CAPLAW

SWISS CAPITAL MARKETS LAW

No. 2/2024

Securities

Regulatory

News | Deals & Cases

Optimization of Convertible Bond Issuances through "Share Borrow Facilities" – A Swiss (Legal) Perspective

Reference: CapLaw-2024-19

Convertible bonds may be an attractive financing instrument for listed companies, particularly for companies with a high growth potential. Creating a share lending facility may help issuers to increase the size and improve the pricing terms of their convertible bonds. This article aims to provide a brief overview of how such facilities may be structured and typical stumbling blocks that must be considered and addressed.

By Sandro Fehlmann

1) Introduction

Recently, a number of European companies looking to raise money in the convertible debt markets created "share borrow facilities" to improve the pricing terms of their convertible bonds and potentially allowing them to increase the size of the fundraising. While there are several ways of structuring such facilities, the most common approach involves share lending programs. Such a "share borrow facility" gives investors in the convertible offering the opportunity to hedge their convertible position through means other than a short sale of the issuer's shares in the market. By facilitating hedging, the issuer may be able to obtain more favorable pricing terms on its convertible bonds through a lower coupon rate or higher conversion premium and significantly increase the level of investor interest in the convertible bond offering. This particularly holds true for situations where there is insufficient share borrow available for short sales. "Share borrow facilities" present a number of complex corporate, securities and regulatory issues - under Swiss law and the law of foreign jurisdictions - that must be considered and addressed as part of the offering process.

2) Background and Rationale

Investors in convertible debt securities are generally institutional investors. These institutional investors may be either "fundamental" buyers or hedge funds who are looking to hedge against changes in the value of the issuer's shares. Convertible bond investors who wish to hedge their convertible bond position typically accomplish this by short-selling shares into the market. Because the value of a short position increases as the issuer's share price declines, short positions allow investors to effectively offset a reduction in the value of their convertible bond holdings resulting from a decline in the value of the shares underlying their convertible bonds.

To affect a short sale of shares, an investor borrows outstanding shares and sells the borrowed shares into the market. Given the prevalence of hedge fund investors in the convertible bond market, often the number of shares available to be borrowed (commonly referred to as the issuer's "available share borrow") will impact the size of convertible bond offering. Depending on the circumstances, companies with little or no available share borrow may struggle to access the traditional convertible bond markets.

Recently, a number of announced convertible bond transactions by issuers have addressed inadequate available share borrow by creating a "share borrow facility" to allow investors in the convertible bonds to hedge their positions. The share borrow facility then allows the issuer to access the traditional convertible debt markets on (more) attractive terms. The mechanics of executing a convertible bond offering itself are generally the same whether or not the issuer is creating a share borrow facility.

3) Mechanics of the Share Borrow Facility

a) Overview

Share borrow facilities can be accomplished either (i) by means of the issuer entering into a share lending agreement with a stock lending agent (usually an affiliate of a member of the underwriter syndicate of the convertible bonds), whereby the issuer lends issued and/or unissued shares to the lending agent, or (ii) by means of the issuer entering into a prepaid forward contract with a member of the underwriter syndicate or an affiliate of such member, whereby the issuer agrees on the contract date to purchase shares at a fixed price on the maturity date of the convertible bonds. The purchase price of the shares is typically paid upfront from the proceeds of the convertible bond offering, which, as discussed further below, reduces the issuer's net proceeds. In certain instances, however, it may be possible for the issuer to delay payment of the purchase price until the maturity of the convertible bonds, giving the issuer access to all the proceeds of the offering in the interim.

b) Share Lending Program

A number of recent convertible bond offerings with share borrow facilities have been completed using a share lending facility. To execute a share lending facility, the issuer lends shares to a lending agent concurrently with the offering and issuance of the convertible bonds. The lending agent is typically an affiliate of one of the underwriters of the convertible debt offering. The lent shares may be newly issued shares, treasury shares or a combination of both. The share lending is governed by a share lending agreement which requires the lending agent to return the shares once the bonds are converted, redeemed, repurchased or repaid. Once the shares are borrowed, the lending agent will sell some or all of the shares short into the market.

Once the lending agent has sold the shares short, the lending agent is in a position to transfer the short position to convertible bond holders, either through equity swap arrangements or directly, depending upon the legal requirements.

c) Prepaid Forward Contract to Repurchase Shares

As an alternative to implementing a share lending facility, an issuer can create a share borrow facility through a prepaid forward contract, which is entered into with a member of the underwriter syndicate (or an affiliate of a member) in lieu of a share lending agreement. A prepaid forward contract is an agreement between the issuer and the underwriter whereby the issuer agrees today to repurchase shares at a fixed price if the convertible bonds are converted, redeemed, repurchased or repaid. By entering into the prepaid forward contract, the underwriter (or its affiliate) is agreeing to deliver shares in the future that it does not own on the contract date. This agreement to deliver shares it does not own is effectively a "short" position in the issuer's shares. The underwriter can transfer this short position to the convertible bond investors via a swap transaction, and thereby allow the investor to hedge its position in the convertible bonds. This enables the convertible bond investors to hedge their position without borrowing and selling shares into the market. From the issuer's perspective, its agreement to repurchase its shares has the added benefits of mitigating the potential dilution from the convertible bond offering and reducing the amount of short selling into the market that would otherwise result from the offering.

The net result to the issuer from a prepaid forward contract is similar to a share lending facility, since both create a short position that can be transferred to the convertible bond investors, thereby allowing them to hedge their positions without borrowing shares in the market. The prepaid forward contract, however, will typically result in the issuer receiving lower proceeds from the convertible offering since a portion of the proceeds is used to repurchase shares under the prepaid forward contract. This contrasts to the share lending facility, for which the issuer is not required to use any of the proceeds in connection with the lending of the shares. For this reason, we have seen more share lending facilities in order to create a share borrow facility (though in certain circumstances, for prepaid forward contracts it may also be possible for the issuer to finance the cost of the repurchase either by upsizing the convertible transaction or implementing a loan agreement with a commercial bank).

4) Swiss Regulatory Considerations

a) Disclosure Duty of Major Shareholdings

According to article 17 (2) (a) of the Financial Market Infrastructure Ordinance FINMA ("**FinMIO-FINMA**"), the disclosure duty in a securities lending facility is incumbent on the borrower. Hence, the lending agent as borrower must notify a purchase position due to his right to borrow and receive shares under the share lending facility.

The lender, however, must not make any corresponding disclosure notification (by way of disclosing a selling position). However, since the lender remains the beneficial owner of the shares to be on-lent (to the extent such shares have already been created), the lender and the borrower will both disclose a purchase position resulting in a "double notification". This applies irrespective of whether the shares are actually lent or not. Neither the lending agent as borrower nor the lender will, however, disclose a selling position.

b) Technicalities of the Reporting of Major Shareholdings

The positions requiring notification must be calculated based on the total number of shares in accordance with the entry in the respective commercial register (article 14 (2) FinMIO-FINMA). This also applies for shares created out of conditional share capital. Hence, the number of shares in the denominator (to determine the relevant shareholdings and thresholds) must always be the number of shares in accordance with the entry in the commercial register.

c) Considerations from a public takeover perspective

Article 135 of the Financial Market Infrastructure Act ("**FinMIA**") requires any who directly, indirectly or acting in concert with third parties acquires equity securities which exceed the threshold of 33⅓% of the voting rights of a target company to make a tender offer. For the calculation of the 33⅓% threshold for mandatory public takeover purposes, only shares (i) which are owned by a shareholder or (ii) for which it may exercise voting rights in other ways are counted (see BSK FinFraG - Kuhn, Article 135 N 13). "Acquisition" within the meaning of article 135 (1) FinMIA applies, however, not only to the acquisition of ownership of shares, but also to the acquisition of *usufructus* (article 34 (2) FinMIO-FINMA in conjunction with article 690 (2) of the Swiss Code of Obligations). Securities lending and so-called repo transactions are to be treated as transfers of ownership if the borrower or buyer also acquires the right to exercise voting rights (see TOB, Recommendation, June 27, 2005, Unaxis Holding AG, E. 5.1; BSK FinFraG - Kuhn, Article 135 N 31).

As long as the shares remain on the client account with the lending agent, such lent shares are not counted towards the 33⅓% threshold of article 135 FinMIA. Only once the lending agent borrows the shares and thereby becomes the legal owner, such shares would, in theory, be counted towards the threshold of article 135 FinMIA (subject to any applicable statutory exception or exemption from the Swiss Takeover Board). However, according to legal scholars and an older recommendation issued by the Swiss Takeover Board in 2005 (see TOB, Recommendation, 27 June 2005, Unaxis Holding AG, E. 5.1), for banks (as lending agents) such rule only applies if the bank not only acquires naked ownership, but also the corresponding voting rights. In addition, whenever such shares are on-sold or on-borrowed by the lending agent to a third party (such as a hedge fund), these shares would not count anymore towards the 33⅓% threshold.

Hence, shares on the lender's securities account with a bank as lending agent available under a securities lending facility do not count towards the 33⅓% threshold as long as no transfer of legal title has occurred and the lending agent has no other means of exercising the voting rights. In light of this general rule, securities lending agreements often contain a contractual provision where the lending agent waives any rights to exercise the voting rights of any shares received under the securities lending facility.

5) Conclusion

By allowing convertible bond holders to hedge their positions, share borrow facilities have the potential to significantly enhance the terms of a convertible bond offering, and may give companies access to the convertible debt markets when they would not otherwise be able to do so, absent the borrow facility. Convertible debt offerings containing a share borrow facility present a number of challenging corporate, securities and regulatory issues and, hence, must be carefully structured.

Sandro Fehlmann (sandro.fehlmann@advestra.ch)

Untrue or Incomplete Information in the Offering Prospectus – Introduction of New Criminal Offence

Reference: CapLaw-2024-20

On 1 February 2024, a new criminal offence was introduced in Switzerland's public takeover law. According to the new criminal offence, anyone who willfully provides untrue or incomplete information in the offering prospectus or the announcement of a public takeover offer can be penalized with a fine of up to CHF 500,000. If the offender acted through negligence, a reduced fine of up to CHF 150,000 can be imposed. This article describes the prerequisites for imposing a fine for such a breach of duty by the offeror.

By Pascal Hodel

1) Introduction

With effect as of 1 February 2024, article 152*a* of the Financial Market Infrastructure Act ("**FinMIA**") penalizes a breach of duty by the offeror in a public takeover offer. Specifically, a fine not exceeding CHF 500,000 shall be imposed on any person who willfully provides untrue or incomplete information in the prospectus or announcement of the offer (article 127 and 131 (a) FinMIA). A fine not exceeding CHF 150,000 shall be imposed on any person who commits the foregoing act through negligence.

The introduction of this new criminal offence is due to the identification of a gap in Swiss takeover law. While previously only a breach of duty by the target company was penalized (see article 153 FinMIA), the introduction of article 152*a* FinMA also covers a breach of duty by the offeror. However, due to the similarities and the close relation between article 152*a* and article 153 FinMIA, the case law of the latter serves as basis for the interpretation of the prerequisites of the breach of duty by the offeror (see explanatory report of Swiss parliament on the FinMIA bill dated 5 May 2022 (hereinafter the "**Explanatory Report 2022**"), p. 5).

2) History of origin

The gap in the Swiss takeover law was identified by the Swiss Takeover Board ("**Takeover Board**") in the particular case of the public takeover offer of HNA Aviation (Hong Kong) Air Catering Holding Co., Ltd. ("**HNA Aviation**") to the shareholders of gategroup Holding AG taking place in 2016.

In its decision 630/03 dated 22 November 2017, the Takeover Board stated that the offeror provided untrue and incomplete information in the prospectus, in particular, untrue information about the shareholders of HNA Aviation. The Takeover Board subsequently alerted the Swiss criminal prosecution authorities and the Swiss Financial Market Supervisory Authority ("**FINMA**") and at the same time stated that there was no legal basis for imposing a fine on HNA Aviation. This was due to the fact that at the time there was no criminal provision in existence which could penalize untrue or incomplete information by the offeror in the prospectus (see CapLaw-2018-32, p. 23 et seqq.).

Subsequently, in late 2018, politicians called for an amendment of the FinMIA to the effect that a breach of duty by the offeror in a public takeover offer should be penalized going forward (Explanatory Report 2022, p. 3). The final wording of the bill was adopted by the Swiss parliament and brought into force on 1 February 2024.

3) Function and purpose of the new criminal offence

The purpose of article 152*a* FinMIA is to ensure the transparency and fairness of a public offer as well as the equal treatment of the target company's shareholders by reducing the information asymmetry between the offeror and the target company's shareholders. Therefore, article 152*a* FinMIA primarily protects the target company's shareholders (*i.e.* investor protection) and thus the functionality of the Swiss financial markets (*i.e.* functional protection). The purpose of article 152*a* FinMIA is thus also to ensure that the target company's shareholders can make a free and informed investment decision based on complete and correct information (see article 17 (1) of the Swiss Public Takeover Ordinance ("**TOO**").

4) Scope and applicable legal standards

Swiss takeover law differentiates mainly between two forms of public takeover offers: mandatory offers and voluntary offers. A mandatory offer is required if an offeror exceeds the applicable thresholds pursuant to article 135 FinMIA, and is thus required to make an offer. A voluntary offer is an offer made by the offeror on its own initiative. Regardless the offer form, the offeror has the duty to publish an offering prospectus containing true and complete information (see article 127 (1) FinMIA). Therefore, the criminal offence pursuant to article 152*a* FinMIA is applicable with both forms *i.e.* a mandatory offer and a voluntary offer, because both offer forms require the offeror to publish a prospectus. This is reasonable, because the target company's shareholders should be able to rely on true and complete information for their investment decision regardless of whether there was an obligation to make a public offer.

Violations of the criminal provisions of the Swiss Financial Market Supervision Act ("**FINMASA**") including the criminal provisions of the FinMIA are prosecuted in accordance with the Administrative Criminal Law Act ("**ACLA**") (see article 50 (1) FINMASA).

5) Offenders

5.1) Circle of eligible offenders

Article 152*a* FinMIA states that a fine shall be imposed on "any person" who willfully provides untrue or incomplete information in the prospectus or announcement of the offer. A suitable offender under article 152*a* (1) FinMIA is the person who prepares the prospectus or the announcement. The obligation to prepare and publish a prospectus or an announcement is the responsibility of the offeror (see article 127 (1) FinMIA and article 5 (1) TOO). In a mandatory offer, the offeror is anyone who acquires equity securities directly or in concert with third parties and thereby exceeds the threshold of 33⅓ of the voting rights of the target company (see article 135 (1) FinMIA). This means that not only the offeror but also persons acting in concert with the offeror are liable to prosecution (see also Explanatory Report 2022, p. 6).

The offeror in a mandatory or a voluntary public offer is usually a company. Therefore, it must be determined within the company who is to be held criminally liable for the untrue or incomplete information in the prospectus or the announcement. According to the wording of article 152*a* FinMIA, the actual creator of the prospectus or the announcement is liable to prosecution. This applies to the following people: first, the person that actually wrote the prospectus or the announcement. Second, the person that is – according to the internal organization of the company – responsible for the creation of the prospectus or the announcement (*e.g.* the CFO). Third, the person who delivers the untrue or incomplete information that is used in the prospectus or in the announcement. Persons who do not exert any influence on the content of the prospectus or the announcement on their own initiative, but who should exert influence due to their position within the offeror, are also liable to prosecution.

5.2) Complicity and incitement

Complicity is penalized under article 152*a* FinMIA, *i.e.* any person who willfully assists another to make untrue or incomplete information in an offering prospectus or an announcement shall be liable for a reduced penalty (article 5 ACLA in conjunction with article 25 and article 105 (2) of the Swiss criminal code ("**CC**")). Incitement is also penalized under article 152*a* FinMIA, *i.e.* any person who has willfully incited another person to make untrue or incomplete information in the offering prospectus or the announcement shall be liable to the same penalty as applies to the person who has committed the offence (article 5 ACLA in conjunction with article 24 and article 105 (2) CC). However, the mere attempt to make untrue or incomplete statements in a prospectus or an announcement is not an offence (see article 105 (2) CC).

5.3) A company is not an offender

In general, a company cannot be penalized based on article 152*a* FinMIA because a company is not considered a suitable offender. A company can only be penalized under specific circumstances. This is the case if (i) the investigation of the responsible person within the company requires disproportionate efforts by the prosecutors and (ii) the penalty imposed in the specific case is a fine of no more than CHF 50,000 (see article 49 FINMASA).

6) Intention and negligence

To commit the criminal offence pursuant to article 152*a* (1) FinMIA, the offender must make willfully untrue or incomplete statements in the prospectus or the announcement. The offender acts willfully if he carries out the act in the knowledge of what he is doing and in accordance with his will (see article 12 (2) CC).

The offence can also be committed through negligence (see article 152*a* (2) FinMIA). An offender commits an offence through negligence if he fails to consider or disregards the consequences of his conduct due to a culpable lack of care. A lack of care is culpable if the offender fails to exercise the care that is incumbent on him in the circumstances and commensurate with his personal capabilities (see article 12 (3) CC).

The criminal liability for negligence was criticized during the consultation of this legal bill (see report on the consultation results dated 15 September 2022, p. 3), but was nevertheless retained, as it was assumed that negligence would occur more frequently because the required information is precisely described in an offering prospectus.

7) Untrue or incomplete information

The criminal offence of article 152*a* FinMIA requires the offender to make "untrue" or "incomplete" statements in the prospectus or the announcement.

A statement is untrue if it is false or rather does not objectively correspond to the facts. This is also the case if the information is correct, but in the overall context creates a false impression. In any case, the untrue statement must relate to a fact that the target company's shareholders deem relevant for their investment decision, *i.e.* making false but irrelevant statements is not penalized.

A prospectus or an announcement is incomplete if the information required by law is missing (see for the necessary information article 17 et seq. and article 5 et seq. TOO; see also Explanatory Report 2022, p. 6).

8) Sanctions and prosecution

If the prerequisites are fulfilled, a fine not exceeding CHF 500,000 shall be imposed on an offender who acts willfully (article 152*a* (1) FinMIA). A fine not exceeding CHF 150,000 shall be imposed on any offender who acts through negligence (article 152*a* (2) FinMIA). The penalties are the same as for a breach of duty by the target company (see article 153 FinMIA).

The Swiss Federal Department of Finance ("**FDF**") is responsible for the prosecution of offences pursuant to article 152*a* FinMIA (see article 50 (1) FINMASA). The Takeover Board must immediately notify the competent criminal authorities, *i.e.* the FDF, if it becomes aware of potential violations of the new criminal provision (see article 138 (4) FinMIA in conjunction with article 50 (1) FINMASA) (Explanatory Report 2022, p. 6).

Prosecution of a violation of article 152a FinMIA is time-barred after seven years (see article 52 FINMASA).

9) Civil liability

The board of directors of the company at fault may also be exposed to civil liability claims based on article 754 of the Swiss Code of Obligations ("**CO**") or article 41 CO in the event of a breach of the duty to produce a true and complete prospectus.

10) Conclusion

To conclude, the Swiss takeover law has introduced a new criminal offence that penalizes a breach of duty by the offeror. The newly introduced article 152*a* FinMIA states that anyone who willfully provides untrue or incomplete information in the offering prospectus or the announcement of a public takeover offer can be penalized with a fine of up to CHF 500,000. If the offender acted through negligence, a reduced fine of up to CHF 150,000 can be imposed. As shown in this article, the prerequisites for criminal liability pursuant to article 152*a* FinMIA are high and it remains to be seen whether the new criminal provision will actually be applied in practice.

Pascal Hodel (pascal.hodel@nkf.ch)

Understanding the Landscape of Advertising Foreign Collective Investment Schemes to Swiss Investors

Reference: CapLaw-2024-21

The Swiss financial market, renowned for its robust regulatory environment and attractiveness to global investors, presents unique challenges and opportunities for foreign collective investment schemes. This article seeks to demystify the legal intricacies involved in advertising these schemes to Swiss investors, focusing particularly on the stringent requirements set forth by the Swiss Financial Market Supervisory Authority FINMA.

By Jürg Frick / Benjamin Leisinger

1) Introduction

From a Swiss regulatory point of view, the advertising of foreign, *i.e.* non-Swiss, collective investment schemes or funds to investors in Switzerland needs to be looked at under at least two different aspects: first, it must be assessed whether the fund as such is eligible for advertising or distribution in Switzerland, and second, the advertising or distribution activity itself must be understood and assessed whether it is subject to regulation in Switzerland or not. In both cases, it is relevant to understand to what kind of investors the respective fund shall be marketed and offered in Switzerland, *e.g.* to retail investors or only to qualified investors.

The eligibility criteria for foreign funds to be distributable in Switzerland are set out in the Swiss Collective Investment Schemes Act (CISA). Questions arise as to whether a fund must be approved by the Swiss Financial Market Supervisory Authority FINMA (FINMA) and whether it must appoint a Swiss representative and a Swiss paying agent.

Advertising or distribution activities could fall under the scope of the Swiss Financial Services Act (FinSA). Since FinSA is still relatively new and the Swiss Federal Supreme Court has not yet had to decide whether or not advertising or distribution activities automatically qualify as a financial service under FinSA, Swiss legal scholars continue to debate the exact scope of FinSA.

The purpose of this article is to discuss certain eligibility criteria for foreign funds to be distributed to investors in Switzerland, including, *inter alia*, FINMA approval requirements.

2) FINMA Approval for Foreign Collective Investment Schemes

Under article 120 CISA, foreign collective investment schemes must obtain FINMA approval before being offered to non-qualified investors in Switzerland. The criteria for approval, as per article 120 (2) CISA, are multi-faceted, demanding comprehensive compliance in areas including investor protection, organizational structure, and investment policy.

3) Key Approval Criteria

The approval process entails ensuring that: a) the scheme and associated entities are under adequate public supervision to protect investors; b) the regulatory framework governing these entities aligns with Swiss standards; c) the scheme's name is clear and non-deceptive; d) a Swiss representative and paying agent are appointed; and e) there exists an agreement for cooperation and information exchange between FINMA and the relevant foreign authorities.

4) Challenges for Non-UCITS and Crypto Funds

In practice, obtaining approval for non-UCITS foreign collective investment schemes can be exceptionally challenging. To date, FINMA has shown considerable restraint, approving only a limited number of such funds, including a solitary crypto fund, exclusively for qualified investors.

5) Regulations for Qualified Investors

Foreign collective investment schemes targeting qualified investors under article 5 (1) of the Financial Services Act (FinSA) face relatively lenient requirements. They are exempt from FINMA approval but must still ensure non-deceptive naming and appoint a Swiss representative and paying agent.

6) Exemptions for Genuine Qualified Investors

Offers made exclusively to "genuine" qualified investors, excluding those defined under article 5 (1) FinSA, can proceed without authorization or the need for a representative and paying agent. This offers a streamlined pathway for certain foreign funds targeting a sophisticated investor segment.

7) Restrictions on Unlicensed Foreign Funds

Foreign funds not approved for offering to non-qualified Swiss investors must adhere to strict limitations. They can only be offered to professional clients, as defined in article 4 (3) FinSA, and private clients meeting specific criteria under article 10 (3ter) CISA. These clients must be under the management or advisement of a qualified financial intermediary and must not opt out of being treated as qualified investors.

Under article 127a of the Swiss Collective Investment Schemes Ordinance, mere advertisement (without an offer) triggers the same duties as an offer. Accordingly, unlicensed foreign funds can only be advertised to "genuine" qualified investors, excluding those defined under article 5 (1) FinSA, without approval or the need for a representative and paying agent.

8) Requirements in Other Cases

In cases involving opt-out retail investors, a Swiss representative and paying agent are mandatory. For offerings to retail investors, obtaining FINMA approval becomes a necessity.

9) Reverse Solicitation

It's crucial to note that "true" reverse solicitation, which involves execution-only purchases without any prior marketing of the fund to such investor, is not considered an offer under Swiss law and is therefore permissible.

10) Conclusion

Navigating the advertisement and offering of foreign collective investment schemes in Switzerland requires a nuanced understanding of the regulatory framework. While the pathway for non-UCITS and certain other funds is fraught with challenges, there remains scope for targeted offerings to qualified investors under specific conditions. It's imperative for fund managers and advertisers to meticulously adhere to these regulations to successfully access the sophisticated Swiss investment market.

Jürg Frick (juerg.frick@homburger.ch)
Benjamin Leisinger (benjamin.leisinger@homburger.ch)

Issuance by UBS Switzerland AG of EUR 1 billion covered bonds

Reference: CapLaw-2024-22

On 5 March 2024, UBS Switzerland AG successfully completed its issuance under its covered bond program of EUR 1 billion 3.304% covered bonds due March 2029. The covered bonds are governed by Swiss law and have been provisionally admitted to trading on SIX Swiss Exchange, and application will be made for definitive admission to trading and listing.

Issuance by Thermo Fisher of CHF 1.070 billion inaugural bond

Reference: CapLaw-2024-23

On 7 March 2024, Thermo Fisher Scientific Inc. successfully completed its issuance of its inaugural CHF bonds in excess of CHF 1 billion, being the largest foreign Swiss franc bond issuance in seven years. The issuance consisted of three tranches, the CHF 330 million 1.6525 per cent. bonds due 2028, CHF 415 million 1.8401 per cent. bonds due 2032 and the CHF 325 million 2.0375 per cent. bonds due 2036. The bonds are governed by Swiss law and have been provisionally admitted to trading, and application has been made for definitive admission to trading and listing of the bonds, on the SIX Swiss Exchange. UBS Investment Bank, BNP Paribas (Suisse) SA, and Deutsche Bank AG London Branch, acting through Deutsche Bank AG Zurich Branch, acted as lead managers.

Placement by Swiss Prime Site of green bonds in the aggregate principal amount of CHF 250 million

Reference: CapLaw-2024-24

Swiss Prime Site successfully placed green bonds in the aggregate principal amount of CHF 250 million 1.80% due 2030. The bonds were issued by Swiss Prime Site Finance AG and guaranteed by Swiss Prime Site AG. Zürcher Kantonalbank, Basellandschaftliche Kantonalbank and Luzerner Kantonalbank AG acted as Joint Lead Managers in this transaction.

Issuance by Roche Holdings, Inc. of USD 3.875 billion in aggregate principal amount senior notes, guaranteed by Roche Holding Ltd

Reference: CapLaw-2024-25

On 8 March 2024, Roche Holdings, Inc. successfully completed its issuance of USD 3.875 billion in aggregate principal amount of senior notes, consisting of USD 875 million 4.790% Notes due 2029, USD 750 million 4.909% Notes due 2031, USD 1.25 billion 4.985% Notes due 2034, and USD 1 billion 5.218% Notes due 2054. The notes are irrevocably and unconditionally guaranteed by Roche Holding Ltd.

Issuance by Nestlé of an aggregate of USD 2.5 billion notes through an institutional (Rule 144A) offering in the United States of America

Reference: CapLaw-2024-26

On 12 March 2024, Nestlé Capital Corporation successfully completed its issuance of USD 600 million 4.650% Notes due 2029, USD 450 million 4.750% Notes due 2031, USD 800 million 4.875% Notes due 2034, and USD 650 million 5.100% Notes due 2054. The Notes are guaranteed by the Nestlé group's Swiss parent company Nestlé S.A. The offering of the Notes was done in reliance on Rule 144A and Regulation S under the U.S. Securities Act.

IPO of Galderma on SIX Swiss Exchange

Reference: CapLaw-2024-27

On 22 March 2024, the shares of Galderma Group AG, a pure-play dermatology category leader, were listed and started trading on SIX Swiss Exchange at a price of CHF 53 per share. Based on the offer price, Galderma's implied market capitalization was CHF 12.6 billion. During the IPO, the syndicate banks successfully placed 37,233,708 newly issued registered shares, as well as 276,909 existing registered shares offered by one of Galderma's shareholders, Sunshine SwissCo AG (EQT). EQT, together with certain of Galderma Group AG's other shareholders, granted a secondary over-allotment option of up to 5,626,592 existing registered shares, which was exercised in full. The total placement volume was CHF 2.3 billion. On 25 March 2024, Galderma was granted inclusion to SPI, SPI Extra, SPI ex Swiss Leader Index, SXI Life Sciences, UBS 100 and Ethos Swiss Corporate Governance. Galderma raised gross proceeds of CHF 2.0 billion from the offering, and intends to use the proceeds primarily to strengthen its balance sheet by repaying and refinancing debt.

Scrip dividend by SGS SA

Reference: CapLaw-2024-28

At its AGM held on 26 March 2024, SGS SA proposed to shareholders, and an overwhelming majority approved, the right to receive a dividend in the form of either cash or shares of the company (scrip dividend) at the option of eligible shareholders. The shares to be delivered will be valued at a discount of 6% to the market value of the SGS shares, offering attractive tax benefits for shareholders (no withholding tax and no income tax for certain shareholders). The new shares will be sourced by way of an ordinary capital increase also approved by the shareholders at the AGM.

Capital increase by Meyer Burger with gross proceeds of CHF 206.75 million

Reference: CapLaw-2024-29

On 2 April 2024, Meyer Burger Technology AG announced that as part of its rights offering, subscription rights for 19,648,121,444 new shares were exercised. On 3 April 2024, Meyer Burger announced that all 496,302,442 new shares for which subscription rights were not exercised during the subscription period were successfully placed with various institutional investors. As a result, Meyer Burger issued 20,144,423,886 new registered shares in connection with the capital increase and raised gross proceeds of CHF 206.75 million.

Placement by Clariant of dual tranche CHF 200 million and CHF 150 million senior bonds maturing 2027 and 2031

Reference: CapLaw-2024-30

Clariant AG successfully placed a CHF 200 million bond with a term to maturity of three years, and a CHF 150 million bond with a term to maturity of seven years. The net proceeds will be used for general corporate purposes.

Placement by Medartis of CHF 115.8 million convertible bonds maturing 2031

Reference: CapLaw-2024-31

On 4 April 2024, Medartis Holding AG announced the successful placement of senior unsecured guaranteed convertible bonds due 2031 for an amount of CHF 115.8 million, convertible into newly issued and/or existing registered shares of Medartis Holding AG. The bonds are issued via Medartis International Finance SAS, a directly wholly owned subsidiary of Medartis Holding AG, and the payment obligations under the bonds are unconditionally and irrevocably guaranteed by Medartis Holding AG. An application will be made for the bonds to be admitted to trading on the Open Market of the Frankfurt Stock Exchange (Freiverkehr). The net proceeds from the bonds issue will be used for general funding purposes including acquisitions in Medartis' core business.

EUR 300 million capital increase by Swiss Steel Holding AG

Reference: CapLaw-2024-32

On 18 April 2024, Swiss Steel Holding AG announced the placement of a total of 3,101,000,000 new registered shares in connection with its capital increase. The shares were sold at an offer price of CHF 0.0925 per share, resulting in gross proceeds of EUR 300 million and net proceeds of approximately EUR 294 million. The transaction was fully backstopped by BigPoint Holding AG.

Placement by DocMorris (former Zur Rose Group) of convertible bonds in the aggregate principal amount of CHF 200 million and public repurchase offer for outstanding convertible bonds due 2025

Reference: CapLaw-2024-33

On 18 April 2024, DocMorris announced the successful placement of senior unsecured guaranteed convertible bonds due 2029 for an amount of CHF 200 million, convertible into newly issued and/or existing registered shares of DocMorris AG. The bonds are issued via DocMorris Finance B.V., a directly wholly owned subsidiary of DocMorris AG, and the payment obligations under the bonds are unconditionally and irrevocably guaranteed by DocMorris AG. With the transaction, DocMorris intends to refinance the outstanding CHF122m convertible bonds due 2025. For this purpose, DocMorris announced a public repurchase offer for outstanding convertible bonds due 2025 at an offer price of CHF 5,037.50 per bond corresponding to 100.75% of the par value, plus accrued and unpaid interest.