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EVENTS

NEW WHITE PAPER ON SIX IPOs PRESENTED AT JANUARY 2026 TECH IPO EVENT

Reference: CapLaw-2026-34

At an event held in January 2026 at the premises of SIX Swiss Exchange, a new white paper was presented that sets out the advantages of conducting an IPO in Switzerland as opposed to the United States. This contribution focuses on legal aspects covered in the white paper.

By Lorenzo Togni

Estimated to be more than USD 200 billion, Switzerland's investor capital pool is second to none in continental Europe. Home to some of the world's leading universities, in particular ETH Zürich, and to some of the most innovative companies in tech, biotech, techbio, medtech, pharma, fintech, crypto and AI, Switzerland delivers a steady pipeline of potential IPO candidates – embedded in an ecosystem providing for a solid cluster of peers, easy access to talent and comprehensive financial analyst coverage.

On 29 January 2026, as part of an in-person conference addressed to IPO candidates primarily in the tech space (the **Tech IPO Event**) jointly hosted by Swisscom Ventures and SIX Swiss Exchange (together with SIX Exchange Regulation, **SIX**), Homburger and SIX presented a co-authored white paper entitled *Evaluating the Aspects of a Swiss versus a US Listing* (the **White Paper**). The full version of the White Paper is available here. This contribution focuses on legal aspects covered in the White Paper and as part of a presentation held by the author of this contribution at the Tech IPO Event.

1) White Paper

The White Paper compares an initial public offering and listing (an **IPO**) on SIX (a **SIX IPO**) against an IPO on a US exchange (Nasdaq/NYSE) (a **US IPO**) in each case of a Swiss-incorporated company. In particular, the White Paper provides a comparative analysis of prospectus duties, ongoing disclosure obligations, corporate governance requirements, securities liability regimes, litigation risk, and compliance burden under Swiss and US laws and regulations. The paper's target audience are domestic companies considering a US IPO or a SIX IPO featuring a Rule 144A cross-border offering to US qualified institutional buyers (**QIBs**).

a) Listing Eligibility and Exchange Standards

The White Paper sets out the quantitative and qualitative requirements for admission to the SIX Main Market and the SIX Sparks segment designed for growth companies, including track record, minimum equity capital, free float, and market capitalisation thresholds. These are contrasted with the listing standards of Nasdaq and NYSE, including as they apply to Foreign Private Issuers (**FPIs**).

b) SIX Prospectus Approval vs. U.S. SEC Registration

Under the Financial Services Act (the **FinSA**), which applies to a SIX IPO, the IPO prospectus requires ex-ante approval by the SIX Prospectus Office in its capacity as an authorised reviewing body for (i) completeness (*rule check*), (ii) coherence (absence of manifest inconsistencies) and (iii) so-called understandability (*plain English*), with a statutory filing deadline of at least 20 calendar days before the offering (whereby one full month is the market practitioners' convention and best practice; see also paragraph 2)b) below). Pre-deal investor education (**PDIE**) is standard[1] (see also paragraph 2)a)ii. below).

Conversely, as part of a US IPO, FPIs file a registration statement on Form F-1 with the US Securities and Exchange Commission (the **SEC**), which conducts a typically iterative review as to substance. Pre-effective marketing is restricted owing to federal securities laws gun-jumping rules.

c) Ongoing Disclosure and Reporting Obligations

Following a SIX IPO, Swiss corporate law and/or the SIX Listing Rules (the **SIX LR**) require audited annual financial statements (stand-alone and if applicable consolidated) as part of an annual report, semi-annual reports, ad hoc disclosure of price-sensitive facts, and management transaction reporting within two trading days following the relevant trade.

Following a US IPO by an FPI, the US framework requires an annual report on Form 20-F (within four months of fiscal year-end), ongoing Form 6-K filings for material home-country information, and Sarbanes-Oxley internal control and CEO/CFO certification obligations.

d) Corporate Governance Requirements

SIX-listed companies are subject to a principles-based comply-or-explain governance report under the SIX Directive on Information Relating to Corporate Governance (the **SIX DCG**). US exchanges and the SEC impose significantly more prescriptive rules, including mandatory audit committee independence, financial expert requirements, and whistleblower procedures – though FPIs may to some extent rely on home-country practice with appropriate disclosure.

e) Securities Law Liability and Litigation Risk

Swiss Prospectus liability under article 69 FinSA requires the plaintiff to prove breach, fault, damage, and causal link (due-care standard, no burden-shifting). Directors' and officers' liability is governed by Swiss corporate law, with defences based on proper delegation and exercise of due diligence.

[1] Lorenzo Togni, *Moving the Goalposts Between Launch and Pricing* oder Der Prospektnachtrag beim IPO unter bisherigem und zukünftigem Recht, in: Kapitalmarkt – Recht und Transaktionen XIV, Thomas U. Reutter/Thomas Werlen (eds.), Zürich 2019, pp. 57-91, p. 61.

The US liability regime includes, *inter alia*, the following elements:

- Section 11 of the US Securities Act imposes near-strict liability for material misstatements in a registration statement;
- Section 12(a)(2) of the US Securities Act covers public offering materials;
- pursuant to Rule 10b-5 under the US Securities Exchange Act, antifraud claims require proof of scienter, reliance (aided by the fraud-on-the-market presumption), economic loss, and loss causation; and
- the Private Securities Litigation Reform Act provides certain procedural protections, including heightened pleading standards and an automatic stay of discovery.

f) Holding Foreign Insiders Accountable Act Triggering Section 16(a) Reporting Duties

Finalized in December 2025, the White Paper flags the Holding Foreign Insiders Accountable Act (the **HFIAA**), which, with effect as of 18 March 2026, as a rule extends Section 16 reporting requirements to directors and officers of FPIs.

Specifically, Section 16(a) of the US Securities Exchange Act requires directors, officers and 10% shareholders of domestic SEC-reporting companies to report their holdings and transactions in issuer equity securities and exposes them to strict *short-swing profit* liability under Section 16(b) of the US Securities Exchange Act.

However, and as could not be known at the time of finalization of the White Paper, on 5 March 2026, the SEC granted exemptive relief from Section 16(a) insider reporting to directors and officers of Swiss FPIs that report management transactions under the SIX regime (*i.e.*, article 56 SIX LR and the implementing SIX directives), so long as the transaction reports are made publicly available in the English language within certain timeframes[2].

Conversely, Swiss FPIs that do not report management transactions under the SIX regime (*i.e.*, Swiss companies that have completed a US IPO but are not SIX-listed) are encompassed by the scope of applicability of the HFIAA and, with that, under the Section 16 reporting obligations.

2) Tech IPO Event of 29 January 2026

With BioVersys delivering lessons learned from its 2024 SIX IPO, each of CUTISS, Ecorobotix, and SWISSto12 showcasing various elements of IPO readiness, and the Chief Executive Officer

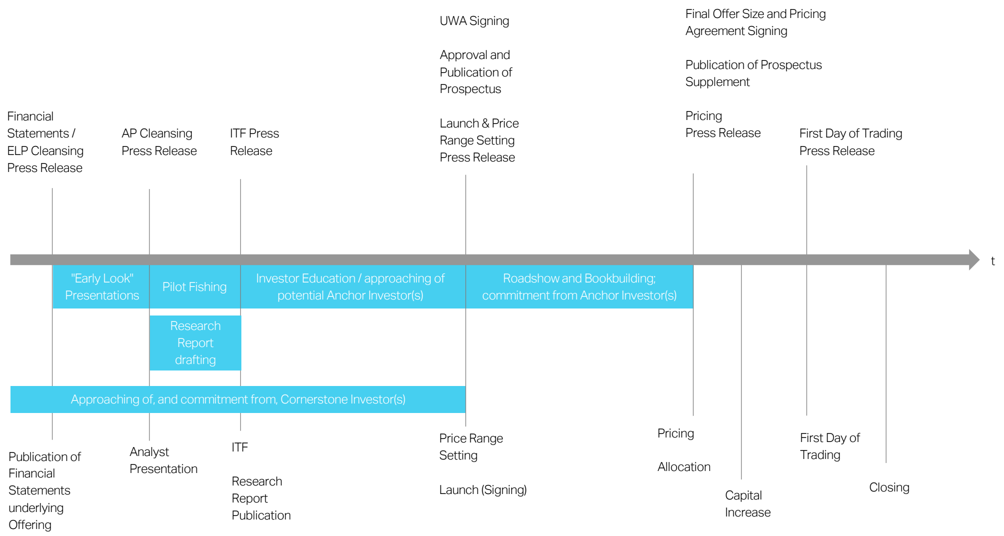
[2] SEC Release No. 34-104931, "Order Granting Directors and Officers of Certain Foreign Private Issuers an Exemption from the Filing Requirements of Section 16(a) of the Exchange Act" of 5 March 2026, available at https://www.sec.gov/files/rules/exorders/2026/34-104931.pdf. For a synopsis of the SEC order, see Homburger client alert of 10 March 2026, "SEC Exempts D&Os of Swiss Dual-Listed FPIs from Insider Reporting", available at https://www.homburger.ch/en/insights/sec-exempts-dos-of-swiss-fpis-from-insider-reporting.

of Proton advocating for SIX IPOs and the Swiss ecosystem more broadly, the aim of the Tech IPO Event held on 29 January 2026 was to take stock on what has been accomplished and what gaps remain to be closed in the current Swiss IPO space, both from a commercial and from legal and regulatory perspective.

The presentation delivered on occasion of the Tech IPO Event by the author of this contribution revolved around five key topics: the analyst process and PDIE, the SIX Prospectus Office prospectus review timeline, a descriptive overview of the Swiss Equity Capital Markets (**ECM**) ecosystem, the IPO documentation and in particular the underwriting agreement and the prospectus, and post-IPO access to equity funding by means of accelerated bookbuild (**ABB**) offerings.

a) Analyst Process and PDIE

Prior to embarking on a SIX IPO roadshow and bookbuilding, which typically takes between 6 and 10 trading days (*i.e.*, the offer period) based on a price range to be published in the IPO prospectus, a number of workstreams are carried out. Two of them stand out, in contrast to a US IPO:



i. Analyst Process

In the weeks prior to the IPO candidate publicly announcing its intention to float (the **ITF**) its shares on the stock market via an ITF press release, the analysts of the banks on the IPO syndicate are invited to prepare research reports in accordance with a meticulously defined procedure set out in the Research Guidelines and based on information to be made available in all material respects in the IPO prospectus. At the same time as the ITF press release is published, the analysts will publish their research reports, supporting – independently from the company – the investment decision on the part of prospective IPO investors.

ii. PDIE

Subsequently to the ITF press release having been published, potential investors may be approached in what is referred to as PDIE (see paragraph 1)b) above). This applies in particular to cornerstone and anchor investors: Legally binding commitments are now sought from cornerstone investors with the aim of disclosing their commitment in the IPO prospectus, such disclosure serving as favourable signalling bolstering the IPO. In contrast, anchor investors may well still place their orders in the order book after the launch, *i.e.*, while the offer period has already commenced. The economic objective of the PDIE is to establish a price range (and to secure commitments from cornerstone investors) to be published in the IPO prospectus; to this end, the syndicate banks maintain a 'shadow book' that reflects the 'appetite' of the targeted investors as a function of the offer price and, in some cases, of the offer size.

b) Statutory SIX Prospectus Office Review Timeline

Pursuant to article 53(5) FinSA, the SIX Prospectus Office on a SIX IPO has a statutory timeframe of 20 days to review and approve the IPO prospectus (the **Review Period**). Because technically a new Review Period starts to run from each point in time a revised prospectus is being submitted – in response to SIX Prospectus Office comments or otherwise –, it is best practice to effect the first prospectus filing no less than one month prior to the start of the offer period (which is the point in time the prospectus needs to be approved, deposited and published).

The existence of a statutory Review Period, *i.e.*, the legal entitlement to be granted approval of a FinSA-compliant prospectus within a predefined timeframe, is overall beneficial to the planning of a SIX IPO.

c) Proven ECM Ecosystem

While not strictly a legal argument, as set out in the introductory paragraph to this contribution, Switzerland boasts continental Europe's largest investor capital pool and, backed by world-class universities and a thriving innovation ecosystem, produces a consistent pipeline of high-quality IPO candidates across technology, life sciences, and financial sectors.

A SIX IPO with an offering to US QIBs pursuant to Rule 144A will typically feature the following offering participants: the issuer and its Swiss and US legal counsel, potentially the selling shareholder(s) and its/their Swiss and US legal counsel, a syndicate of banks (frequently sub-divided into Joint Global Coordinators, Joint Bookrunners and Co-Lead Managers or similar roles of seniority), their Swiss and US legal counsel, the issuer's auditors, a financial transaction adviser, potentially a PR agency, the share register, SIX and SIX SIS.

As was mentioned in the voiceover by certain panelists and participants at the Tech IPO Event, the cost of going public on SIX is comparatively low, when benchmarked against other leading markets. Underwriting fees in Switzerland currently range between 2% to 5% of gross proceeds, whereas in the United States they currently average 4% to 7%. Legal fees and regulatory compliance costs are also contained by Switzerland's proportionate, principles-based regulatory framework generally resulting in a more predictable, efficient, and issuer-friendly path to the public markets. Legal execution risks for issuers, including stemming from the interaction with the commercial register of the relevant canton in connection with the articles of incorporation and/or the Swiss Takeover Board in connection with any opting-out or opting-up from the mandatory PTO obligations, are generally manageable. In particular, cantonal commercial registers offer a *hyperexpress* procedure for intra-day registration of capital increases (see also paragraph 2)e) below).

d) Market-Standard IPO Documentation

The main documents to be prepared in connection with a SIX IPO are the underwriting agreement (the "**UWA**") and the IPO prospectus. Each of these documents follows a well-established Swiss market standard. The UWA is executed at the same time as the prospectus is published: At the beginning of the offer period. At this point in time, only an offer price range and a maximum offer size is known, to be narrowed town to the offer price and the offer size once roadshow and bookbuilding have been concluded, culminating in pricing and allocation.

e) Post-IPO Access to Equity Funding by Means of ABB Offerings

Based on recent examples, the author of this contribution illustrated access to equity funding overnight by means of an ABB offering. For example, with wall-crossing of certain institutional investors ahead of the ABB, one issuer was able in February 2025 to raise CHF 300 million in such a transaction for general corporate purposes, and in March 2026 a well-known seasoned issuer in the insurance sector raised CHF 3,900 million to finance a previously announced acquisition – in each of these cases with an announcement of the ABB transaction at 5:45 pm CET of the first trading day and legally binding investor obligations having been entered into by 7:30 am CET of the second trading day. Thanks to the *hyperexpress* procedure referred to in paragraph 2)c) above, issuance and delivery to investors (against payment of the offer price, *i.e.*, closing of the ABB) can occur and trading on SIX of the new shares can start as early as 9:00 am CET of the third trading day, catering for an overall expedited capital raising process.

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SUCCESSFUL SME LISTINGS: REGULATORY DESIGN AND MARKET STRUCTURE IN SWEDEN

Reference: CapLaw-2026-35

The Swedish market has established itself as one of Europe's leading stock markets, and in December 2025, The Economist declared Stockholm "Europe's new capital of capital." In 2025, Sweden accounted for more IPOs than any other country in Europe and, in absolute terms, had the highest number of listed companies in Europe even though Sweden, with a population of around ten million, ranks only eighth in the EU in terms of GDP.

By Michaela Ådén / Christian Lindhé

1) Introduction

Nasdaq Stockholm alone hosts more than 350 companies on its Main Market, including some of the most innovative companies in the Nordic region, and the combination of a deep pool of engaged retail investors and strong institutional investors has helped the Swedish market thrive over the past decade. Yet what makes the Swedish model truly distinctive is the broader ecosystem designed to bring companies of all sizes into the public capital markets.

The Swedish capital market is not just for the large institutions and companies. Alongside major listings on regulated markets, there is another segment of the Swedish capital market where small and medium-sized companies are successfully listed and gain access to public capital. The Swedish model, which provides companies of various types – both in terms of industry and size – with access to capital, is not the result of a single legislative measure or political initiative, but rather the result of a multifaceted system that has evolved over decades through regulation, specialized trading venues and a broad base of investors.

2) The Trading Venues

The SME listing landscape is built around three principal venues: Nasdaq First North Growth Market, Nordic Growth Market's (NGM) Nordic SME and Spotlight Stock Market. Each operates as a multilateral trading facility (MTF) rather than a regulated market, and each is registered as an SME Growth Market. This classification is not merely a label – it carries concrete regulatory consequences that define the operating environment for issuers and investors alike.

Nasdaq First North is the dominant venue for small and medium-sized companies, and it has become the default listing destination for growth companies across technology, life sciences and specialty industrials. First North is itself divided into two tiers: a standard segment and a premier segment, the latter applying somewhat more demanding disclosure requirements and serving as an explicit stepping-stone toward the Nasdaq Stockholm Main Market. The existence of this internal graduation is not incidental – it reflects a deliberate design philosophy in which the regulatory burden scales with the company's development rather than being imposed uniformly at the point of entry.

Spotlight Stock Market occupies a position below First North in terms of issuer size and applies an even more streamlined admission process. It is particularly popular among micro-cap issuers and companies at very early stages of commercialization. NGM occupies a niche between the two and also operates a regulated market.

Together, the three venues create a layered ecosystem that provides listing options across a broad spectrum of company size, maturity and ambition – from a pre-revenue biotech raising SEK 20 million (approx. CHF 1.7 million) on Spotlight to a SEK 500 million (approx. CHF 41.6 million) technology company seeking First North Premier as a prelude to a Main Market transfer.

3) The Regulatory Framework

This article examines the key regulatory features that distinguish these venues, focusing on the prospectus regime, admission requirements, the Certified Adviser model and ongoing disclosure obligations. Each of these features is calibrated to the resources and risk profile of smaller issuers. The article focuses on Nasdaq First North compared to the regulated market Nasdaq Stockholm, since their graduated relationship within a single exchange group makes the regulatory architecture particularly visible – but the structural logic applies, in broad terms, across the Swedish SME Growth Market landscape.

a) The Prospectus Regime

The prospectus regime is the first regulatory feature that a company encounters when considering a listing. Under the EU Prospectus Regulation, a full prospectus is required for any offer of securities to the public exceeding the applicable threshold or for any admission to trading on a regulated market. Since SME Growth Markets operate as MTFs rather than regulated markets, admission to trading on these venues does not, in itself, trigger the Prospectus Regulation's requirement for a full prospectus. This distinction is fundamental to the cost calculus for smaller issuers.

In practice, however, a company conducting an IPO on First North will typically still need to prepare a prospectus where the offering exceeds the relevant threshold (currently EUR 12 million over a twelve-month period under Swedish implementation). Where the offer falls below that threshold, a company description – a lighter document governed by the marketplace's own rules rather than the Prospectus Regulation – suffices. This lighter document requirement reduces both the direct cost and the time required to bring a transaction to market. The practical significance of this layered prospectus regime is considerable: for a company raising EUR 5 million in connection with an IPO, the difference between a full prospectus and a company description can determine whether the transaction is commercially viable at all.

b) Admission Requirements

The admission requirements also represent a structural difference between the Main Market and the growth venues. A company applying to Nasdaq Stockholm must demonstrate at least three years of financial history through published or filed annual reports, a clear business strategy with ongoing business operations conducted in its current form for at least one year, sufficient working capital for at least twelve months of planned operations, a minimum free float of 25 per cent (or 10 per cent where the value of the shares exceeds SEK 500 million), at least 500 qualified shareholders (or 300 with a liquidity provider), and a market capitalization of at least EUR 1 million. In addition, the company must apply IFRS, adhere to the Swedish Corporate Governance Code (Sw. *Svensk kod för bolagsstyrning* – a comply-or-explain code, covering board composition, remuneration committees, internal control and audit), and publish quarterly interim reports.

By contrast, a company seeking admission to First North Growth Market needs only have prepared one financial report in accordance with applicable legislation, conducted business for at least twelve months, demonstrated sufficient working capital for twelve months, secured a minimum free float of 10 per cent, and built a shareholder base of at least 300 qualified holders. The intermediate tier – First North Premier Growth Market – adds further requirements including application of IFRS, a minimum market capitalization of EUR 10 million, a 25 per cent free float threshold, and adherence to the Corporate Governance Code, thus positioning it closer to the Main Market while retaining the MTF structure.

The due diligence process mirrors this graduated approach: listings on Nasdaq Stockholm require a comprehensive legal due diligence review carried out by a qualified lawyer, as well as an admission review performed by a Listing Auditor – an experienced auditor from one of the major auditing firms (Deloitte, EY, KPMG, PwC, Grant Thornton or BDO) who assesses whether the company meets the Main Market listing requirements and presents conclusions to the Nasdaq Stockholm Listing Committee. The corresponding review for First North, while substantive, is less extensive and carried out by Nasdaq itself, without involvement of a Listing Auditor. The practical effect for a Swedish growth company is that the total advisory cost, elapsed time, and internal resource commitment needed to reach first day of trading are materially lower on First North than on Nasdaq Stockholm, both in absolute terms and relative to the capital raised.

c) The Certified Adviser Model

The Certified Adviser model is a distinctive feature of the Swedish growth market framework. Every company admitted to trading on First North must retain a so-called Certified Adviser – a firm approved by Nasdaq that serves as a continuous regulatory counterpart throughout the listing lifecycle. The Certified Adviser assesses the company's suitability for listing prior to admission, provides ongoing guidance on disclosure and compliance obligations, and monitors adherence to the marketplace rules. It is not a regulator but a private-sector intermediary – typically an investment bank or corporate finance boutique – which functions as both a quality gate and an ongoing compliance resource. The model decentralizes the compliance function away from the exchange operator and provides smaller companies with dedicated advisory support without requiring them to build an in-house compliance infrastructure from the outset. A company that loses its Certified Adviser faces de-listing unless it appoints a replacement within a prescribed period, which creates a strong incentive for continuous engagement on both sides of the relationship. On Nasdaq Stockholm, there is no equivalent requirement; the exchange itself, through its listing committee and surveillance department, performs the gatekeeping and ongoing monitoring function directly.

d) Ongoing Disclosure Obligations

The ongoing disclosure regime is another key feature that differentiates the growth venues from the Main Market. While issuers on First North remain fully subject to the EU Market Abuse Regulation, the periodic reporting requirements are lighter than those on the Main Market. National accounting standards – in Sweden, the K3 framework – are permitted on First North Growth Market, whereas IFRS is mandatory on both First North Premier and the Main Market. For a company with annual revenues of SEK 50–200 million (approx. CHF 4.2–16.6 million) and a finance team of modest size, the ability to report under the K3 framework, rather than IFRS, represents a meaningful reduction in accounting cost and complexity. The corporate governance requirements follow the same graduated logic: the Swedish Corporate Governance Code applies on Nasdaq Stockholm and on the Premier segment, but is not required on the base First North tier.

The Swedish Corporate Governance Code imposes requirements that go beyond the minimum standards of the Swedish Companies Act (Sw. *aktiebolagslagen*): it mandates, among other things, that a majority of board members be independent of the company and its major shareholders, that a nomination committee be established according to a specific model involving shareholder representation, and that the company maintain a formal framework for internal control over financial reporting. Companies on the base First North tier are not bound by these requirements and may instead organize their governance arrangements by reference to the Companies Act alone and any additional standards they choose to adopt voluntarily – an important degree of flexibility for founder-led or venture-backed companies whose ownership structure does not lend itself to the independent-director model. Companies on First North Premier, by contrast, must comply with the Corporate Governance Code on a comply-or-explain basis, which in practice means they need to build board and committee structures that mirror those on the Main Market even though they remain on an MTF.

Taken together, these ongoing obligations are calibrated to avoid imposing on smaller issuers a compliance burden designed for companies with substantially greater resources, while still maintaining the market integrity standards that investors expect of a venue operated by Nasdaq.

4) The Investor Base

Regulation alone does not produce IPO activity. Without investors willing to participate in smaller offerings, even the most proportionate listing regime will generate little deal flow. The Swedish model addresses this demand-side challenge through a broad culture of household equity ownership that has no close parallel in continental Europe. Fifty years ago, the picture was very different: Sweden had one of the world's most heavily regulated financial markets, and share ownership was largely confined to a small circle of industrial families and banks. The transformation began in the late 1970s with the introduction of tax-efficient savings schemes that gave ordinary households an incentive to invest in equity funds. When the stock market then rose sharply in the early 1980s, participation surged – and by mid-decade Sweden was being described as one of the most equity-dense countries in the world. Successive reforms reinforced the trend: financial-market deregulation opened the economy to international capital, the 1999 pension reform channeled part of every worker's contributions into individually chosen funds, and in 2012 the *Investeringssparkonto* (ISK) removed remaining administrative friction by replacing transaction-level taxation with a simple annual flat charge on portfolio value.

Today, roughly a quarter of the Swedish population holds shares directly and three-quarters invest through funds; if mandatory pension savings are included, virtually the entire adult population has exposure to the equity market. The ISK has been central to this final stage of democratization. Over half of Swedish adults now hold an ISK, and its success rests less on the headline tax rate than on the radical simplification it achieves: investors no longer need to track and declare individual transactions, removing the cognitive load of tax-optimized trading decisions. The behavioral consequence is that equity ownership has become a default component of household savings rather than the preserve of a financially sophisticated minority.

The relevance of this for the small-cap market is direct. When a broad base of retail investors holds equity through a simple, tax-efficient vehicle, the addressable investor base for a EUR 10 million First North IPO extends far beyond the institutional investors that dominate larger transactions. This depth of retail demand is a precondition for the analyst coverage, market-making activity and secondary-market liquidity that sustain a functioning small-cap ecosystem. Without it, the sell-side economics of covering smaller companies do not work, and the virtuous cycle between coverage, liquidity and further listings cannot establish themselves.

5) Institutional Cornerstone Investors

Retail participation alone is not sufficient. The Swedish AP funds – the national pension buffer funds – have played a distinctive and complementary role as domestically anchored cornerstone investors. These are professionally managed, large-scale institutional investors with explicit mandates to generate long-term real returns on domestic assets. Their willingness to participate in smaller IPOs, and to hold positions through the early post-listing period, sends a credibility signal that attracts other investors and reduces the placement risk that might otherwise deter issuers.

The AP funds are not the only institutional participants, but they occupy a structurally important position because of their scale, their long-term mandates and their domestic orientation. Their presence in the market creates a standing demand that smaller issuers can rely on when planning an IPO, which in turn makes the advisory and distribution infrastructure for smaller offerings commercially sustainable. Dedicated small- and mid-cap research, of the kind that is widely available in the Swedish market, requires sufficient deal flow and trading volume to justify the cost of coverage – and the AP funds' consistent participation helps to provide precisely that.

6) Conclusion

The Swedish model for small and medium-sized company listings represents a carefully calibrated regulatory ecosystem. The combination of proportionate prospectus requirements, graduated admission standards, a dedicated Certified Adviser system, tailored disclosure obligations and a broad domestic investor base create a self-reinforcing cycle: accessible listing venues attract issuers, broad retail participation generates liquidity, and institutional cornerstone demand provides credibility. The stepping-stone model – from First North Growth Market through First North Premier to the Main Market – allows companies to scale their regulatory and governance obligations in line with their commercial development, rather than facing a binary choice between remaining private and meeting full main-market standards from day one.

For European policymakers seeking to deepen their domestic capital markets, the Swedish experience offers a practical template: not a single legislative reform but an integrated system of graduated listing venues, proportionate regulation, tax-efficient investment options and domestically anchored institutional demand. The result is a market in which public equity financing is accessible not only to established large-caps but also to the growth companies that drive innovation and employment – companies that may, in time, become the next generation's leading brands.

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PROPOSAL FOR A SUSTAINABLE CORPORATE GOVERNANCE ACT

Reference: CapLaw-2026-36

On 1 April 2026, the Federal Council introduced the draft Sustainable Corporate Governance Act as a counterproposal to the Responsible Business Initiative 2.0. The proposed legislation seeks to align Swiss law with the latest amendments to corporate sustainability regulations in the EU by instituting broadly framed sustainability due diligence obligations and enhanced sustainability reporting requirements for large to very large Swiss companies. In addition, the draft outlines the creation of a special liability framework and introduces supervisory mechanisms to ensure compliance.

By Andreas Hösli

1) Context

In 2020, the Responsible Business Conduct Initiative (**RBCI**) proposed a legally binding regime to hold parent companies accountable for environmental and human rights violations occurring in their supply chains. Though the initiative was rejected by a very narrow margin, the Federal Council responded by enacting a counter-proposal to embed non-financial reporting obligations, specific transparency requirements for commodity traders, as well as specific due diligence requirements concerning conflict materials and child labor into Swiss corporate law. These requirements are set forth in articles 964*a-l* of the Code of Obligations (**CO**).

By 2023, discussions surrounding corporate responsibility had gained new momentum. The EU adopted two key new regulations, the Corporate Sustainability Reporting Directive (**CSRD**) and the Corporate Sustainability Due Diligence Directive (**CSDDD**). Building on the then current version of the CSDDD, a new constitutional initiative was launched in Switzerland in 2025, the so-called Responsible Business Conduct Initiative 2.0 (**RBCI 2.0**). This initiative proposes to introduce broadly framed sustainability due diligence obligations, a requirement for businesses to align their activities with the 1.5°C temperature rise goal of the Paris Agreement, as well as a specific civil liability and supervisory regime to enforce these obligations. In 2025, due to the implementation of the so-called Omnibus-I "simplification package", the CSRD and CSDDD underwent significant revisions, resulting in notable reductions in their scope and content. In response to these developments, in April 2026, the Federal Council tabled a draft legislative proposal, the Draft Sustainable Corporate Governance Act (**Draft SCGA**). A public consultation was launched to gather comprehensive feedback, running until 9 July 2026.

2) Sustainability Due Diligence

The Draft SCGA proposes mandatory sustainability due diligence requirements for (very) large companies operating in Switzerland, with the primary aim of preventing and mitigating risks related to human rights violations and environmental damage throughout their global supply chains.

Under the Draft SCGA, companies exceeding specific thresholds for workforce size (5,000 full time employees, FTEs) and global turnover (CHF 1.5 bn) are required to implement a formal system of risk-based human rights and environmental due diligence (**HREDD**, here referred to as **sustainability due diligence**). It is currently expected that only around 30 Swiss companies would meet this threshold and thus fall into the scope of the new requirements. Most of these very large Swiss companies would likely meet the respective thresholds for non-EU companies under the CSDDD as well.

Based on the model of HREDD under the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (**OECD Guidelines**) and the UN Guiding Principles on Business and Human Rights (**UNGP**), as adapted by the CSDDD, the framework includes, in particular, the identification, assessment, prevention, and minimization of adverse impacts related to environmental degradation, climate change, forced labor, child labor, etc. Notably, the Draft SCGA adopts the concept of the *chain of activity* from the CSDDD. This limits the due diligence responsibility mainly to the *upstream* value chain but imposes only limited responsibility regarding the *downstream* value chain.

Closely mirroring the respective obligations under the CSDDD, as well as the due diligence requirements as outlined in OECD guidance, sustainability due diligence under the Draft SCGA requires in-scope businesses to:

a) develop a strategy and a code of conduct to be implemented into corporate policies and risk management systems;

b) identify, assess, and prioritize potential and actual adverse impacts on human rights and the environment;

c) prevent potential negative impacts and develop a prevention action plan;

d) address any actual negative impacts, minimize their extent, and develop a corrective action plan;

e) provide remedy for actual negative impacts that have occurred;

f) involve stakeholders;

g) set up and maintain a reporting mechanism and internal complaint procedure for interested parties;

h) provide appropriate support to small and medium-sized enterprises in the chain of activity; and to

i) monitor the effectiveness of the above measures.

Furthermore, companies must ensure that their business partners adhere to the code of conduct. They must also continuously document how they have discharged their due diligence duties. The company's top executive body, typically the board, must publicly **report** on the fulfilment of the company's due diligence duties. Moreover, companies must cooperate with the newly established supervisory authority (see section 5 below). Notably, the supervisory authority may request that the due diligence report be audited based on the elevated *reasonable assurance* standard.

Many large Swiss companies have already voluntarily implemented sustainability due diligence processes based on best industry practices and international standards for responsible business conduct, such as the OECD Guidelines and the UNGP. Nevertheless, the Draft SCGA would make these established business practices mandatory for all in-scope companies, leading to increased scrutiny and standardization.

The Draft SCGA retains the *status quo* regarding the special due diligence regime for (i) child labor risks and (ii) conflict minerals and metals (conflict materials), currently outlined in articles 964*j*–*l* CO. Importantly, these due diligence requirements do not primarily arise from company size (though there is an exception for SMEs with respect to child labor), but are triggered when a company identifies relevant potential risks in its supply chain. The due diligence requirements relating to child labor and conflict materials are carried over into a dedicated chapter of the Draft SCGA without major substantive changes, thereby largely preserving the existing framework.

3) Reporting Obligations

Building on the foundations laid by the CSRD, the Draft SCGA proposes a substantially amended sustainability reporting framework. In-scope Swiss companies (companies with over 1,000 FTE and an annual global turnover of over CHF 450 million) are required to disclose comprehensive sustainability information, which is split into four topics: environment, social matters, human rights issues, and governance.

As part of its requirements for reporting on environmental matters, the Draft SCGA mandates that companies report on their progress toward achieving the net zero goal of limiting the Earth's temperature rise to 1.5°C above pre-industrial levels by 2050 (*i.e.*, in alignment with the Paris Agreement). This essentially entails the development and publication of a **transition plan**. Such obligation would not constitute an entirely new requirement, but is largely aligned with the existing legal obligations for large companies in Switzerland under the Climate Reporting Ordinance and the Climate and Innovation Act.

To ensure consistency and comparability, the disclosures must be aligned with the European Sustainability Reporting Standards (**ESRS**) or another equivalent standard for sustainability reporting. Compared to the current obligations (articles 964*a-c* CO), reporting in line with the ESRS leads to more detailed and more standardized reporting. The Federal Council has yet to determine whether reporting in line with the standards issued by the International Sustainability Standards Board (**ISSB**), potentially in conjunction with the Global Reporting Initiative standard (**GRI**), will be recognized as equivalent.

A major novelty of the Draft SCGA is the proposed introduction of mandatory verification of sustainability reports. Under the proposal, companies must engage third-party auditors to review and validate their reports, under the *limited assurance* standard. Furthermore, the draft requires companies to make their reports publicly available in a digital format according to an internationally recognized standard.

Similar to the current law (article 964*c* CO), the sustainability report must be approved and signed by the board. Additionally, and clarifying similar requirements under the current law, the Draft SCGA stipulates that the report must be presented to the general assembly for a *binding vote*; if the general assembly rejects the report, the company must nevertheless publish the report but mark it as non-approved.

4) Indirect Effects and Protections for Business Partners

Although the thresholds for due diligence and reporting obligations to apply are set (very) high, companies that fall outside the scope of these requirements (including SMEs) will still be *indirectly* affected by the new provisions — likely to a greater extent than they are already today. This is primarily because in-scope companies must obtain information from their business partners to comply with their own reporting and due diligence obligations.

Specifically, in relation to due diligence obligations, in-scope companies are explicitly required to extend their due diligence responsibilities to their business partners by ensuring adherence to their code of conduct. Mirroring EU law, the Draft SCGA introduces certain safeguards, including the use of *value-chain caps*. These caps limit the extent of information that in-scope companies may request from smaller companies — defined as those with fewer than 1,000 FTEs for sustainability reporting purposes and fewer than 5,000 FTEs for due diligence obligations.

5) Liability and Supervision

Under current legislation, article 325ter of the Criminal Code (CC) stipulates that making false or misleading statements in due diligence and sustainability reports, or failing to document and retain such reports, is punishable by a criminal fine of up to CHF 100,000 (or up to CHF 50,000 in cases of negligence). This fine is imposed on the *responsible individuals* (e.g., board members or the sustainability officer) and is not a company fine. The Draft SCGA retains this provision; however, negligence shall no longer be punishable.

Currently, the law does not expressly address civil liability for violations of due diligence (and reporting) obligations, thus tacitly deferring the question to general rules of (extra-contractual) civil liability and criminal enforcement under article 325ter CC. The Draft SCGA proposes to introduce a special civil liability regime and outlines two potential approaches. Under the *first variant*, civil liability would be determined according to the general rules under the CO, complemented by a broadly framed *lex specialis* provision in the Draft SCGA (article 16). While companies would not be held liable for the actions of their business partners, they would bear liability for damages caused abroad if they intentionally or negligently breached their due diligence obligations. The *second variant*, by contrast, does not include a specific provision establishing civil liability for such breaches, thereby omitting explicit rules in this regard, while still excluding liability for the actions or omissions of business partners. The Explanatory Report to the Draft SCGA states that the second variant would leave room for liability under general provisions of extra-contractual liability, in particular articles 41, 55 and 722 CO.

In addition to the criminal and civil enforcement regimes outlined above, the Draft SCGA proposes the creation of a new supervisory authority to oversee whether companies comply with their sustainability reporting and due diligence obligations. The Federal Council has proposed assigning this responsibility to the Federal Audit Oversight Authority (**FAOA**), which would be renamed the Federal Audit and Sustainability Oversight Authority (**FASOA**). The FASOA would be granted extensive powers, including the ability to accept complaints, audit companies using a risk-based approach, and collaborate with other authorities, both domestic and foreign. It would also have the authority to impose sanctions where appropriate. In less severe cases, the FASOA could issue reprimands, while in more serious instances, it could prohibit unlawful conduct or require companies to take corrective measures. Further enforcement measures available to the

FASOA would include ordering the disgorgement of profits and imposing exclusion from public tenders for up to five years. Additionally, the FASOA would have the authority to levy *pecuniary administrative sanctions* of up to 3% of a company's worldwide turnover.

6) Conclusion and Outlook

With the introduction of the Draft SCGA in 2026, the Federal Council has taken a step toward aligning Switzerland's sustainability framework with that of the EU, aiming to create a level playing field while avoiding a *Swiss finish*. The Draft SCGA proposes significant amendments to current legislation, including mandatory sustainability due diligence requirements, enhanced sustainability reporting obligations, and a new liability and supervisory regime. As discussions surrounding the Draft SCGA evolve and public consultations contribute to shaping its final version, the proposal seeks to establish a regulatory framework that aligns with emerging sustainability standards while addressing business expectations.

Based on the feedback received from the consultation, the Federal Council will produce a final draft in the coming months. Provided that the initiative is not withdrawn by the initiators, the vote on RBCI 2.0 and its counter-proposal is currently anticipated to take place in 2028.

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FINMA'S EXPECTATIONS IN TERMS OF CONSOLIDATED SUPERVISION: THE FINMA CIRCULAR 2025/4 AND BEYOND

Reference: CapLaw-2026-37

The Circular codifies FINMA's supervisory practice and clarifies the regulatory requirements applicable to the consolidated supervision of financial groups, in line with international standards. These standards were developed progressively by the Basel Committee after a series of crossborder bank failures in the 1970s and early 1980s, starting with Herstatt and Franklin National, and then the collapse of Banco Ambrosiano in 1982. Switzerland, as a member of the Basel Committee, has implemented these internationally recognized standards in its financial market regulations.

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On 1 July 2025, the FINMA Circular 2025/4 on consolidated supervision entered into force. The Circular codifies FINMA's supervisory practice and clarifies the regulatory requirements applicable to the consolidated supervision of financial groups, in line with international standards. These standards were developed progressively by the Basel Committee after a series of crossborder bank failures in the 1970s and early 1980s, starting with Herstatt and Franklin National, and then the collapse of Banco Ambrosiano in 1982. Switzerland, as a member of the Basel Committee, has implemented these internationally recognized standards in its financial market regulations.

After a brief introduction (Section 1), the purpose of this contribution is to outline our understanding of FINMA's expectations in this respect, both as reflected in the Circular (Section 2) and in the practice of the Swiss financial regulator (Section 3).

1) Introduction

On 19 March 2025, FINMA published Circular 2025/4 *Consolidated Supervision of Financial Groups under the BA and FinIA* (the ***Circular***), which entered into force on 1 July 2025. The Circular codifies FINMA's preexisting long-standing practice regarding the consolidated supervision of financial groups. This practice is primarily based on article 3b of the Banking Act (***BA***) and article 49 of the Financial Institutions Act (***FinIA***).

By formalizing its approach in the Circular, FINMA aims to provide greater legal certainty, while also stressing the importance the regulator attaches to this topic. Until now, FINMA's supervisory practice was communicated to the regulated institutions in the form of individual rulings, in which FINMA (i) confirmed whether the prerequisites for consolidated supervision were met and (ii) defined the scope of consolidated supervision (and the applicable requirements) for the relevant financial group. In addition, FINMA had published on its website a set of Frequently Asked Questions (FAQ) and had provided guidance to the auditors which, under the Swiss supervisory regime, act as the long-arm of the regulator.

The primary purpose of the consolidated supervision exercised by FINMA is to enable the regulator to assess the financial stability of institutions that form part of financial groups, by taking into account not only individual entities, but also the group as a whole.

The Circular classifies financial groups into the following categories:

Category	Key characteristics	Top entity	Scope of consolidation
Parent company structure	Group headed by an operating entity (parent company).	Parent company	Scope includes the parent and one or more group companies active in the financial sector.
Holding structure	Group headed by a holding company controlling at least one financial institution.	Holding company (if active in the financial sector)	FINMA may exclude the holding company from the scope of consolidation if it is considered non-significant for supervisory purposes (four cumulative criteria: no control of other financial subsidiaries, no financial activity, no influence, no significant leverage).
Atypical structures	Includes contractual groups (linked by contract rather than equity/ voting control) and *de facto* financial groups (controlled by individuals).	Depends on the situation	Assessment based on effective control rather than formal ownership.
Swiss sub-group of a non-Swiss financial group	Swiss sub-group that forms part of a non-Swiss financial group.	Parent company structure, holding structure or atypical structure	Subject to FINMA consolidated supervision in Switzerland, even if supervised abroad.
Swiss sub-group of a Swiss financial group	Swiss sub-group that forms part of a Swiss financial group.	Parent company structure or holding structure	Subject to FINMA consolidated supervision at subordinate levels.

Of note, the regulatory scope of consolidation may, in practice, differ from the scope of consolidation from an accounting perspective, as the latter is determined under the accounting standards applied by the group. For international financial groups and conglomerates, additional consolidation regimes may apply.

2) Consolidated Supervision "in the Books" (Circular 2025/4)

a) Which Entities Fall within the Perimeter of Consolidated Supervision?

i. The Rules in the Books

Consolidated supervision aims at enabling the financial regulator to understand the relationships that the various members of the group maintain with each other, including, at times, with the group's shareholders, and to ensure that the parent company has a clear understanding of all activities within the group along with the risks involved.

The position that a shareholder is not legally liable for the losses of a subsidiary also applies – at least in theory – in Swiss banking law. That being said, the decision to let a subsidiary fail may have a detrimental impact on all members of the group, in particular financially, reputationally or systemically. Therefore, the determination of whether a company (which is part of a group) is to be included within the scope of consolidation for regulatory purposes depends on two cumulative tests:

– whether it conducts activities in the financial sector (see sub-paragraph (1) below); and

– whether the entity concerned is part of an interconnected system (see sub-paragraph (2) below).

Where these conditions are met, the Circular specifies that the consolidated supervision exercised by FINMA generally covers all group companies that are active in the financial sector. This includes, in particular, special purpose vehicles (SPVs) that meet the specific requirements set out in the Circular for inclusion in the regulatory scope of consolidation. Consequently, in order to prevent SPVs established for off-balance-sheet issuances from being included within the regulatory scope of consolidation, appropriate safeguards must be implemented to ensure that the conditions outlined below are not met.

(1) Activity in the Financial Sector

The Circular provides for a broad definition of the terms "*activity in the financial sector*", which covers the provision and intermediation of all types of financial services; it is not limited to activities subject to licensing or registration under the Swiss financial market regulatory framework. In addition, a *substance over form* perspective applies.

These terms include, among others, leasing, factoring, credit card activities, participation in issuances, custody of securities, payment services, as well as the issuance and custody of payment instruments. By contrast, group companies that are engaged purely in commercial, industrial or administrative activities are not considered to be active in the financial sector.

(2) Interconnected System

In order for two entities to constitute a financial group, they must form part of an "*interconnected system*".

According to article 3c (1) (c) BA, an interconnected system exists where companies active in the financial sector form an *economic unit* or are linked by a *legal duty* or a *de facto obligation* to provide mutual support (*Beistandspflicht*).

An *economic unit* exists where a company directly or indirectly holds more than 50% of the capital or voting rights of other companies in the group, or otherwise exercises control over them. The Circular provides additional guidance on circumstances (listed non-exhaustively in the Circular) where control may be presumed through other means:

Control indicator	Description	Regulatory relevance
Voting rights agreements	Control of voting rights based on an agreement with other shareholders.	Strong presumption of an economic unit; FINMA may consider entities to be interconnected even without majority ownership.
Appointment / removal rights	Direct or indirect right to appoint or remove the majority of the board of directors.	High relevance; usually sufficient on its own to establish control.
Significant influence over management	Ability to exert significant influence on executive management or business activities (*e.g.* contractual co-decision rights on key matters).	Case-by-case assessment; may establish control when combined with other factors indicating interconnection.

The inclusion of a company within the scope of consolidated supervision may *also* be triggered by circumstances pointing out a *legal* or a *de facto obligation* to provide support, which can, for example, arise from the following circumstances:

- strategic, personnel, organizational, or financial interdependencies;
- cooperation arrangements and dependencies;
- the use of a common company name;
- a uniform market presence; or
- comfort letters, "keep well" agreements, or similar guarantees.

ii. The Rules in Practice: FINMA's Margin of Appreciation

The Circular indicates that FINMA has discretion in determining whether a financial group and/or certain entities should fall within the regulatory scope of consolidated supervision. This discretion also allows FINMA to grant regulatory exemptions in justified cases, including in the following situations:

- ***Exemption for non-material group companies***: FINMA may exempt group companies active in the financial sector from consolidated supervision or declare that it applies only partially, where a company is not material for consolidated supervision purposes (article 23 (2) of the Banking Ordinance (***BO***)). In this context, FINMA may grant exemptions to group companies with respect to quantitative elements but not with respect to qualitative elements (see Section b) below). A typical candidate for the exclusion from the perimeter of consolidated supervision would be the General Partner (GP) of a private equity fund launched by a financial group.

- ***Implementation of ring-fencing measures***: In exceptional cases, FINMA may waive the requirement for consolidated supervision and instead require the relevant financial group to implement ring-fencing measures, such as:

  - corporate governance or structural measures aimed at strengthening the independence of the management and decision-making bodies of the institution *vis-à-vis* the financial group;

  - financial measures aimed at protecting client assets or limiting the institution's financial interdependencies with the financial group; and

  - the reduction of commercial interdependencies.

  These measures, which are at times put in place for Swiss banking affiliates of foreign groups, are generally combined with specific reporting and disclosure obligations to FINMA.

b) What is the substantive content of consolidated supervision?

The substantive content of consolidated supervision comprises (i) qualitative elements and (ii) quantitative elements:

i. Qualitative Requirements

Qualitative requirement	Description	Regulatory relevance
Group organization	Appropriate organization of the financial group, in line with FINMA Circular 2017/1 (*Corporate governance – banks*).	Effective oversight and compliance at group level.
Internal control and risk management	Adequate internal control system and group-wide risk management framework.	Central to consolidated supervision; assessed during audits.
AML framework	Group-wide framework for meeting Swiss anti-money laundering requirements.	Explicit qualitative requirement; alignment across all entities.
Fit and proper requirements	*Fit and proper* standards applied to board members and senior management at group level.	Key governance safeguard for consolidated entities.
Board/management separation	Functional and personal separation of the board of directors and executive management at the consolidated level.	Availability of effective checks and balances.
Audit firm	Appointment of a recognized and independent audit firm for the consolidated regulatory audit (single firm principle).	Reliable reporting and FINMA oversight.

ii. Quantitative Requirements

Quantitative requirement	Description	Regulatory relevance
Capital adequacy	Group-wide compliance with capital requirements.	Ensures core prudential safeguards at a consolidated level.
Risk diversification	Group-wide large exposure limits and reporting on concentration risks, including interest rate risk.	Protects against contagion within the group.
Liquidity	Consolidated liquidity coverage and risk management.	Ensures resilience under stress at group level.
Financial reporting	Application of financial reporting standards on a consolidated basis.	Provides transparency and comparability across the group.

FINMA monitors compliance with both sets of requirements and designates a responsible entity within the group to ensure their effective implementation. The scope and intensity of the applicable requirements will ultimately depend on the group's structure and risk profile, and will be assessed by FINMA on a case-by-case basis.

c) *Excursus*: Insurance groups under the Insurance Surveillance Act (*ISA*)

Pursuant to article 64 ISA, two or more companies form an insurance group where (i) at least one of them is an insurance company, (ii) their activities in the field of insurance are predominant, and (iii) they form an economic unit or are otherwise connected through influence or control.

Not all insurance groups fall under FINMA consolidated supervision. Under article 65 ISA, FINMA *may* subject an insurance group with a Swiss member to group supervision if such group is effectively managed (i) from Switzerland or (ii) from abroad without being subject to equivalent supervision.

Pursuant to the new version of the FINMA Circular 2016/04 *Insurance groups and conglomerates* (para. 10 *et seq*) which entered into force on 1 September 2025, FINMA may place an insurance group under consolidated supervision if:

— The insurance group has an international character;

— The insurance group has a complex group structure (*e.g.* where the group has nested company structures, operates several business areas, or has intra-group links based on internal transactions); or

— For other important reasons (*e.g.* substantial market share in a product group, public interest in macro-prudential oversight of a group in the insurance sector, etc.).

In practice, only seven insurance groups[2] are currently supervised by FINMA from a consolidated supervision perspective, which, on the basis of the current market situation, represents a clear minority of all insurance groups active in or from Switzerland.

3) Consolidated Supervision "on the Ground"

While the Circular codifies the main principles of consolidated supervision, it remains relatively high-level and does not expressly mention some of the expectations which FINMA has conveyed in practice to Swiss prudentially supervised entities.

Some lessons can be drawn from FINMA's recent practice in this area, where the authority has focused on (a) the definition of the regulatory consolidation perimeter, (b) group-wide governance and organizational structure, and (c) incident management.

a) Definition of the Scope of Prudential Consolidation

One area of focus for the regulator is the definition of the scope of prudential consolidation. FINMA examines whether the scope of consolidation has been correctly determined, from both a legal and an economic perspective. Companies are required to provide a clear justification of any exclusion of any entity from the group. In practice, this point is implemented within financial groups through the adoption of a formal consolidated supervision policy setting out the applicable criteria, supplemented by an exhaustive list of entities falling within the scope of consolidated supervision.

With regard to the definition of the scope of prudential consolidation, the following three points are of note:

– The main criterion for inclusion within the scope of consolidated supervision is control of more than 50% of the voting rights or capital, or *corporate* control on another basis (*e.g.* large (but minority) shareholders v. fragmented shareholding; influence over governance granted by a shareholders' agreement; this could typically be the case where a minority shareholder has a right to appoint a substantial number of board members). An alternative criterion is the duty to provide support, in situations where allowing a subsidiary to fail would harm the entire group – regardless of the general principle that a shareholder is not liable for a subsidiary's losses. This duty may arise from factual or legal circumstances, such as the interdependence of strategic, financial, organizational or human resources, or the use of a common business name or a uniform market presence (Circular, para. 34 *et seq*).

– Particular attention is also paid to special purpose vehicles (SPVs). FINMA examines whether these entities actually carry out activities that can be considered *financial* in a substantive

[2] The list is available here: https://www.finma.ch/en/~/media/finma/dokumente/bewilligungstraeger/pdf/vk.pdf?la=en&hash=14160A0E611439D902A2EE18359E1D3D.

sense. Financing vehicles and entities carrying out financial activities not directly related to banking are subject to particularly close scrutiny. The regulator expects the decision to exclude such an entity from the scope of consolidated supervision to be formalized and documented.

– An exemption may also apply where an entity is not material (see Section 2 (a) (ii) above). From an accounting perspective, participations in entities that are not significant for financial reporting or risk assessment purposes need not be included in the consolidated financial statements, provided that such non-consolidation is duly justified and disclosed in the notes (Circular, para. 89; article 33 *et seq* BO, in particular article 35 (1) (a) and (2) BO). FINMA has not established quantitative materiality thresholds; in practice, an assessment is generally performed by reference to indicative thresholds (typically around 5%) in relation to key metrics such as total assets, income, expenses and profit, as well as capital requirements, liquidity and client exposures from a risk perspective, subject to confirmation by the external auditors. From a prudential supervision standpoint, a similar quantitative approach is applied, complemented by a qualitative assessment, in particular where the entity does not carry out any substantive financial activity.

A further point of attention concerns sub-consolidation, and in particular the case of a Swiss sub-group forming part of a Swiss financial group within the meaning of para. 56 of the Circular. A practical illustration of this phenomenon – which appears to be uncommon in the Swiss financial market – is the situation of a financial group comprising private banking and asset management activities where FINMA decides to exercise its consolidated supervision, but at both the level of the financial group and at the level of the sub-group exercising banking or securities house activities. In such a configuration, the sub-group is itself subject to FINMA's consolidated supervision as a sub-group, in addition to the supervision exercised by FINMA at the level of the parent group. This gives rise to a double layer of regulatory consolidation, which may raise vexing practical questions: on the one hand, the precise outline of the scope of consolidation at sub-group level, which may differ from the scope applied at the level of the group as a whole; and, on the other hand, the consolidation obligation in respect of capitalization (see article 11 of the Capital Adequacy Ordinance (***CAO***)) and liquidity requirements applicable to the sub-group.

In practice, the entities concerned are required to formally document the consolidation retained at sub-group level and to ensure that the qualitative requirements applicable at the level of the parent group are also implemented at sub-group level. In our view, an exemption from consolidated supervision at sub-group level should nonetheless be granted where the sub-group is fully integrated into the governance, risk management, internal control system, AML framework and operational processes of the Swiss parent group, and where the consolidated supervision exercised at group level already adequately covers all relevant risks – such that the establishment of a specific consolidated supervision regime at sub-group level would not provide any additional prudential value. The principle of proportionality, which should underpin FINMA's actions, would in our view support such an approach. That being said, experience shows that FINMA tends to take a rather formalistic approach to the obligation of sub-consolidation for capital requirements purposes.

From a practical perspective, such an exemption from "sub-consolidation" requires, in our view, that the sub-group be fully aligned with the group, both organizationally and functionally. The following elements should be looked at:

— The sub-group should not — and generally in practice will not — have a distinct autonomous strategy of its own; it will execute the strategy and business model defined at the group level.

— The management and supervisory bodies should be aligned between the group and the sub-group, with no autonomous governance structure specific to the future sub-group, so as to ensure a direct flow of information and consistency of decisions across both levels.

— Capital, liquidity and leverage requirements should be monitored, and risk management, compliance, internal audit and internal control functions organized and overseen, on a centralized basis at the group level, with no operational segregation of the sub-group.

If these prerequisites are met, the sub-group will have no strategic or governance autonomy of a nature that would justify the introduction of an additional level of supervision in the form of a consolidation requirement at the level of the sub-group.

b) Organisational Structure

The group's organisational structure (including its governance) is another key area of focus for the Swiss regulator.

Firstly, FINMA assesses whether the governance structures are appropriate and proportionate to the group's complexity. This review also covers functional reporting lines (in addition to the *reporting* lines within each legal entity). In this context, the internal regulatory framework must reflect a balance between (i) the accountability of local bodies (executive bodies and senior management) within each entity and (ii) the parent company's supervisory and intervention powers.

In practice, the holding company's influence over its subsidiaries can be exercised through two channels: (a) via *group* functions to which the corresponding local function reports (*e.g.* the local compliance function reports to the group compliance function) and (b) via representatives of the parent company who sit on the supervisory body of the subsidiaries. From FINMA's perspective, it is important that local management bodies assume their responsibilities autonomously (and have access to the information required to do so), even for functions that are otherwise integrated into a matrix structure at group level. To this end, institutions are expected to maintain up-to-date organizational charts and clearly document the distribution of decision-making powers and information flows (see also Section c below).

Secondly, FINMA requires that all group entities, including foreign and non-banking subsidiaries, be adequately monitored by the group's internal control system (ICS) and risk management framework on a consolidated basis, including for activities that are not *per se* regulated. This entails, *at group level*, the development of risk maps (*e.g.* for credit risk, market risk and operational risk), minimum standards and control plans. *At local level*, the minimum standards issued by the group must be implemented as a minimum standard, whilst taking into account any stricter rules applicable under the subsidiary's legal framework. In this context, the regulator attaches particular importance to the implementation of a unified internal anti-money laundering framework.[3]

c) Information Flow within the Group

Another key aspect concerns information flows (top-down and bottom-up). FINMA requires that information is transmitted via clearly defined and traceable channels, in accordance with the group's legal structure.

i. Top-down Information Flows

The group's holding company must have an internal structure that ensures that guidelines adopted at group level are communicated to local entities, which are responsible for implementing them locally. The group functions responsible for this area must then verify that the guidelines have been implemented, with the regulator emphasising the importance of regular on-site visits in this context (see article 6 (1) (d) of the FINMA Money Laundering Ordinance (***FINMA-MLO***)).

ii. Bottom-up Information Flow

The upwards chain of communication must be transparent and traceable. Escalation mechanisms must be formalized, and reports be validated by local governance bodies before being forwarded. In practice, consolidated reporting tools, including dashboards and standardized reporting templates, play a key role in demonstrating, on an *ex-post* basis, the effectiveness of the escalation system.

In this context, FINMA attaches particular importance to the management of incidents and irregularities. Institutions must demonstrate that they have effective processes in place to identify, report and remedy significant incidents, including breaches of internal rules and cases of fraud. A centralized incident register at group level is considered good practice, as are clearly defined escalation timelines and responsibilities. Corrective measures and follow-up actions should be systematically documented (in the minutes of group bodies and at the level of local entities) in order to demonstrate the effectiveness of controls over time.

[3] In this context, it is worth recalling that the Swiss anti-money laundering framework applies to all commercial activities of a bank (even those which do not qualify as "financial intermediation" in the strict sense). This point was recently stressed by the Supervisory Board of the Agreement on the Swiss Banks' Code of Conduct in its case law overview for the first semester 2025 (see *Aperçu de la jurisprudence de la Commission de surveillance relative à l'obligation de diligence des banques (1er janvier au 30 juin 2025*), page 3).

4) Concluding Remarks

FINMA Circular 2025/4 codifies longstanding supervisory practice for financial groups, enhancing clarity without imposing additional burdens, while aligning with international standards. In practice, FINMA emphasizes perimeter definition, group governance, and bidirectional information flows. These are thus the areas warranting proactive adaptation by regulated institutions: financial groups should strengthen documentation, formalized escalation protocols, and unified risk frameworks to meet these expectations robustly. With the Circular having entered into force in July 2025 and now forming part of the regulator's official rulebook, further scrutiny and enforcement are to be expected in the near future.

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Infracore's Initial Public Offering on SIX

Reference: CapLaw-2026-38

On 9 July 2026, Infracore SA, Switzerland's leading specialist in healthcare real estate, successfully completed its initial public offering on SIX Swiss Exchange. Priced at CHF 54 per share, the IPO consisted of 4,209,203 firm shares, comprising 3,703,703 newly issued shares and 505,500 existing shares sold by Infracore's largest shareholder, MPT Switzerland Holdings S.à r.l., and an over-allotment option of up to 420,920 existing shares granted by MPT, exercisable on or before 8 August 2026. Trading in the shares on SIX started on 9 July 2026. Based on the offer price of CHF 54 per share, the aggregate offer size (assuming the over-allotment option is exercised in full) is up to approximately CHF 250.0 million, and the market capitalization of Infracore on the first day of trading was CHF 826.4 million. Citigroup Global Markets Limited and Zürcher Kantonalbank acted as Joint Global Coordinators and Joint Bookrunners, Swiss Finance & Property AG acted as Co-Manager, Baader Bank AG acted as Joint Bookrunner and Octavian AG acted as Selling Agent on the IPO.

SOPHiA GENETICS's Public Offering of USD 57.5 Million of Ordinary Shares

Reference: CapLaw-2026-39

On 19 June 2026, SOPHiA GENETICS (Nasdaq: SOPH), a global leader in AI-driven precision medicine, closed its underwritten public offering with total gross proceeds of USD 57.5 million. TD Cowen acted as the lead book-running manager for the offering. Guggenheim Securities acted as book-running manager, and BTIG and Craig-Hallum acted as lead managers for the offering.

Zürcher Kantonalbank's Issuance of EUR 500 Million Bail-in Bonds

Reference: CapLaw-2026-40

On 17 June 2026, Zürcher Kantonalbank successfully completed a further offering of Bail-in Bonds in the amount of EUR 500 million with a fixed annual coupon of 3.622% (6NC5 structure). The Bail-in Bonds have been designed and issued on the basis of a legal framework allowing Cantonal Banks to issue Total-Loss-Absorbing-Capacity (Gone-Concern Capital). BNP PARIBAS, Commerzbank Aktiengesellschaft, UBS London Branch and Zürcher Kantonalbank acted as Joint Lead Managers.

SpaceX USD 75 Billion IPO: Swiss Retail Offering

Reference: CapLaw-2026-41

On 12 June 2026, Space Exploration Technologies Corp. (SpaceX) successfully completed the largest initial public offering ever. The offering included a public offering in the United States as well as concurrent offerings to retail investors in Australia, Canada, Japan, the United Kingdom, certain EU countries, and Switzerland.

In Switzerland, the offer to retail investors was made on the basis of a prospectus approved by the German regulator BaFin that was subsequently deposited with the Prospectus Office of SIX Exchange Regulation AG pursuant to article 54(2) of the Swiss Financial Services Act. The SpaceX IPO is the first U.S. IPO to include concurrent public offerings in multiple jurisdictions around the world, including Switzerland.

The underwriting syndicate was led by Goldman Sachs & Co., Morgan Stanley, BofA Securities, Citigroup, and J.P. Morgan and included for the purpose of the Swiss offering UBS AG.

VERAXA Biotech's Business Combination and NASDAQ Listing

Reference: CapLaw-2026-42

On 11 June 2026, VERAXA Biotech AG completed its business combination with Voyager Acquisition Corp. and listed on the NASDAQ Stock Market under the ticker symbols "VRXA" and "VRXAW". Through this transaction, VERAXA strengthened its financial position, including through a USD 27.5 million senior secured note financing and a share purchase agreement for up to USD 50 million. The proceeds will be used to further advance VERAXA's oncology pipeline based on its proprietary BiTAC platform, supporting progress towards clinical development and industry partnerships.

Energie 360 Grad AG's Issuance of CHF 150 Million Green Bond

Reference: CapLaw-2026-43

In early June 2026, Energie 360 Grad AG successfully placed a CHF 150 million green bond, maturing in 2034 and carrying a coupon of 1.4%. The bond has been admitted to trading on SIX Swiss Exchange. The proceeds will be used in particular to finance investments in district heating projects and the infrastructure for electric mobility.

Clariant's Issuance of EUR 500 Million Bonds

Reference: CapLaw-2026-44

In June 2026, Clariant returned to the Eurobond market: Clariant International Financial Services (Luxembourg) S.à.r.l. placed EUR 500 million in unsecured bonds guaranteed by Clariant AG. The bonds carry a fixed annual coupon of 4.125% and will mature in January 2032. The bonds will be listed on SIX Swiss Exchange and on the Open Market (Freiverkehr) of the Frankfurter Stock Exchange. Settlement occurred on 12 June 2026. The net proceeds from the issuance will be used for general corporate purposes, including potential refinancing of existing debt, in support of Clariant's ongoing strategy execution.

Amazon's Issuance of CHF 2.82 Billion Bonds

Reference: CapLaw-2026-45

On 28 May 2026, Amazon.com, Inc. issued bonds in Switzerland in the aggregate amount of CHF 2.82 billion. The offering comprised of CHF 900 million aggregate principal amount of 0.8350% notes due 2029, CHF 585 million aggregate principal amount of 1.200% notes due 2032, CHF 475 million aggregate principal amount of 1.4475% notes due 2035, CHF 390 million aggregate principal amount of 1.6750% notes due 2038, CHF 245 million aggregate principal amount of 1.9389% notes due 2044 and CHF 225 million aggregate principal amount of 2.0825% notes due 2051.

BNP PARIBAS, Paris, Lancy/Geneva Branch acted as representative of the initial purchasers for the offering, which included Deutsche Bank AG, London Branch and J.P. Morgan Securities plc as Joint Book-Running Managers together with eighteen Co-Managers.

Siegfried Holding AG's Issuance of CHF 200 Million Bonds

Reference: CapLaw-2026-46

On 26 May 2026, Siegfried Holding AG successfully priced the offering of its CHF 200 million 1.350% bonds. UBS Investment Bank and Zürcher Kantonalbank acted as joint lead managers. The bonds have been listed on SIX Swiss Exchange.

dsm-firmenich's additional Listing on SIX Swiss Exchange

Reference: CapLaw-2026-47

On 21 May 2026, dsm-firmenich, Kaiseraugst (Switzerland) and Maastricht (Netherlands), completed the listing of its shares on SIX Swiss Exchange. The shares are now traded on SIX Swiss Exchange under the ticker symbol DSFIR, in addition to the existing listing on Euronext

Amsterdam. The dual listing strengthens dsm-firmenich's capital markets presence in Switzerland and is an important milestone for its Swiss domicile and heritage. dsm-firmenich will be included in the Swiss Performance Index (SPI) and SPI Extra. Based on opening price on the day of the listing on SIX Swiss Exchange, the company's market capitalization stood at approximately CHF 15.9 billion.

Raiffeisen Schweiz Genossenschaft's Issuance of CHF 200 Million Digital Bail-in Bond

Reference: CapLaw-2026-48

On 20 May 2026, Raiffeisen Schweiz Genossenschaft successfully placed its inaugural digital bail-in bond on the Swiss capital market in the amount of CHF 200 million with a fixed annual coupon of 1.44% due 2033. The issued digital bail-in bond has the same legal status and the same rating as a traditional bail-in bond from Raiffeisen Schweiz Genossenschaft. The bond will be traded on SIX Swiss Exchange. Raiffeisen Schweiz Genossenschaft acted as lead manager for this transaction.

Helvetia Baloise's Issuance of CHF 550 Million Inaugural Senior Bonds

Reference: CapLaw-2026-49

In mid-May 2026, Helvetia Baloise successfully completed its inaugural senior bond issuance following the merger of Helvetia and Baloise, placing three tranches in an aggregate amount of CHF 550 million. The issuance comprised of CHF 150 million maturing in 2028 with a coupon of 0.625%, CHF 175 million maturing in 2032 with a coupon of 1.125% and CHF 225 million maturing in 2036 with a coupon of 1.500%. The proceeds will be used for general corporate purposes, including the potential refinancing of outstanding instruments.

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Swiss Life's Issuance of EUR 500 Million Senior Bond

Reference: CapLaw-2026-50

On 28 April 2026, Swiss Life successfully placed a EUR 500 million senior bond with maturity in 2033 and a coupon of 3.736%. The bond was placed with investors in the European market. The proceeds will be used for general corporate purposes. The bond is guaranteed by Swiss Life Holding Ltd.

Capital Markets Law in Focus 2026
(Kapitalmarktrecht im Fokus 2026)

Wednesday, 19 August 2026, SIX Convention Point, Zurich

https://ile.unisg.ch/de/newsdetail-1/events/kapitalmarktrecht-im-fokus-2026/

13th Conference on Internal and Regulatory Investigations
(13. Tagung zu internen und regulatorischen Untersuchungen)

Tuesday, 1 September 2026, Metropol, Zurich

https://www.eiz.uzh.ch/product/13-tagung-zu-internen-und-regulatorischen-untersuchungen/

29th Conference on Mergers & Acquisitions
(29. Zürcher Konferenz Mergers & Acquisitions)

Tuesday, 22 September 2026, Lakeside, Zurich

https://www.eiz.uzh.ch/product/29-zuercher-konferenz-mergers-acquisitions/

Conflicts of Interest: Law & Best Practice IV

(Interessenkonflikte: Recht & Best Practice IV, Anti-Korruptions-Compliance in Unternehmen – Wie weit darf Beziehungspflege gehen?)

Tuesday, 29 September 2026, Metropol, Zurich

https://www.eiz.uzh.ch/product/interessenkonflikte-recht-best-practice-2026/

19th Conference on Asset Management

(19. Tagung zur Vermögensverwaltung)

Thursday, 1 October 2026, Metropol, Zurich

https://www.eiz.uzh.ch/product/19-tagung-zur-vermoegensverwaltung/