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GREEN SHOOTS IN WINTER: THE REVIVAL OF THE SWISS IPO MARKET?

Reference: CapLaw-2025-01

After several years of subdued activity, the IPO market in Switzerland underwent something of a resurgence in 2024. This revival was underpinned by key transactions, a shift in investor sentiment, and broader trends in European capital markets, all of which have contributed to renewed confidence in the viability of Swiss public listings. Looking toward 2025 and beyond, while certain fundamental questions remain about market depth, investor appetite and macroeconomic stability, there are reasons to have an optimistic outlook regarding the future of the Swiss IPO landscape.

By Deirdre Ní Annracháin

1) The Revival of Swiss IPOs

In recent years, the Swiss IPO market has suffered heavily from a variety of macroeconomic factors, including the outbreak of COVID-19, the war in Ukraine, and sustained market volatility both in Europe and globally. As a result, the number and size of traditional IPOs on SIX Swiss Exchange between 2020 and 2023 decreased dramatically compared to historic levels, resulting in a general consensus that the market was essentially closed to newcomers. The only exception to this was the short-lived boom in listings of GDRs, or global depositary receipts, by Chinese issuers on SIX Swiss Exchange pursuant to the „China-Switzerland Stock Connect" program introduced in June 2022, which has since died down following new, limiting regulations by the Chinese Securities Regulatory Commission in 2023.

Encouragingly, in 2024, some tentative green shoots began to emerge, signalling a potential revival of the Swiss IPO market. The key trigger for this was the successful public listing of Galderma. In March 2024, the dermatology firm listed on SIX Swiss Exchange, raising CHF 2.3 billion and achieving an initial market capitalization of approximately CHF 14.5 billion. As the largest Swiss IPO since 2017 and the largest IPO globally in the first quarter of 2024, it was widely regarded as the event that could herald the reopening of the Swiss market after an extended period of dormancy.

Adding further cause for celebration, the transaction was well received by investors and performed strongly in the aftermarket. With an IPO price of CHF 53 per share, an opening price of CHF 61 per share on the first day of trading, and a surge of 21% by the end of that first day, concerns may have initially arisen about an over-enthusiastic aftermarket. However, in the intervening period, the price of the shares has continued to climb steadily, exceeding CHF 100 per share by the end of 2024. The market also successfully absorbed two substantial sell-downs by major shareholders in September and November 2024, further evidencing the strength and depth of investor appetite for the Swiss company's shares. Market observers viewed

both the IPO itself and the strong aftermarket performance as an affirmation of the strength of Switzerland's public markets.

The success of Galderma's listing appears to have acted as a catalyst for a number of Swiss firms to begin preparing for IPOs, suggesting that confidence in public capital markets is improving. Investment banks have reported increased preparatory activity, as companies from a range of industries explore the possibility of a listing in Switzerland. Given the lengthy period required to prepare for an IPO, however, it may take several months, or even until the beginning of 2026, before the fruits of these initiatives are seen in the form of new entrants on SIX Swiss Exchange.

2) A Broader Context

Switzerland's nascent IPO recovery must be understood within the broader European capital market landscape. Across the continent, public listings have increased in frequency, with proceeds from European IPOs reportedly doubling in 2024 compared to 2023. Companies in key markets such as Germany, France, and the United Kingdom have contributed to this resurgence, benefiting from more favourable economic conditions and a measured reduction in market volatility.

Despite this increased activity in Europe, however, the aftermarket performance of a number of landmark European IPOs failed to achieve the same successes as the Galderma IPO. For example, the shares of Douglas AG, listed on the Frankfurt Stock Exchange in March 2024, and Puig Brands SA, listed on the Spanish Stock Exchanges in May 2024, have both consistently and stubbornly remained below the IPO price, triggering disappointment among market spectators.

While the re-emergence of Swiss IPOs has been a defining feature of 2024, an equally important development has been the prevalence of corporate spin-offs and other restructuring efforts aimed at unlocking shareholder value, as evidenced by Liberty's spin-off of Sunrise Communications Ltd in November 2024. Given the lower risk profile that comes from having a ready-made shareholder base for the spun-off shares, such transactions are often less dependent on favourable IPO conditions and have proven to be an effective means for large corporations to optimize their business structures. Among the notable forthcoming transactions is Holcim's proposed spin-off of its North American operations. The building materials conglomerate has indicated plans for a listing in the United States, expected to take place in mid-2025. This move aligns with a growing trend among large corporations seeking to unlock shareholder value through strategic corporate restructuring rather than through traditional IPOs.

3) Key Questions Moving Forward

Despite the positive momentum observed in 2024, certain critical questions remain regarding the future trajectory of the Swiss IPO market. While the success of the Galderma IPO indicates an appetite for large-cap transactions, it remains to be seen how well smaller players – which have historically made up a significant number of Switzerland's IPO candidates – might fare.

The true test of the market's robustness will therefore likely be its ability to support mid-sized and smaller listings in the coming months.

The recent IPO of Bioversys, a Swiss biotech firm, will serve as an important benchmark in this regard. With a deal size of EUR 80 million and an initial market capitalization of around CHF 215 million, Bioversys represents a more modest offering than Galderma, and its performance will provide insights into investor willingness to engage with smaller, high-growth companies.

The macroeconomic environment remains a crucial factor influencing IPO candidates' willingness to proceed to market. While inflationary pressures have eased to some extent, and interest rates have stabilized, significant uncertainties exist, particularly in respect of geopolitical tensions and the potential introduction of U.S. tariffs on European products. IPO candidates must therefore demonstrate not only strong financial fundamentals but also resilience in the face of potential economic headwinds, with investors likely placing a premium on companies that enjoy leadership positions in niche, high-growth industries.

4) Looking Ahead: A Cautiously Optimistic Outlook

The resurgence of the Swiss IPO market in 2024 is an encouraging development, and the outlook for 2025 remains largely positive. The presence of a healthy pipeline of potential listings suggests that the recent momentum may continue, particularly if broader European market conditions remain supportive.

However, this recovery must be approached with a measured perspective. The ability of the Swiss IPO market to sustain this momentum will depend on multiple factors, including market depth, macroeconomic stability, and investor risk appetite. Additionally, regulatory and structural considerations will play a role in determining whether Switzerland remains an attractive listing destination in the face of competition from other global financial hubs.

In sum, while the re-emergence of IPO activity in Switzerland is a welcome development, long-term sustainability will require continued adaptation, prudent corporate governance, and a stable macroeconomic environment. Market participants will do well to remain vigilant, ensuring that the enthusiasm surrounding recent transactions is supported by enduring financial and economic fundamentals.

Deirdre Ní Annracháin (deirdre.niannrachain@nkf.ch)

LIFT OF SWISS PROTECTIVE MEASURES AGAINST EU TRADING VENUES

Reference: CapLaw-2025-02

On 29 January 2025, the Swiss Federal Council (the Federal Council) decided to lift protective measures introduced when the European Union (EU) refused to recognize Swiss stock exchanges as equivalent, as of 1 May 2025. This article provides an overview of the situation so far, the decision of the Federal Council and its impact on the Swiss financial market and Swiss issuers.

By Urs Kägi / Florian Schweighofer

1) Background: Former Measures to Restrict Trading of the EU Against Switzerland

Under article 23(1) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 (Markets in Financial Instruments Regulation, MiFIR), EU investment firms have a trading obligation, allowing them to only trade shares on trading venues in the EU or in jurisdictions that are recognized by the EU as equivalent in accordance with article 25(4) Directive 2014/65/EU (so-called stock exchange equivalence, „*Börsenäquivalenz*"). Because the EU trading obligation also covers shares of companies with a registered seat in Switzerland (Swiss Shares) traded on Swiss exchanges, EU investment firms can only trade these equities on Swiss trading venues if the EU recognizes the Swiss exchanges as equivalent.

In December 2018, the European Commission extended the stock exchange equivalence for Switzerland until 30 June 2019 (see Commission Implementing Decision (EU) 2018/2047 of 20 December 2018 on the equivalence of the legal and supervisory framework applicable to stock exchanges in Switzerland in accordance with Directive 2014/65/EU of the European Parliament and of the Council). However, the European Commission then let the stock exchange equivalence definitively expire on 30 June 2019. Hence, the EU no longer recognized Swiss trading venues as equivalent to EU trading venues. This decision was made in the context of political tensions between the EU and Switzerland, primarily relating to the negotiation of a new framework agreement to govern their bilateral relations.

As a result, there was a significant risk that EU investment firms could no longer trade equities on Swiss trading venues. This was of great importance for the Swiss financial market, as most of the equity trading on the SIX Swiss Exchange, the largest Swiss stock exchange, is performed by foreign investment firms. As market participants domiciled in the EU or the European Economic Area (EEA) account for almost 60 percent of all foreign market participants admitted to the SIX Swiss Exchange (see dispatch of the Federal Council, BBl 2022 1673, p. 6), many market participants were restricted by the EU equity trading obligation when trading equities on Swiss trading venues.

2) Swiss Protective Measures

a) Initial response to restrictive measures of the EU

To respond to the expected restrictive measures of the EU, the Swiss Federal Council passed the „Ordinance on the Recognition of Foreign Trading Venues for the Trading of Equity Securities of Companies with Registered Office in Switzerland" (Swiss Ordinance) on 30 November 2018 already in advance. The Swiss Ordinance required that Swiss Shares be traded exclusively on Swiss trading venues or on foreign trading venues recognized by the Swiss Financial Market Supervisory Authority (FINMA) as of 1 January 2019. As of 1 July 2019, when the EU no longer recognized Swiss trading venues as equivalent to EU trading venues, FINMA could not recognize trading venues in the EU and its members states as equivalent (the Swiss Protective Measures). The Swiss Ordinance included a grandfathering provision for shares of Swiss registered companies listed on a foreign stock exchange prior to 30 November 2018 with the express consent of the issuer given before said date, provided the issuer assumed the obligations associated with listing or admission to trading on the relevant stock exchange (see article 1(2) of the Swiss Ordinance and article 41a(2) of the Swiss Financial Market Infrastructure Act (FMIA) under current law).

The Swiss Protective Measures, apart from the exception for grandfathered Swiss Shares, restricted Swiss Shares from being admitted to an EU stock exchange or traded on an EU trading venue, and therefore ensured that the EU trading obligation did not apply for these shares and an exchange equivalence is no longer required in this regard. Put differently, the Swiss Protective Measures aimed to ensure that after the expiration of the EU stock exchange equivalence, there was no more trading in the EU in Swiss Shares that would entail corresponding share trading obligations. As a result, EU investment firms have been able to continue trading Swiss Shares on Swiss trading venues without violating the EU trading obligation, even without stock market equivalence.

By effectively restricting the trading of Swiss Shares to Swiss exchanges or foreign non-EU exchanges, the Swiss Protective Measures mitigated the impact of the EU's decision to no longer regard Swiss stock exchanges as equivalent. This was of great importance, as a loss of the trading volumes generated by EU investment firms would have had a significant adverse impact on the trading of Swiss Shares on Swiss trading venues and thus on the entire Swiss stock exchange infrastructure as a key element of the Swiss financial market.

b) Introduction to FinMIA

With effect as of 1 January 2024, the Swiss Ordinance was adopted in the newly introduced article 41a to 41c FMIA. This was necessary as the Swiss Ordinance was issued by the Federal Council based directly on article 184(3) of the Federal Constitution, being reasonably limited in time, with a possibility for one extension (see article 7c(2) et seq. Government and Administration Organization Act).

According to article 41c(2) FMIA, the Federal Council publishes a list of jurisdictions that restrict its market participants in trading Swiss Shares on Swiss trading venues (the Restricted List). Inclusion in the Restricted List meant that trading venues from the included countries could not be recognized as equivalent to Swiss trading venues by FINMA. So far, only the EU and its member states have been included in the Restricted List.

The new article 41a et seqq. FMIA are limited in time as well, in particular until 31 December 2028. However, as the long-term goal has been to restore stock exchange equivalence between the EU and Switzerland from the start, the Swiss Protective Measures have always had a legitimate basis only when the EU did not recognize Swiss stock exchanges as equivalent.

3) Changes to MiFIR in 2024

In 2024, only a few months after article 41a et seqq. FMIA entered into force, the EU amended article 23(1) MiFIR through Regulation (EU) No 2024/791. This amendment significantly altered the scope of the trading obligation for shares. Under the new article 23(1) MiFIR, the obligation to trade on an EU trading venue is limited to shares with an International Securities Identification Number (ISIN) of the EEA. Consequently, Swiss Shares are no longer subject to the share trading obligations under MiFIR (but still under the Swiss Protective measures).

This change effectively meant that the trading obligation no longer included Swiss Shares, allowing them to be traded on EU trading venues under EU law once again. The amendment to the MiFIR was a crucial step towards restoring stock exchange equivalence between the EU and Switzerland, as it removed the regulatory barrier that had previously restricted the trading of Swiss Shares in the EU. Furthermore, it also removed the basis for the Swiss Protective Measures.

However, the European Securities and Markets Authority (ESMA) had changed its practice beforehand to apply the share trading obligation only to shares with an ISIN from EEA countries. The European Parliament and the Council of the EU expressly embedded the practice of ESMA in Regulation (EU) No 600/2014 (reasoning 21 to Regulation (EU) No 2024/791). When the Swiss Federal Council adopted its dispatch on the amendment to the FMIA, it knew of this change in the practice of ESMA but decided to hold on to the Restricted List as such change was not governed on EU Regulation level at the time (see dispatch of the Federal Council, BBl 2022 1673, p. 5 et seq. and 10).

4) Negative effects of lasting Swiss Protective Measures for Swiss issuers

With the Swiss Protective Measures having remained in force and the EU and its member states still being listed on the Restricted List even after the changes to the MiFIR, Swiss issuers have been disadvantaged compared to foreign issuers.

In particular, the Swiss Protective Measures restricted Swiss issuers from having their shares listed on an EU stock exchange, which has been a disadvantage namely for Swiss issuers

seeking a dual listing. For example, a Swiss issuer planning a public exchange offer for the shares of an EU issuer could not have sustained the existing listing of the target company on an EU trading venue. Such material disadvantage in negotiations between Swiss and EU issuers could only have been addressed, *e.g.*, by listing Global Depository Receipts (GDR) on the respective foreign trading venue or through a secondary listing of Swiss Shares in an EEA member state such as Norway (although the first Norwegian stock exchange, Oslo Børs ASA, only achieved formal recognition in January 2025). However, GDRs are hardly known or even unprecedented in many EU member states and a secondary listing in an EEA member state – which most often has no significant connection to the companies of such a transaction – is usually undesired. Hence, such alternative measures were rather theoretical considerations than practical solution driven based directly on economic grounds.

5) Lift of Swiss Protective Measures

On 29 January 2025, the Federal Council decided to remove the EU and its member states from the Restricted List and therefore lift the Swiss Protective Measures as of 1 May 2025 (see press release of the Federal Council „Federal Council to remove EU from stock exchange protection list as of 1 May 2025" of 29 January 2025). The Restricted List has been removed from the website of FINMA as early as February 2025, with no jurisdiction being left included on the list. The decision of the Federal Council follows requests from the foreign affairs committees of both the National Council and the Council of States as well as the economic affairs and taxation committee of the National Council to lift the Swiss Protective Measures (see press release of the foreign affairs committee of the National Council of 14 January 2025, <https://www.parlament.ch/press-releases/Pages/mm-apk-n-2025-01-14.aspx>; press release of the foreign affairs committee of the Council of States of 21 January 2025, <https://www.parlament.ch/press-releases/Pages/mm-apk-s-2025-01-21.aspx>; press release of the economic affairs and taxation committee of the National Council of 21 January 2025, <https://www.parlament.ch/press-releases/Pages/mm-wak-n-2025-01-21.aspx?lang=1031>, all links last accessed 20 February 2025).

The Federal Council justified its decision by stating that an overall assessment had shown that the effect of the Swiss Protective Measures against the EU is currently no longer necessary due to the recent changes to MiFIR (see above, section 3). The decision was based on the recognition that the changes to MiFIR had addressed the primary concern of ensuring that Swiss Shares could be traded on EU trading venues in accordance with EU law. The Federal Council also admitted that the current legal situation can lead to negative effects for Swiss companies in individual cases (*e.g.* in the context of mergers with EU companies).

The Federal Council therefore concluded that the Swiss Protective Measures are no longer necessary at present and should be lifted in favor of Swiss companies. Such lift marks the end of protective measures between the EU and Switzerland that have been in place since 2019.

The lift of Swiss Protective Measures on 1 May 2025 will end the ban on trading venues in the EU and its members states not being recognized by FINMA as equivalent to Swiss trading

venues. As a consequence, Swiss issuers may again list their shares on an EU stock exchange. This is of particular interest for Swiss issuers that are evaluating strategic alternatives involving a dual listing in the EU, *e.g.* in connection with a transaction involving an EU target company.

6) Remaining requirement for recognition of foreign trading venues

a) General requirement for recognition

Despite the lift of the Swiss Protective Measures, the requirement for recognition of foreign trading venues by FINMA in accordance with article 41a FMIA remains in place. Article 41a(1) FMIA states that trading venues require recognition if equity securities of companies having their registered office in Switzerland are traded there or if they otherwise facilitate trading of such securities and if, cumulatively, such securities are listed on a stock exchange in Switzerland or are traded on a Swiss trading venue. Therefore, for dual listings of Swiss Shares in the EU (as for any other country outside of Switzerland), recognition of the respective trading venue by FINMA will generally still be necessary.

b) Exception

As already mentioned, there is an exception from the requirement of recognition for grandfathered shares listed on a foreign stock exchange prior to 30 November 2018 with an express consent of the issuer given before said date, provided the issuer assumes the obligations associated with listing or admission to trading on the relevant stock exchange (see above, section 2).

c) Requirements to obtain recognition

Article 41b(1) FMIA states by law that FINMA shall grant recognition on request if the foreign trading venue (i) is subject to appropriate regulation and supervision and (ii) does not have its registered office in a jurisdiction that restricts its market participants in trading equity securities of companies having their registered office in Switzerland on Swiss trading venues and thereby significantly adversely affects the trading in such equity securities on Swiss trading venues.

As trading venues in the EU usually fulfill the requirement of appropriate regulation and supervision and since the changes to MiFIR in 2024 (see above, section 3), the EU and its member states are no longer restricting its market participants in trading equity securities of companies having their registered office in Switzerland on Swiss trading venues in accordance with requirement (ii), FINMA must grant recognition to EU trading venues on request in the future.

FINMA does not publish guidance on applications for recognition in accordance with article 41a FMIA – other than for applications for (separate) recognition as a foreign trading venue in accordance with article 41 FMIA (see FINMA, Wegleitung für Gesuche betreffend die Anerkennung als ausländischer Handelsplatz nach Art. 41 FinfraG vom 7. Februar 2025) – but informs on request.

Furthermore, in accordance with article 41b(2) FMIA, FINMA may also grant recognition to a foreign trading venue without being requested to do so if that foreign trading venue fulfils the mentioned requirements. We expect this to be of practical importance (see below, section 7).

d) Limitation in time

The article 41a et seqq. FMIA are limited in time until 31 December 2028 and, barring any setbacks, are expected to expire on said date. After such potential expiration, as up to 2019, Switzerland would again not restrict dual listings and impose a recognition requirement for foreign trading venues, respectively.

7) Outlook

We expect at least the major trading venues in the EU to be recognized by FINMA on or shortly after 1 May 2025, as in the past, FINMA had recognized many (non-EU) trading venues without being requested to do so as well. In the absence of any existing recognition, FINMA has so far been flexible in recognizing foreign stock exchanges swiftly. As a result, provided that projects such as dual listings are properly planned and implemented by issuers, the ongoing recognition requirement should cause no delays in the process.

Given that the EU maintained the trading obligation for EU shares and did not recognize Swiss stock exchanges as equivalent, EU law still places Swiss stock exchanges at a disadvantage to a certain degree. It remains to be seen whether the new bilateral treaties between the EU and Switzerland, which are set to be finalized this spring but are not expected to be submitted to parliament before 2026, will address that issue as well.

Urs Kägi (urs.kaegi@baerkarrer.ch)
Florian Schweighofer (florian.schweighofer@baerkarrer.ch)

THE BOOM OF EXCHANGE TRADED PRODUCTS (ETPS)

Reference: CapLaw-2025-03

ETFs and ETPs have grown to over USD 7 trillion in assets under management (AuM) of which ETPs contributed USD 1 trillion. To reflect on selected key legal aspects which are relevant in the course of this boom the article at hand examines the regulatory framework for ETPs in Switzerland with a focus on structuring as well as listing requirements. It further highlights the role of special purpose vehicles and collateralization including recent developments such as the SIX Digital Collateral Service (DCS) for cryptocurrency collateral.

By Luca Bianchi / Michael Kremer / Donja Gehrig

1) Introduction

Over the last decade, the growth of Exchange Traded Funds (ETFs) and Exchange Traded Products (ETPs) exceeded USD 7 trillion in AuM (cf. EFAMA, *Demystifying ETPs: A simple guide for the European investor*, 1). SIX Swiss Exchange (SIX) has 172 ETP listings and a total of 440 listed crypto products (ETPs and structured products), an all-time high. BX Swiss (BX) has 106 ETPs which are listed and/or admitted to trading. This boom is driven by investor demand which in recent years was particularly high for crypto ETPs.

Against this background, this article provides a brief overview of ETPs and the key regulatory requirements applicable to their structuring and listing in Switzerland.

2) Exchange Traded Products (ETPs)

Under the Additional Rules for the Listing of Exchange Traded Products of SIX (ARETP SIX) and BX (ARETP BX), ETPs are defined as collateralized, non-interest-bearing bearer debt securities which are issued as securities and sold and redeemed continuously in the same structures and denominations (article 3 (2) ARETP SIX; article 1.2 ARETP BX). ETPs track the price movements of an underlying asset, either directly or with leverage (tracker certificate). Issuers seeking to list ETPs on a Swiss stock exchange must adhere to the listing requirements of SIX or BX. Moreover, the production and offer of ETPs must be compliant with the general regulations of the Financial Services Act (FinSA) and, in particular, the specific requirements for structured products outlined in article 70 FinSA and article 96 of the Financial Services Ordinance (FinSO).

Furthermore, ETPs are not to be confused with ETFs. As opposed to ETFs, ETPs do not fall within the scope of the Collective Investment Schemes Act (CISA) in accordance with the „form over substance“ principle applied by the Swiss Financial Market Supervisory Authority (FINMA) when distinguishing structured products from collective investment schemes. ETPs are debt instruments and thus do not qualify as collective investment schemes in Switzerland.

Accordingly, ETPs are not subject to FINMA approval requirements or supervision. Instead, ETPs qualify as structured products pursuant to article 3 (a) (4) of the FinSA.

Given the ETP market's growth and the sheer number of new products, regulatory compliance is essential for many issuers and offerors of ETPs.

3) Structuring of ETPs

a) Regulatory Requirements for Structured Products (Article 70 FinSA)

Under article 70 (1) FinSA, structured products offered in or from Switzerland to retail clients without an ongoing asset management or advisory relationship must be issued, guaranteed, or equivalently secured by a bank, insurance company, securities firm, or foreign institution under equivalent supervision.

Alternatively, a special purpose vehicle (SPV) may issue structured products to retail clients under article 70 (2) FinSA if:

– A ***financial intermediary*** under the Banking Act (BA), Financial Institutions Act (FinIA) or CISA, an insurance company under the Insurance Supervision Act (ISA) or a foreign institution subject to equivalent supervision offers the products; ***and***

– ***collateral*** is provided corresponding to the requirements of article 70 (1) FinSA.

According to article 96 (2) FinSO, an SPV is a legal entity created primarily for issuing financial instruments, with the ability to engage in directly related secondary activities. The boom of crypto ETPs has led to an increasing number of Swiss or foreign SPVs as ETP-issuers instead of traditional banks or securities firms as issuers, although the latter remains possible as well.

Therefore, (SPV-issued) ETPs may be offered to retail clients, *inter alia*, by banks, securities firms or asset managers pursuant to articles 17 (1) or 24 (1) FinIA as authorized offerors provided the ETPs are adequately secured.

b) Collateralization Requirement (Article 96 (3) FinSO)

To meet the collateralization requirements corresponding to article 70 (1) FinSA, article 96 (3) FinSO specifies acceptable forms of security, including:

a. A legally enforceable guarantee from a supervised financial intermediary ensuring the issuer's obligations or financially equipping the issuer to satisfy investor claims; ***or***

b. the provision of a legally enforceable real security in favor of investors.

The above list of eligible forms of enforceable security is not conclusive, allowing for alternative security forms. In practice, pledge agreements are regularly used as such legally enforceable security. The collateral pursuant to article 70 (2) ***(b)*** FinSA must not necessarily be provided by a supervised financial intermediary but may be provided by the SPV itself or a third party instead.

It is noteworthy that certain foreign jurisdictions provide for securitization companies or Protected Cell Companies (PCCs) with legally segregated compartments to ensure asset separation to the benefit of the investors in case of an insolvency of the issuer or one of its compartments. While structural security is not explicitly listed under article 96 (3) (a) and (b) FinSO, the legal doctrine argues for its eligibility. However, to be on the safe side, issuers typically complement structural security with pledges or other eligible collateralization mechanisms. The compartments of an SPV or the collateralization of ETPs typically do not qualify as collective investment schemes under the CISA because ETPs are issued as debt instruments. It would be desirable to introduce an issuance vehicle with segregated compartments under Swiss law in the future as well.

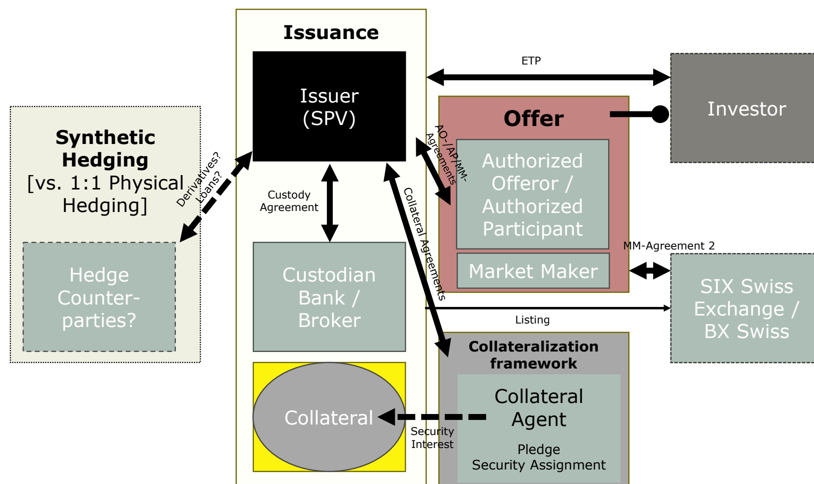
Consequently, a regulated or unregulated SPV, whether domiciled in Switzerland or abroad, may issue ETPs to retail clients without a bank guarantee if the requirements of article 70 (2) FinSA are met. Due to capital costs under the Basel III-regulations from the perspective of a bank or securities firm, issuances by SPVs without bank guarantees may be preferred if no consolidation requirements apply for these financial institutions from a regulatory and accounting perspective.

From a Swiss civil law perspective, the validity of pledges is controversial and thus legally uncertain if cryptocurrencies are pledged directly as the pledge object. While some legal scholars argue that cryptocurrencies can be pledged in accordance with articles 884 et seqq., respectively, 899 et seqq. of the Civil Code, others contend that they do not meet the legal requirements to qualify as a validly pledged asset under Swiss civil law (cp. Luca Bianchi, *Sicherung von strukturierten Produkten nach Art. 70 Abs. 2 FIDLEG*, SZW 1/2023, 67; Luca Bianchi, *Konvergenz von innovativen Finanzprodukten – same same, but different? (Teil 2)*, SJZ 11/2024, 508). Accordingly, under the SIX listing rules, it is currently required to pledge (at least also) the collateral account (i.e., the claim for surrender of the underlying instrument) to mitigate potential legal uncertainties in such cases (article 14 (1) (1bis) ARETP SIX).

It is noteworthy that in February 2025, SIX and SIX Digital Exchange (SDX) introduced the ***Digital Collateral Service (DCS)***, a new collateralization mechanism enabling its participants to use selected cryptocurrencies as collateral alongside traditional assets. This service streamlines collateral management by allowing entities to manage both traditional securities and crypto-assets on a single platform, thereby enhancing operational efficiency and reducing counterparty risk. Notably, DCS may be particularly advantageous for crypto ETP issuers, as it aims to provide a secure and efficient way to use crypto-assets as collateral.

c) Impact of Regulatory Requirements on ETP Structuring

To provide an example of a standard transaction structure which is aligned with the requirements of article 70 (2) FinSA, the graph below sets out an indicative structure chart for an ETP issued by an SPV as well as its collateralization framework. In practice, ETP structures and collateralization frameworks may vary from this example and allow for certain innovation.



4) Listing of ETPs

a) General Listing Rules

The Listing Rules (LR) of SIX or BX contain general provisions and govern primarily the listing of equity securities. The listing of ETPs is subject to the ARETP SIX or ARETP BX. In the absence of conflicting regulations or additional regulations outlined in the ARETP SIX or BX, the LR and their corresponding implementing provisions are generally applicable to the listing of ETPs. For example, the listing requirements of a clearing and settlement system permitted by the exchange (article 23 LR SIX) or of a Swiss paying agent (article 24 LR SIX) must also be fulfilled for ETPs.

b) Additional Listing Rules for ETPs

The listing of ETPs requires issuers to fulfill specific listing requirements. Issuers must either demonstrate sufficient capitalization or provide a guarantee or secure the ETP with appropriate collateral (article 4 ARETP SIX). Further, open-end ETPs must grant investors a redemption right, ensuring liquidity (article 6a ARETP SIX). The minimum capitalization of an ETP at issuance is CHF 1 million for SIX (article 7 ARETP SIX), whereas BX imposes no minimum threshold (article 9.1 ARETP BX). In addition, the issuer must appoint a market maker to facilitate continuous trading and liquidity (article 19 ARETP SIX; article 3.3 ARETP BX). For a successful listing, the issuer must provide evidence that it has a prospectus which has been approved by a prospectus office in accordance with the FinSA or that is deemed to be approved in accordance with the FinSA, which specifically includes a description of the collateral and the associated risks (if no exemption applies; article 15 ARETP SIX and article 7.4 LR BX).

Moreover, the Directive of SIX on the Procedure for Exchange Traded Products (DPETP SIX) sets out the procedure for the listing of ETPs. SIX issuers must submit a formal listing application (including also an application as a new issuer for first time issuers). The issuer must enclose a compliance declaration that the ETP is not a collective investment scheme and that the issuer or

the guarantor is a bank, an insurance company, a securities firm or a foreign institution subject to equivalent prudential supervision ***or*** that collateralization within the meaning of article 70 (2) (b) of the FinSA is guaranteed.

Further, the issuer must confirm, if applicable, that the custodian holds the assets serving as collateral on behalf of the issuer and is a custodian within the meaning of article 14 (4) ARETP SIX; and that, if applicable, the custodian keeps the assets serving as collateral available at all times within the meaning of article 14 (4) ARETP SIX and that these can either be allocated individually to the issuer or are allocated to a community and it is clear what share of the joint assets the issuer is entitled to (article 15a ARETP SIX).

Pursuant to article 4 DPETP SIX, the issuer must, *inter alia*, submit an issuer's declaration, a declaration of consent, and publish an official notice disclosing key issuance details. At BX, the submission of the listing application and its attachments are governed by the Directive to the Listing Procedure for Derivatives (article 10.1 ARETP BX).

SIX and BX generally require that underlying assets of ETPs must be sufficiently liquid, tradable, and transparent. These assets typically include, *inter alia*, equities, bonds, collective investment schemes, derivatives and futures, precious metals and commodities, and crypto-assets (article 9-13 ARETP SIX; article 7.1 ARETP BX). In addition, the Directive on Crypto-Assets as Underlying Instruments of SIX (DCA SIX) governs technical details and other requirements for crypto-assets as underlying instruments. At BX, special requirements for cryptocurrencies as underlying are stated in article 8 ARETP BX.

c) Special Listing Requirements for Collateralization

Pursuant to article 14 (1)-(3) ARETP SIX and article 6 ARETP BX, ETPs are secured by the underlying asset, either physically or in the form of a futures contract, or by the claim to the underlying asset in the case of crypto-assets. They can also be backed, *inter alia*, by liquid securities listed on SIX or BX or an equivalent foreign exchange, or by cash balances or precious metals. The collateral must cover at least the outstanding amount of the ETPs, and the assets are held by an independent third party custodian appointed by the issuer.

If the collateral consists of crypto-assets, additional requirements must be met (article 14 (4) ARETP SIX; article 8 ARETP BX). At SIX, the custodian must keep the assets available for the issuer at all times, ensuring that the assets can either be individually allocated to the issuer or be part of a collective pool with a clear indication of the issuer's share.

d) Approval Duty for Crypto Custodians of ETPs

The following are permitted as custodians of crypto ETPs (article 14 (4) ARETP SIX): a) custodians within the meaning of article 4 (2) of the Federal Act on Intermediated Securities (FISA) or a person pursuant to article 1b of the Banking Act (BankA) (fintech license); or b) foreign institutions that are subject to equivalent supervision. SIX may demand that suitable documents

are provided as evidence of the crypto-asset custodian's regulatory status (article 14 (5) ARETP SIX).

As regards the additional evidence of an equivalent supervision of foreign institutions which intend to act as crypto custodians for ETPs, in practice, SIX has accepted alongside the approval letter by the foreign regulator or excerpts of lists of approved entities of the regulator, for example, a detailed application with an argumentation concerning the equivalent supervision including legal memoranda or confirmations by reputable foreign law firms as regards foreign law aspects as enclosures. However, such demands for additional evidence by SIX basically constitute a de facto approval requirement for foreign custodians of crypto-assets for ETPs by SIX. This is reflected in SIX's practice to request separate applications regarding the recognition of (foreign) crypto custodians by SIX in certain cases and the publication of a list of recognized crypto custodians on the SIX webpage. In our view, a (de facto) SIX-approval duty for (foreign) crypto custodians would merit (if not require) a more specific legal basis in the ETP listing regulations.

If the crypto custodian does not meet the above requirements, the issuer or the guarantor making a guarantee commitment in accordance with the Directive on Guarantee Commitments (DGC) must be a regulated financial institution, such as a bank, insurance company, securities firm or a foreign institution subject to equivalent supervision (article 14 (6) ARETP SIX).

5) Conclusion

Switzerland has established itself as a key financial center for ETPs, supported by a transparent regulatory framework and a booming ETP market, particularly in the crypto-asset segment. The structuring and listing of ETPs require compliance with specific regulatory and collateralization requirements which ensure investor protection and market stability.

The increasing use of SPVs and new collateralization solutions, as well as cryptocurrencies, reflects the innovative nature of the ETP market. While regulatory developments continue to shape the financial products landscape in Switzerland, in civil law, legal uncertainties regarding the direct pledging of cryptocurrencies remain controversial and unresolved. Further regulatory adoption of additional types of digital assets (besides cryptocurrencies) such as equity or debt tokens as well as other (illiquid) underlings for ETPs (such as a broad range of alternative investments) will be essential to address these challenges and support the continued growth of the Swiss ETP market. A further highlight will hopefully be the introduction of tokenized ETPs at BX Digital or SDX at some point in the future.

Illiquid assets, on the other hand, may currently typically not be used as underlyings of ETPs due to the existing LR and the increased risk which they pose to investors. However, permitting more illiquid assets as underlyings (e.g., private equity, private debt or real estate) of ETPs under the SIX or BX listing regulations in the future would certainly constitute a business opportunity with respect to the securitization of different kinds of assets in the wrapper of ETPs and would meet an existing demand by issuers and investors which can be observed in the market for

unlisted structured products, all aligned with the general trend towards the democratization and assetization of alternative investments.

Luca Bianchi (luca.bianchi@kellerhals-carrard.ch)
Michael Kremer (michael.kremer@kellerhals-carrard.ch)
Donja Gehrig (donja.gehrig@kellerhals-carrard.ch)

M&A TRANSACTIONS IN THE SWISS FINANCIAL MARKET – PART II: ASSET DEALS INVOLVING SWISS REGULATED ENTITIES

Reference: CapLaw-2025-04

The Swiss financial market laws provide for a number of regulatory notification and approval requirements which must be adhered to in the context of asset deals involving entities prudentially supervised by FINMA. This article provides an overview of the relevant regulatory requirements which may be applicable in the context of acquiring a portfolio of assets, liabilities and contracts by and/or from a Swiss regulated financial institution.

By Alexander Wherlock

1) Introduction

In the past two years the number of traditional share deals involving Swiss regulated entities has vastly increased. There has been M&A activity in the public markets (such as the well-publicized public take-over battle between Liontrust Asset Management plc and the investor group NewGAMe regarding the listed Swiss fund manager, GAM Holding AG) and the private markets (among others, the acquisition of Kaleido Privatbank AG by Bank Richelieu, or the acquisition of Sociéte Génerale Private Banking (Suisse) SA by Union Bancaire Privée). The Swiss financial market laws set out a number of regulatory notification and approval requirements which must be adhered to in the context of the acquisition of a qualified participation in Swiss regulated financial institutions under a share deal. In the article CapLaw-2024-85, „M&A Transactions in the Swiss Financial Market – Part I: Acquiring a Qualified Participation in a Swiss Regulated Entity" the author provided an overview of the regulatory requirements which must be complied with upon acquiring a qualified participation in a Swiss regulated entity.

In addition to the activity in the traditional M&A-markets, there has been a rise in the number of asset-related deals (Asset Deals) in the Swiss regulated sector. Such Asset Deals are often not as well publicized as traditional share deals but rather are typically executed away from the

public eye. However, the recent acquisition of the client book of Privatbank IHAG Zürich AG by Vontobel AG serves as an example of the increased activity in Asset Deals in the Swiss regulated market. The underlying intentions of such transactions vary in practice, with most deals aiming at expanding the acquirer's business by assuming a part of the operations of the selling entity. Asset Deals may also serve as a balance sheet-driven risk transfer instrument (often referred to as *Synthetic Risk Transfers or SRTs*), under which the underlying risks and credit exposures of a portfolio of mortgages and/or other loans are (synthetically or formally) transferred to the acquirer in exchange for the payment of a premium. Often SRTs are executed on a collateralized basis with the underlying claims also being transferred to the acquirer as collateral.

The Swiss regulatory framework provides for a number of notification and/or approval requirements which may be applicable in the context of an Asset Deal involving a Swiss regulated entity. The specific regulatory consequences of any given transaction will, however, typically have to be assessed on a case-by-case basis and will vary depending on the transferred assets, the size of the transaction relative to the overall business of the involved entities, and the regulatory status of the transaction parties.

The considerations outlined herein focus on the regulatory requirements applicable to banks licensed under the Federal Act on Banks and Savings Institutions (Banking Act); and other financial institutions, such as securities houses, fund management companies, asset managers for collective assets, trustees and portfolio managers within the meaning of the Federal Act on Financial Institutions (Financial Institutions, and together with banks, collectively Swiss Regulated Entities).

2) Asset Deals Involving Swiss Regulated Entities – *Buy-Side* Consideration

In contrast to the specific notification and approval requirements applicable in the context of an acquisition of a qualified participation in a Swiss Regulated Entity, the Swiss financial market laws, in particular the Banking Act and the Federal Act on Financial Institutions (FinIA), do not provide for specific notification and approval requirements applicable to Asset Deals. As a consequence, each Asset Deal, and the consequences thereof, must be assessed under the general licensing, approval, and regulatory notification requirements set out under the Banking Act and FinIA. Therefore, in practice, the regulatory licensing, approval and/or notification requirements applicable to a specific transaction will depend on whether (i) the holding of the assets and/or the operation of the business transferred under the respective transaction requires a license under the financial market laws of Switzerland, (ii) the existing regulatory license of the acquiring entity permits the holding of the assets and/or operation of the business acquired under the transaction in question, and (iii) the transaction in question triggers any regulatory approval and/or notification requirements under the regulatory license of the selling entity.

a) Asset Deals – Potential Regulatory Licensing Requirements

The regulatory consequences of an Asset Deal are primarily driven by the regulatory qualification of the portfolio of assets, liabilities, and contracts transferred under the transaction, in particular whether the operation of the acquired business qualifies as a regulated activity under the financial market laws of Switzerland.

The Banking Act and the FinIA set out the general licensing requirements for Regulated Entities in Switzerland. As a consequence, engaging in any of the regulated activities outlined below requires a corresponding license under the applicable regulatory framework. Therefore, to the extent that an Asset Deal includes the transfer of business operations qualifying as regulated activities under the Banking Act or FinIA, the acquiring entity will need to assess and ultimately ensure that such regulated activities are covered by its existing regulatory licenses. Depending on the scope of a specific Asset Deal, the following licensing requirements may be of relevance:

- **Regulated Deposit Taking**: Pursuant to article 1a Banking Act, any person that is active in the financial sector and on a commercial basis (i) accepts public deposits in the form of cash or crypto-assets (subject to certain *de-minimis* thresholds) and/or (ii) publicly advertises such services, is considered a bank that requires a banking license under the Banking Act. The term deposit taking is interpreted broadly by the Swiss Financial Market Supervisory Authority FINMA (FINMA) and ultimately covers any acceptance of cash or crypto-assets with a simultaneous establishment of a repayment obligation. However, the broad term of public deposits is narrowed down by several exemptions set out under article 5 et seqq. of the Federal Ordinance on Banks and Savings Institutions (Banking Ordinance).
- **Regulated Portfolio Management and Trustee Activities**: Article 17(1) FinIA defines portfolio managers as any person that based on a mandate including a power of attorney can dispose over client assets on a discretionary basis. Such services are, however, only subject to a licensing requirement under FinIA to the extent such services relate to financial instruments within the meaning article 3(a) of the Federal Act on Financial Services (FinSA). In contrast, portfolio management services exclusively relating to assets that do not qualify as financial instruments within the meaning of FinSA, such as cryptocurrencies qualifying as mere payment tokens under FINMA's regulatory practice, do not qualify as regulated portfolio management services and are hence not subject to a licensing requirement under article 17(1) FinIA. Whilst portfolio managers manage client assets based on a power of attorney in the client's name and on the client's behalf, article 17(2) FinIA defines regulated trustee services as the management or holding of segregated funds on a fiduciary basis on behalf of the beneficiaries of a trust pursuant to the Hague Convention on the Law Applicable to Trusts and on their Recognition.
- **Portfolio Management for Collective Assets**: Pursuant to article 24 FinIA, portfolio managers for collective assets are entities that manage assets and provide portfolio management services on a commercial basis on behalf of collective investment schemes

within the meaning of the Federal Act on Collective Investment Schemes (CISA) and/or occupational pension schemes. Consequently, providing portfolio management services to collective investment schemes and occupational pension funds generally requires a license as a portfolio manager for collective assets – with certain exemptions applying, for example, if (i) the portfolio management services are exclusively provided to collective investment schemes that are only open to qualified investors within the meaning of CISA, and (ii) the statutory *de-minimis* threshold is adhered to.

– **Regulated Fund Management Activities**: Article 32 FinIA defines regulated fund management services as management and administrative services on behalf of investors in collective investment schemes within the meaning of CISA. Whilst fund management companies may, pursuant to article 6(3) FinIA provide portfolio management services to the underlying funds, fund management companies additionally provide administrative services in relation to the collective investment schemes, such as the decision making regarding the issuance of units in the respective fund, the calculation of the net asset value, the determination of redemption prices and the exercising of all rights associated with the fund and its underlying assets.

– **Securities House Activities**: Article 41 FinIA defines regulated securities house activities as (i) the trading of securities on behalf of clients, (ii) proprietary trading of securities, to the extent (aa) such trading activities may endanger the proper functioning of the financial market, (bb) the respective entity is a participant of a regulated trading venue or (iii) the respective entity operates an organized trading facility within the meaning of the Federal Act on Financial Market Infrastructures, and (iii) the provision of market making services by (aa) trading in securities on a short-term and proprietary basis and (bb) permanently and publicly quoting prices for specific securities. In addition, pursuant to article 12 FinIA, underwriting activities, i.e., the acquisition and public offering of securities issued by a third party on the primary market and the issuance and public offering of derivatives qualifying as securities on the primary market require a securities house license pursuant to article 41 FinIA.

Certain Asset Deals may be unproblematic from a licensing perspective, such as a transfer of a mortgage portfolio between two banks. Other Asset Deals, particularly those involving the transfer of client relationships, may trigger regulatory licensing requirements under FinIA and/or the Banking Act if the existing license of the acquiring entity does not cover the acquired business, as per the licensing hierarchy defined in article 6 FinIA. In such cases, the buyer may need to obtain a new license or apply for an extension of its existing license, in accordance with the licensing hierarchy defined in article 6 FinIA. For example, if a licensed portfolio manager acquires a client portfolio from a portfolio manager for collective assets, the licensed portfolio manager will need to obtain a new license or apply for an extension of its existing license to cover the newly acquired regulated activities relating to funds and occupational pension schemes. A requirement to obtain a corresponding regulatory license will also apply in constellations in which a foreign regulated entity establishes a new operating entity in Switzerland to acquire the Swiss regulated business from a Swiss Regulated Entity.

b) Asset Deals – Potential Regulatory Approval and Notification Requirements

An Asset Deal may also trigger regulatory approval and/or notification duties in situations where the regulatory license of the acquiring entity, in principle, already covers the operation of the acquired business.

Pursuant to article 8a Banking Ordinance, a bank must notify FINMA of any changes to the facts underlying its current banking license, whereas such changes must be formally approved by FINMA to the extent that such changes are considered material. Article 8 FinIA and article 10 of the Ordinance of Financial Institutions (FinIO) stipulate a corresponding notification and approval requirement for Financial Institutions.

i. Regulatory Framework – Overview

Article 3 Banking Act defines the general licensing requirements for banks which must be satisfied to obtain a respective banking license under the Banking Act. Pursuant article 3(a) Banking Act, the business model, including a description of the geographical scope of the business, and the corporate organization of the bank must be outlined in the articles of association and the organizational regulations of the respective bank. Therefore, any license granted by FINMA is limited to the business model and the corresponding geographical scope as outlined in the bank's articles of association and organizational regulations. As a consequence, a private bank, which according to its articles of association and organizational regulations exclusively provides wealth management services, while holding a license under the Banking Act, is not automatically permitted to engage in corporate banking services. Similarly, a retail bank with a purely domestically oriented business model licensed by FINMA is not permitted to actively engage in cross-border banking activities without prior FINMA approval. Article 7 FinIA and article 9 et seqq. FinIO provide an equivalent framework for Financial Institutions.

In view of this general licensing framework, article 8a Banking Ordinance sets out an approval and notification procedure in case of changes relating to the facts underlying the respective banking license. While non-material changes must be notified to FINMA, pursuant to article 8a(2) Banking Ordinance, events resulting in material changes to the facts underlying the existing regulatory license must be approved by FINMA. Article 8 FinIA and article 10 FinIO provide for a corresponding notification and approval requirement applicable to Financial Institutions. Neither the Banking Act, FinIA, nor the pertaining implementing ordinances define which changes are considered material in the context of the regulatory approval requirement. Consequently, FINMA has considerable discretion in determining the materiality of the respective changes and ultimately the applicability of the notification or approval requirement. Article 10 FinIO does, however, provide for an exemplificatory, non-conclusive list of changes that are considered material in the context of Article 8 FinIA. Thereunder, namely changes to the articles of association and the organizational regulations as well as changes to the regulatory capital requirements are considered material within the meaning of article 8(1) FinIA and must be formally approved by FINMA. Whilst article 10 FinIO applies to Financial Institutions and is consequently not legally binding for banks, the principles set out under article 10 FinIO can

serve as guidance when assessing the materiality of certain changes in the context of article 8a Banking Ordinance.

ii. Asset Deals subject to an Approval Requirement

In view of the regulatory approval requirements set out under article 8a Banking Ordinance and article 8 FinIA, for each Asset Deal it will have to be assessed whether the transaction in question will result in material changes to the existing regulatory license held by the acquiring entity. Each Asset Deal will need to be analyzed on a case-by-case basis, however in the following constellations the transaction will typically result in material changes to the regulatory license of the acquiring entity, consequently requiring prior FINMA approval:

- **Expansion of the Business Model**: A formal approval requirement under article 8a(2) Banking Ordinance or article 8(2) FinIA will typically apply if the acquisition of the portfolio of assets under an Asset Deal results in an expansion of the business model of the acquiring entity previously licensed by FINMA. Such an expansion may occur from a geographical perspective if the acquisition involves a portfolio of cross-border client relationships relating to a jurisdiction not previously included in the licensed geographical scope of the acquiring entity's business. Alternatively, the expansion may relate to the core business model, such as when the acquisition results in a material expansion of the type of services offered by the acquiring entity that are not currently included in the business model licensed by FINMA (*e.g.*, an expansion of the custody business to include crypto-assets).
- **Changes to the Organizational Structure**: As a general regulatory principle, any changes to a Regulated Entity's articles of association and/or organizational regulations are subject to prior FINMA approval (see article 3(3) Banking Act and article 10(a) FinIO). Therefore, a formal approval requirement will also apply in the context of an Asset Deal if the acquisition of assets leads to and/or requires changes to the organizational structure outlined in the applicable articles of association and/or organizational regulations.
- **Relative Size of the Acquired Assets**: Finally, a formal approval requirement may apply in the context of an Asset Deal if the size of the acquired portfolio of assets, liabilities, and contracts is considered substantial relative to the size of the acquiring entity's current business. Whilst the regulatory framework does not provide for quantitative thresholds, an acquisition would likely be considered material and subject to an approval requirement if it (i) has implications on the applicable regulatory capital requirements and the entity's capability to satisfy such requirements, (ii) leads to a considerable change in the risk profile of the entity's balance sheet or (iii) considerably increases the balance sheet size or has a considerable influence on the turnover and/or earnings prospects of the acquiring entity (*i.e.*, if the integration of the acquired business will require considerable amount of capital).

iii. Asset Deals subject to a Notification Requirement

In constellations in which – based on the assessment of the acquiring entity – an Asset Deal leads to changes relating to the facts underlying the current license, that are not considered material as outlined above, FINMA must pursuant to article 8a(1) the Banking Ordinance and Article 8(1) FinIA merely be notified of the transaction, with no formal approval requirement applying. A notification pursuant to article 8(1) FinIA of licensed portfolio managers and trustees must be submitted to the competent supervisory authority (see article 22(1) FinIO).

It should also be noted that article 29(2) of the Financial Market Supervisory Act (FINMASA) sets out the general notification requirement under which Regulated Entities must notify FINMA of all facts and/or events which are significant for FINMA's supervision. Whilst the notification requirement stipulated under article 8a(1) Banking Ordinance and article 8(1) FinIA apply to changes in the facts underlying the current regulatory license, the scope of the notification requirement under article 29(2) FINMASA is broader and applies to any facts that may be significant for FINMA's supervisory activities. Consequently, even where the conclusion of an Asset Deal does not affect the facts underlying the current regulatory license within the meaning article 8a(1) Banking Ordinance and article 8(1) FinIA, as applicable, the respective transaction may trigger a notification requirement under article 29(2) FINMASA, if deemed significant for FINMA's supervisory activities. Depending on the size and balance sheet implications of the transaction, this may be the case for SRTs between banks which will typically not have any implications on the facts underlying the existing regulatory license of the involved parties but may be of significance for FINMA's broader supervision of the entity.

3) Asset Deal Involving Swiss Regulated Entities – *Sell-Side* Consideration

As outlined above, under an Asset Deal the regulatory focus will generally be on the acquiring entity, which must ensure that all regulatory approvals for the acquisition of the respective portfolio of assets, liabilities, and/or contracts are in place. However, the selling entity, based on the transferred assets, liabilities, and contracts, must assess whether the transaction in question will lead to any regulatory approval and/or notification requirements under article 8a Banking Ordinance, article 8 FinIA, or article 29(2) FINMASA, as applicable. This may, for example, be the case if the sale of the respective portfolio results in the selling entity ceasing a considerable part of its regulated business.

4) Cross-border Transactions – in particular

In the context of cross-border transactions, *i.e.* in constellations in which a non-Swiss regulated entity acquires assets, liabilities and contracts located in Switzerland, additional regulatory requirements may apply which must be taken into account.

a) Establishing a Physical Presence in Switzerland by a Foreign Regulated Entity

The Swiss regulatory framework is liberal with regard to the provision of banking services on a cross-border basis. Banks and financial institutions domiciled outside of Switzerland may provide their services to Swiss customers on a cross-border basis without triggering a licensing requirement in Switzerland.

In contrast, under the FINMA-Ordinance on Foreign Banks (OFB-FINMA), a foreign bank, meaning any entity organized under foreign law that (a) is licensed as a bank outside of Switzerland, (b) uses the term „Bank" or „Bankier" in its company name, purpose or documentation or (c) provides banking services within the meaning of Article 2a of the Federal Ordinance on Banks, will become subject to a licensing requirement under the OFB-FINMA, if it establishes a physical presence in Switzerland within the meaning of Article 2 OFB-FINMA by employing persons in Switzerland that permanently, (i) enter into transactions, manage client accounts or legally bind the foreign bank in a professional capacity (requiring a license as a branch of a foreign bank) or (ii) act on behalf of the foreign bank in another manner, without entering into transactions, managing client accounts or legally binding the entity, namely by forwarding client orders to the foreign bank or maintaining a representation for marketing, advertising or other purposes (requiring a license as a representative office of a foreign bank). Article 52 et seqq. FinIA provide for a corresponding licensing requirement for financial institutions incorporated outside of Switzerland.

In light of this regulatory framework, in the context of an Asset Deal including a foreign bank or a foreign financial institution acting as buyer, it will have to be assessed whether acquisition of the respective assets, liabilities and contracts located in Switzerland will result in the foreign bank or the foreign financial institution establishing a regulated physical presence in Switzerland, triggering a licensing requirement under the OFB-FINMA or FinIA. Whilst each transaction will need to be assessed on a case-by-case basis, the mere acquisition of assets located in Switzerland should not trigger a licensing requirement under OFB-FINMA or FinIA. In contrast, an asset deal under which a foreign bank or a foreign financial institution acquires part of an operational business in Switzerland, including the assumption of Swiss-based employees, the transaction may ultimately lead to the establishment of a regulated physical presence in Switzerland, resulting in a licensing requirement under OFB-FINMA or FinIA. In such a case, the acquiring foreign entity will be required to obtain a license as a branch or representative office of a foreign bank or foreign institution, prior to closing of the transaction.

5) Transfer of Fund Management Contracts – in particular

To the extent that an Asset Deal includes the transfer of fund management agreements, the specific regulatory framework set out under CISA and FinIA will have to be complied with.

a) Approval Requirements at the Level of the Fund

Whilst the approval and notification requirements outlined above apply at an entity level, article 39 FinIA sets out a specific approval process in case of a change of the fund management company of a Swiss licensed fund. As a consequence, in the context of an Asset Deal under which fund management agreements are transferred, ultimately resulting in a change of the fund manager for the underlying fund, it must be ensured that the procedure outlined under article 39 FinIA is complied with.

While article 39(1) clarifies that the rights and liabilities of a fund management company can be transferred to another fund management company, certain regulatory requirements must be adhered to in the context of such transfer. The agreement governing the transfer of the fund management mandates must be concluded in written form or any other form evidenced in text. Further, pursuant to article 39(2) FinIA, the appointed custodian bank of the underlying fund must consent to the respective transfer.

In addition, article 39 FinIA, article 27 CISA, and article 41 of the Federal Ordinance on Collective Investment Schemes (CISO) set out a mandatory approval process which must be adhered to in the context of transferring fund management mandates:

– **Publication of the Transfer and Objection**: The existing fund manager must notify the investors in the fund of the intended change of the fund management company via the official publication media, in accordance with the fund documentation. The notification must, in particular, specify (i) that the investors have the possibility to raise objections to the intended change of the fund management company with FINMA (article 39(4) FinIA) and (ii) that the investors are permitted to submit a request for a cash redemption to the fund management company in accordance with the applicable contractual documentation Typically, a draft of the publication is submitted to FINMA for a pre-assessment.

  The objection period for the investors starts on the day after publication, and the investors have 30 days to raise any objections against the change of the fund management company with FINMA.

– **Approval Process**: Upon publishing the notification, the fund management company must submit a formal approval request to FINMA, which must be signed by the current fund management company, the custodian bank, and the new fund management company. FINMA will approve such a request to the extent it concludes that the statutory requirements for a change in the fund management company are satisfied and that the continuance of the fund is in the interest of the investors. Under this assessment FINMA will take into consideration the objections submitted by the respective investors.

b) Approval Requirements for Foreign Fund Management Companies

As outlined above, article 52 et seqq. FinIA stipulates that foreign financial institutions establishing a physical presence in Switzerland must obtain a license as a regulated branch or representative office of the foreign financial institution. However, a special licensing regime applies to fund

management companies incorporated outside of Switzerland. Pursuant to article 52(2) FinIA and article 58(2) FinIA foreign fund management companies are prohibited from establishing a licensed branch or representative office in Switzerland. As a consequence, if a foreign fund management company wishes to establish a physical presence in Switzerland, it must establish a local Swiss entity which must then obtain a license as a Swiss fund management company under article 32 FinIA. Therefore, if a foreign fund manager establishes a physical presence in Switzerland by acquiring assets, liabilities, and contracts under an Asset Deal, the foreign fund management company must prior to closing of the transaction establish a local Swiss entity, which must subsequently obtain a license as a Swiss fund management company under article 32 FinIA.

6) Practical Considerations

As outlined above, the Swiss regulatory framework does not provide for a specific licensing, approval or notification requirement which is generally applicable to Asset Deals involving Swiss Regulated Entities. Based on the portfolio of assets, liabilities and contracts transferred under a specific transaction and in consideration of the regulatory status of the involved parties, it will have to be assessed if the Asset Deal in question triggers a regulatory approval or notification requirement under article 8a(1) Banking Ordinance, article 8(1) FinIA or article 29(2) FINMASA, as applicable. Additional regulatory requirements may apply in the context of cross-border transactions or transactions involving fund management companies and/or the transfer of fund management agreements.

Whilst the applicable regulatory requirements may vary depending on the scope of the Asset Deal and the involved parties, the regulatory approval and/or notification requirements set out under the Banking Act, FinIA, OFB-FINMA or CISA, as applicable, must be satisfied prior to closing of the respective transaction. Whilst from a civil law perspective, a breach of the regulatory requirements will not affect the validity of the transaction, an execution of an Asset Deal without obtaining prior FINMA approval or satisfaction of the applicable notification requirements may lead to administrative enforcement action by FINMA.

In view of the applicable regulatory framework, the respective transaction documentation governing Asset Deals involving Swiss Regulated Entities typically includes a closing condition relating to the satisfaction of the applicable regulatory approval and/or notification requirements. Considering that FINMA, in particular under article 8a Banking Ordinance and article 8 FinIA has a considerable degree of discretion when determining the materiality of a transaction and consequently the applicability of the formal approval requirement, in practice it can be advisable to informally reach out to FINMA at an early stage of a transaction to ensure alignment on the applicable regulatory requirements to correctly address the required regulatory steps in the applicable closing conditions.

Alexander Wherlock (alexander.wherlock@homburger.ch)

THE SWISS BANKERS ASSOCIATION'S PORTFOLIO MANAGEMENT GUIDELINES AND DIGITAL ASSETS

Reference: CapLaw-2025-05

Digital assets, including cryptocurrencies and tokenized „traditional" financial assets, are playing an increasingly significant role in financial markets. While the Swiss Bankers Association's Portfolio Management Guidelines (Guidelines) remain a key reference standard for discretionary asset management, they were developed without consideration for these emerging investment options, raising questions about their compatibility with the framework. This article examines whether cryptocurrencies and tokenized assets can be integrated into portfolios managed under these Guidelines and explores whether a regulatory reassessment may be warranted in light of the evolving investment landscape.

By Ariel Ben Hattar / Valérie Menoud

1) Introduction

The Swiss Bankers Association's Portfolio Management Guidelines (the Guidelines) have long served as a key reference for portfolio management practices in Switzerland. Initially introduced as a form of mandatory self-regulation, they have since evolved into a best-practice framework, particularly following the enactment of the Financial Services Act (FinSA). Despite their continued relevance, the Guidelines were developed at a time when digital assets – such as cryptocurrencies and tokenized securities – were not yet part of the financial landscape. Last revised in 2020, the Guidelines do not mention digital assets, leaving open questions about their compatibility with the Guidelines. The point is noteworthy, because banks will in principle be required to apply the Guidelines when managing portfolios of private clients.

This article examines whether banks applying the Guidelines can integrate digital assets into client portfolios. Specifically, it explores the treatment of (i) cryptocurrencies such as Bitcoin and Ether as investments, (ii) traditional financial assets in tokenized form, and (iii) the use of cryptocurrencies as a means of payment in portfolio transactions. In doing so, we seek to examine whether the Guidelines remain aligned with market developments or if their adaptation may be necessary to reflect the evolving role of digital assets in portfolio management.

2) Cryptocurrencies as investments

a) Have cryptocurrencies become an asset class?

In just over a decade, cryptocurrencies have grown from a niche concept to a market capitalization exceeding USD 3.2 trillion. Daily trading volumes often surpass those of traditional commodities like gold or oil, underscoring their increasing financial relevance.

Investor behavior also signals a shift: research suggests that many cryptocurrency owners adopt longer-term positions, treating these assets as investment opportunities, rather than mere payment means or transactional tools. Whether cryptocurrencies constitute a distinct asset class remains a subject of debate, particularly regarding valuation models, correlation with traditional assets, and hedging potential. While further research is needed, their growing role suggests that they may offer diversification benefits, possibly even for traditionally conservative investors.

This raises the question of whether portfolios managed under the Guidelines could include cryptocurrency investments.

b) Are cryptocurrencies permissible investments under the Guidelines?

The legal nature of cryptocurrencies is a hotly debated question, and one which may not have a uniform response depending on the features and structure of the relevant tokens. That said, determining their eligibility under the Guidelines does not hinge on their legal nature. The Guidelines indeed adopt an economic approach, assessing investments based on their inherent risk exposure rather than their legal form.

For our purposes, we distinguish cryptocurrencies from tokenized traditional assets, which are essentially traditional investments recorded on a distributed ledger (see below at 3)). When referring to „cryptocurrencies" we focus on Bitcoin, Ether and digital tokens recorded on a distributed ledger that have similar functions and use.

i) Common bank investment instruments vs alternative instruments

Since their 2020 revision, the Guidelines have adopted a principle/exception framework regarding the scope of permitted investments. The overarching principle is flexibility, allowing investments across assets types, as needed to achieve the agreed-upon strategy. Article 4 explicitly states that *„the bank may invest the client's portfolio in any asset class, investment instrument, and associated investment techniques required to achieve the investment objective."* Comment n°12 further clarifies that this includes, but is (importantly) not limited to, financial instruments and securities as defined under article 3(a) and (b) FinSA. However, this broad discretion is subject to the specific restrictions outlined in comments n°13 to 16 and article 6 of the Guidelines, which ultimately define the boundaries of permissible investments.

To fully understand the approach underpinning the Guidelines, it is useful to consider how it was framed in previous versions of the text, before the 2020 revision. Historically, the Guidelines have somewhat aligned with the vision presiding under Swiss pension funds regulation, particularly the Occupational Pension Schemes Act and its implementing ordinances (specifically OPP 2 / BVV 2). Leaving aside the specific rules applicable to base metals and commodities, the Guidelines used to explicitly categorize investments into two groups: „common bank investment instruments" and „alternative instruments". Although the current Guidelines no longer refer to „common bank investment instruments", the notion remains relevant. Under the Guidelines, common bank investments are permitted provided they are readily marketable, whereas investments in alternative instruments, their derivatives and combinations, are admissible only

for purposes of portfolio diversification and provided that they (i) are readily marketable and (ii) are either structured according to the „fund-of-funds" principle, follow a „multi-manager" approach or guarantee an equivalent degree of diversification.

Whether an investment qualifies as common or alternative is determined based on its risk profile. Examples given in (former versions of) the Guidelines and the OPP 2 / BVV 2 can serve as guidance. Financial instruments such as stocks, bonds, notes and certain first-rate derivatives are typically considered traditional. By contrast, private equity investments, hedge funds and non-standardized derivatives do not fall within the scope of common bank investment instruments. Typically, alternative investments are characterized by high volatility, illiquidity, or even leverage exposure, which diverge from the principles underlying traditional placements — namely, investment security, reasonable returns, appropriate risk diversification, and some level of liquidity.

Through strict diversification, liquidity, and marketability requirements (as set out in comment n°15 and article 6), the Guidelines essentially take the position that the risks associated with alternative investments can only be mitigated if exposure occurs indirectly, through a diversified product or fund. Furthermore, such investments must serve solely as a portfolio diversification tool, which is generally understood to mean that alternative investments, as a category, should not exceed 15% of a portfolio — a threshold aligned with article 55(d) OPP 2. This limit is now further supplemented by the thresholds set out in FINMA Circular 2025/2, which impose a 10% cap per individual instrument and a 20% limit per issuer.

ii) Cryptocurrencies as alternative investments under the Guidelines

While the situation could change with time if cryptocurrencies become more common in investor portfolios, there is little doubt that cryptocurrencies cannot be considered today as being common bank investments. As a consequence, direct investments in cryptocurrencies are not permissible under the Guidelines, even if only for portfolio diversification purposes. Exposure to cryptocurrencies can only be achieved via an indirect investment meeting the requirements of comment n°15 of the Guidelines, as well as the readily marketable requirement of article 6 of the Guidelines.

In practice, these requirements significantly limit the ability to gain exposure to cryptocurrencies within a Guidelines-aligned portfolio. While the ready marketability requirement is generally not a hurdle (see also 3)c) on this point), the product diversification condition set out in comment n°15 of the Guidelines drastically narrows the investment universe as far as cryptocurrencies are concerned. This requirement entails achieving diversification through either a fund-of-funds structure, a multi-manager (or multi-compartment) setup, or an equivalent approach — something that, as a rule, necessitates a product with diverse components whose returns and risks are driven by different underlying factors.

Fund-of-funds structures that offer crypto exposure remain rare and are typically not cost-efficient. Multi-manager products or multi-compartment vehicles do exist, but they are relatively niche and seldom focus exclusively on cryptocurrencies. The most accessible products, such

as actively managed certificates or cryptocurrency ETFs, often fail to meet the required level of product diversification, because they focus on a single cryptocurrency, or on cryptocurrencies that are correlated with each other. That said, it is not excluded that a fund or certificate invested in multiple baskets of cryptocurrencies could achieve a sufficiently diversified profile.

It must be acknowledged that the current framework makes gaining exposure to cryptocurrencies as investments within a Guidelines-aligned portfolio extremely difficult. Naturally, expanding investment possibilities to include direct cryptocurrency holdings or indirect exposure via derivatives, structured products, or funds that do not strictly align with the product diversification requirements of the Guidelines remains feasible through specific agreements with clients. However, given the growing role of cryptocurrencies, one may question whether the Guidelines, in their current form, truly fulfill their core objective: enabling limited exposure to a full spectrum of alternative assets while maintaining a diversified risk profile.

3) Tokenized traditional assets under the Guidelines

a) Locating tokenized traditional assets in the Guidelines

The use of the distributed ledger technology in financial markets is obviously not constrained to cryptocurrencies. Although the latter still represent the largest trading volumes, the laws of several jurisdictions – including Switzerland – already make it possible to use distributed ledgers to record the ownership of traditional financial instruments, such as stocks, bonds and derivatives. Under Swiss law, the process (commonly referred to as "tokenization") does not involve the creation of a new asset: a tokenized share remains a share, and the digital representation of the share is not a separate asset but a way to record its ownership, similar to the role of a paper certificate.

As noted above, pursuant to article 4 of the Guidelines, when managing portfolios, banks may make „common bank investments", a category that includes a wide range of instruments. In this regard, the focus of the Guidelines is on the financial effects of adding instruments in a portfolio, rather than how the relevant instruments are represented. The Guidelines therefore do not impose specific provisions based on whether an asset is tokenized, such that a tokenized version of a traditional financial instrument can qualify as a common bank investment instrument depending on its characteristics.

Tokenized traditional assets however introduce a challenge that is less common with non-tokenized assets: the increasingly blurred boundary between private and public markets. Taking equity securities as an example, it is easy to identify that a transaction involving shares held in paper form and put in escrow pursuant to a complex shareholder agreement is a private equity deal and thus an alternative investment. However, the classification becomes less straightforward when a mid-sized company issues freely tradable tokenized shares, which are then transacted over-the-counter via an organized trading facility. To address such situations, banks cannot rely solely on surface-level characteristics to determine whether an asset qualifies as a common bank investment or an alternative investment. Instead, they must conduct a more nuanced assessment,

taking into account factors such as the extent of public disclosure regarding the issuer and its securities, as well as the number and nature of investors involved.

b) Indirect investments in tokenized traditional assets

When managing a portfolio, a bank may also consider indirectly investing in tokenized traditional assets. Specifically, a bank may consider investing in (a) a fund investing in these assets, or (b) derivatives with tokenized traditional assets as their underlying asset. Such indirect investments would be subject to the same restrictions as indirect investments in assets that are not tokenized.

c) Marketability

Even if there is no general restriction applying to tokenized traditional financial assets, a specific instrument may be included in a portfolio only if it complies with article 6 of the Guidelines, *i.e.* if the instrument is „readily marketable". Per comment n°18, an instrument is deemed readily marketable if there is a representative market for it (whether on-exchange or off-exchange), if the issuer or a bank commits to provide liquidity, or if the instrument is redeemable at regular intervals.

It is possible for tokenized traditional assets to meet these criteria. The fact that an asset is represented by a digital token on a distributed ledger does not prevent the asset from being traded on a market, for example. Since the market in question does not need to be a stock exchange, an organized trading facility admitting tokenized assets may satisfy this requirement. With respect to the other criteria, the issuer of a tokenized asset can commit to act as market maker, and it is possible that a tokenized asset would be redeemable.

4) Cryptocurrencies as payment means

a) Use of cryptocurrencies as payment means in portfolio management

Cryptocurrencies can be viewed as potential investments, but they may also be used as means of payment. In the context of portfolio management, there would be several ways to use cryptocurrencies as means of payment: (i) to pay blockchain fees, (ii) to acquire assets tradable in cryptocurrencies or to receive proceeds from the sale of such assets, and (ii) as a reference currency of the mandate.

When trading tokenized traditional assets, investors may need to pay certain fees to execute those transactions. These may include brokerage fees and trading venue fees, but also blockchain fees, *i.e.* fees that need to be paid for the transaction to be validated on the relevant distributed ledger (such as „gas" fees on the Ethereum blockchain). These blockchain fees usually need to be paid in the native token of the relevant blockchain (*e.g.* Ether for the Ethereum blockchain). In these circumstances, it would make sense for clients to hold in their portfolio a small quantity of the relevant tokens to pay for these fees. In this case, cryptocurrencies would not be used as investments, but as payment means.

Investors trading tokenized assets may also encounter situations in which the purchase price of an asset (or the proceeds from its sale) is paid in cryptocurrencies. In such cases, investors will generally hold, for a very short time, the relevant cryptocurrencies pending execution of the transaction (in the case of an acquisition) or conversion into the reference currency (in the case of a sale).

Lastly, one may theoretically consider a portfolio management where the reference currency would be a cryptocurrency. At present, this hypothesis seems rather remote, at least for a mandate under the Guidelines, and we have refrained from examining it further.

b) Cash and managed accounts under the Guidelines

The Guidelines focus on *investments* that banks may make on behalf of their managed clients. A traditional wealth management portfolio is however seldom fully invested. There will typically be a portion (*e.g.* 5%) of the portfolio that is held in cash, normally in the reference currency of the portfolio. The reference currency would generally be expected to be the currency in which the investor pays the majority of its expenses, or the currency in which the investor makes the most investments.

The reference currency is not the only currency that a bank may hold in the context of a portfolio management agreement. When an investment is made in an asset traded in a different currency (*e.g.* an equity security traded in US dollars if the reference currency is the Swiss franc), the bank will usually purchase the relevant currency to execute the transaction. During a very short time, the client will therefore hold cash in a currency that is not the reference currency. Further, securities denominated in a currency that is not the reference currency may also pay dividends or coupons, for example. Even if they are later converted into the reference currency, the relevant amounts will typically accrue to the client and be held – albeit temporarily – on the account.

The Guidelines do not set limits nor provide guidance on the use of cash in portfolios (and these would typically be set as part of the investment strategy agreed upon with the client). More specifically, the Guidelines (a) do not indicate how the reference currency should be selected, (b) do not prescribe a minimum or maximum portion of the portfolio that must remain in cash, and (c) do not address what should be done with cash in foreign currencies that is received as part of dividends or coupon payments.

c) Cryptocurrencies as payment means under the Guidelines

In our view, there is nothing in the Guidelines that would prevent banks from using cryptocurrencies as payment means when managing portfolios. Regardless of whether the relevant cryptocurrencies are to be considered as common bank investments instruments, a bank may therefore cause clients to hold cryptocurrencies to pay for blockchain fees, or even to pay for cryptocurrency-denominated assets. It would also be possible to cause clients to receive distributions, such as coupon payments and dividends, in cryptocurrencies.

The use of cryptocurrencies as means of payment should however remain compatible with cryptocurrencies being actually used as such. In other words, such cryptocurrency positions held for payment purposes should not be used to circumvent limitations on holding cryptocurrencies as investments. Generally, this will mean reducing the cryptocurrency position to the minimum required to achieve the relevant goals and converting distributions in the reference currency.

4) Conclusion

The Guidelines, while a cornerstone of portfolio management in Switzerland, were designed in a financial landscape that did not anticipate the rise of digital assets. As a result, their application to cryptocurrencies and tokenized assets requires careful interpretation.

Our analysis suggests that not all digital assets are treated equally under the Guidelines. While tokenized traditional assets generally fit within the existing framework, cryptocurrencies as investments face significant hurdles. Classified as alternative investments, they are subject to strict diversification and structuring requirements that, in practice, severely limit placement options. Yet, cryptocurrencies differ fundamentally from traditional alternative investments: concerns about liquidity and marketability – central to the Guidelines – have diminished with the rise of trading platforms. Instead, the most pressing risks stem from volatility, legal uncertainties, reputational exposure, and cybersecurity threats, including hacking and fraud.

Beyond their role as investments, cryptocurrencies can serve as a means of payment. Their use for blockchain fees, asset purchases, or distributions within managed portfolios appears permissible under the Guidelines, provided holdings are strictly limited to transactional purposes and not used to bypass investment restrictions.

While banks can structure agreements with clients to facilitate exposure more broadly, the increasing role of digital assets in financial markets may warrant a broader reassessment of the Guidelines. A precedent exists: in 2008, the Guidelines revision introduced greater flexibility for investments in base metals and commodities in response to market developments. As cryptocurrency adoption grows, it remains to be seen whether similar adjustments can be made to ensure the Guidelines remain relevant in an evolving investment landscape.

Valérie Menoud (valerie.menoud@lenzstaehelin.com)
Ariel Ben Hattar (ariel.benhattar@lenzstaehelin.com)

Issuance of CHF 1.425 billion bonds by Thermo Fisher

Reference: CapLaw-2025-06

On 26 February 2025, Thermo Fisher Scientific Inc. successfully placed CHF bonds in the amount of CHF 1.425 billion. The issuance consisted of five tranches. The bonds are governed by Swiss law and application will be made for admission to trading and listing of the bonds on the SIX Swiss Exchange.

UBS AG acting through UBS Investment Bank, BNP Paribas (Suisse) SA, and Deutsche Bank AG London Branch, acting through Deutsche Bank AG Zurich Branch, acted as lead managers.

Issuance of USD 400 million of 7.5% Perpetual Tier 1 Subordinated Contingent Convertible Bonds by Julius Baer Group Ltd.

Reference: CapLaw-2025-07

On 19 February 2025, Julius Baer Group Ltd. successfully issued USD 400 million of 7.5% Perpetual Tier 1 Subordinated Contingent Convertible Bonds (Tier 1 CoCos).

The Tier 1 CoCos and all transaction documents are governed by Swiss law. If a trigger event occurs and is continuing on the relevant subsequent trigger test date or if a viability event has occurred, a contingent conversion of the Tier 1 CoCos will occur on the relevant conversion settlement date into shares of Julius Baer Group Ltd. issued out of its conversion capital introduced by the shareholders at the occasion of the annual shareholders meeting in 2024. The Tier 1 CoCos feature a denomination of USD 200,000 each. The Tier 1 CoCos have been provisionally admitted to trading, and application has been made for definitive admission to trading and listing, on the SIX Swiss Exchange.

Goldman Sachs International acted as Lead Manager and Zürcher Kantonalbank as Co-Manager.

Issuance of CHF 150 million 3.00% Additional Tier 1 Bonds by Luzerner Kantonalbank

Reference: CapLaw-2025-08

On 5 February 2025, Luzerner Kantonalbank successfully priced its issuance of CHF 150 million 3.00% Additional Tier 1 Bonds by Luzerner Kantonalbank. The issuance was the first

post-Credit Suisse offering of write-down bonds. The issuance closed on 28 February 2025.

Zürcher Kantonalbank acted as Structuring Advisor and Joint-Lead Manager and Luzerner Kantonalbank and UBS AG acted as Joint-Lead Managers.

BioVersys AG conducts IPO on SIX Swiss Exchange

Reference: CapLaw-2025-09

On 29 January 2025, BioVersys AG, a clinical-stage biopharmaceutical company developing and commercializing novel antibacterial products for life-threatening infections domiciled in Basel, Switzerland, opened the 2025 Initial Public Offering (IPO) season and announced the launch of its IPO on SIX Swiss Exchange, the publication of the offer price and the start of the bookbuilding process. BioVersys focuses on identifying, developing and commercializing novel antibacterial products for serious life-threatening infections caused by multi-drug resistant (MDR) bacteria. The company's most advanced R&D programs address nosocomial pneumonia and blood stream infections caused by Acinetobacter baumannii (BV100, phase 3-ready) and tuberculosis (alpibectir, phase 2a). In addition to its domicile in the biotech hub in Basel, Switzerland, BioVersys has operations in Lille, France, Delaware, United States and Guangzhou, China.

The IPO, which successfully occurred on 7 February 2025, comprised a primary offering targeting gross proceeds of CHF 80 million (including an over-allotment option targeting gross proceeds of CHF 5 million). At an opening price of CHF 36.50 per share, the resulting market capitalization of BioVersys AG was around CHF 216 million.

Citigroup Global Markets Limited, UBS AG and Stifel Europe AG are acting as Joint Global Coordinators and Joint Bookrunners on the IPO, Mirabaud & Cie SA and Octavian AG as Selling Agents.

Issuance of EUR 420 million Senior Secured Notes by Matterhorn Telecom S.A.

Reference: CapLaw-2025-10

On 30 January 2025, Matterhorn Telecom S.A., the parent company of Salt Mobile SA, issued EUR 420 million 4.500% Senior Secured Notes due 2030 guaranteed by Matterhorn Telecom Holding S.A. and Salt Mobile SA.

The syndicate of initial purchasers was led by Goldman Sachs International, BofA Securities Europe SA, BNP Paribas, Crédit Agricole Corporate and Investment Bank, J.P. Morgan SE, Société Générale and UBS AG London Branch.

Issuance of CHF 250 million Senior Unsecured Bonds by AMAG Leasing AG

Reference: CapLaw-2025-11

On 21 January 2025, AMAG Leasing AG placed CHF 250,000,000 senior unsecured bonds with maturity in 2031 and a coupon of 1.875%. The bonds will be listed on the SIX Swiss Exchange.

UBS Investment Bank, Zürcher Kantonalbank und Bank J. Safra Sarasin acted as Joint Lead Managers.

Issuance of CHF 575 million Senior Bonds by Swiss Life

Reference: CapLaw-2025-12

On 14 January 2025, Swiss Life Holding Ltd. successfully placed three tranches of senior bonds totaling CHF 575 million, comprising a tranche of CHF 150 million with maturity in 2028 and a 0.8875% coupon, a tranche of CHF 200 million with maturity in 2030 and a 1.1350% coupon and a tranche of CHF 225 million with maturity in 2035 and a 1.4250% coupon. The bonds were placed with investors in the Swiss franc market. The proceeds will be used for general corporate purposes, including potential future refinancings of outstanding debt instruments.

Issuance of CHF 250 million Senior Bonds by Helvetia Schweizerische Versicherungsgesellschaft AG

Reference: CapLaw-2025-13

On 8 January 2025, Helvetia successfully placed two senior bond tranches in the total amount of CHF 250 million. The first tranche is in the amount of CHF 110 million with maturity in

2029 and a coupon of 0.80 percent. The second tranche is in the amount of CHF 140 million with maturity in 2033 and a coupon of 1.10 percent. The proceeds will be used for general corporate purposes, including possible refinancings of outstanding instruments. The bonds are guaranteed by Helvetia Holding Ltd.

Issuance of EUR 1.75 billion bonds by Barry Callebaut

Reference: CapLaw-2025-14

Following the successful placement of CHF 300 million bonds in January 2025, Barry Callebaut again successfully placed EUR 1.75 billion bonds. The bonds were issued in two tranches. The first tranche in the aggregate principal amount of EUR 900 million carries a coupon of 3.75% and is due in 2028. The second tranche in the aggregate principal amount of EUR 850 million has a coupon of 4.25% and will mature in 2031. Both tranches were issued by Barry Callebaut Services NV and are guaranteed by Barry Callebaut AG.

ING Bank N.V., Coöperative Rabobank U.A., Société Générale and UBS AG, London Branch acted as Joint Lead Managers in this transaction.

Ultima Capital SA conducts EUR 530 million Contribution in Kind

Reference: CapLaw-2025-15

Ultima Capital SA (Ultima), a Swiss luxury real estate owner and operator, received a substantial contribution of real estate assets by Yoda PLC (Yoda) and restructured its balance sheet and shareholders. Ultima reached the agreement with Yoda and another new investor for this major deal including the assumption of assets valued at approximately EUR 530 million in exchange for newly issued Ultima shares.

The extraordinary shareholders' meeting of Ultima approved all motions of the board of directors, including a general opting out, the capital increase, board and committee elections and further amendments to the articles of association on 27 December 2024. The new shares were listed on 30 December 2024.

As a result of the transaction, Yoda became Ultima's largest shareholder with an approximately 54% stake. The transaction also involved the conversion of certain claims, including mandatory convertible bonds, into new shares and the repayment of some of Ultima's existing debt.

Combination of SoftwareOne and Crayon

Reference: CapLaw-2025-16

SoftwareOne Holding and Crayon Group Holding, two leading global providers of software and cloud solutions, announced that they have agreed to combine. To this end, SoftwareOne will launch a recommended voluntary stock and cash offer to acquire all outstanding shares in Crayon. Completion of the transaction is expected to occur in Q3 2025, subject to customary conditions.

CHF 300 Million Share Placement by Swiss Prime Site

Reference: CapLaw-2025-17

In February 2025, Swiss Prime Site placed newly issued shares raising gross proceeds of approximately CHF 300 million by way of an accelerated bookbuilding to further expand its high-quality property portfolio.

In light of the new data protection laws, CapLaw has released a privacy statement. The privacy statement, as updated from time to time, is available on our website (see http://www.caplaw.ch/privacy-statement/). For any questions you may have in connection with our data processing, please feel free to contact us at privacy@caplaw.ch.