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## THE DEMISE OF STAGGERED AD HOC DISCLOSURE: THE “MORE LIKELY THAN NOT”-TEST AND ISSUER DISCRETION IN EVOLVING FACTUAL SITUATIONS

Reference: CapLaw-2025-66

On 28 February 2025, the arbitral tribunal of the Court of Arbitration of SIX Group Ltd. issued the final award in *X. AG v. SIX Exchange Regulation AG (SER)*. The case revolved around the timeliness of an ad hoc announcement issued in connection with a complex internal investigation into X. AG’s financial reporting practices. The arbitral tribunal found that the announcement had been made in a timely manner. The tribunal also provided important guidance on ad hoc disclosure obligations in the context of internal investigations and other complex or evolving factual situations.

*By Frank Gerhard / Mariella Orelli / Micha Fankhauser / Richard G. Allemann\**

### 1) Introduction

Few decisions from the judicial bodies of SIX Swiss Exchange have so effectively reshaped the contours of ad hoc disclosure obligations as the final award in the matter *X. AG v. SIX Exchange Regulation AG (SER)* (the **Award**). In what can be considered a landmark ruling, the arbitral tribunal of the Court of Arbitration of SIX Group Ltd. (the **Tribunal**) provided important guidance on ad hoc disclosure obligations in the context of internal investigations and other complex or evolving factual situations (*gestreckte Sachverhalte*; referred to as *protracted processes* in European capital markets law). The Award addresses the concept of staggered disclosure, which SER advocates for such situations in its Guideline on the Directive on Ad hoc Publicity (**DAH** and the **DAH Guideline**, respectively). The Award further discusses the applicability of the business or legal judgment rule to an issuer’s decision whether or not to publish an ad hoc announcement. It upheld X. AG’s position that the Listing Rules (the **LR**) and the DAH afford issuers a margin of discretion when deciding whether or not to make an ad hoc announcement, thus considerably limiting the scope of subsequent regulatory or arbitral review of such decisions.

This article first summarizes the factual background and procedural posture in the *X. AG v. SER* arbitration (II.), before turning to an analysis of the Tribunal’s rulings on the applicable ad hoc disclosure threshold in the case at hand (III.) and the protection of the issuer’s margin of discretion in ad hoc disclosure (IV.). The article concludes with a brief discussion of the precedential value of the Award (V.).

\* The authors have represented the issuer in the procedure before the arbitral tribunal of the Court of Arbitration of SIX Group Ltd

## 2) Background of the X. AG v. SER Case

### a) Facts

The key issue in *X. AG v. SER* centered on the timeliness of X. AG's ad hoc announcement regarding the interim results of a complex, global internal investigation into the company's accounting practices and compliance with the applicable financial reporting standard (the **Ad hoc Announcement**). The Ad hoc Announcement stated that, due to the ongoing investigation, the publication of X. AG's full-year results would be postponed and that a restatement of previous financial figures might be necessary.

The investigation had been triggered by whistleblower reports alleging that employees had been pressured to book entries that may not have complied with applicable accounting standards. The company engaged external counsel and forensic accounting review advisors to investigate the allegations.

Initial findings were presented in a status update approximately two months before the Ad hoc Announcement (the **Status Update**). Investigation counsel reported in particular that it had identified potentially problematic bookings and questionable internal email communications. These findings were expressly characterized as preliminary and remained inconclusive as to whether there had been any material breaches of accounting standards and whether a restatement of prior financial figures would become necessary. Moreover, management and other involved personnel vigorously denied any wrongdoing or recording of entries that did not comply with applicable accounting standards.

X. AG did not publish an ad hoc announcement at that time, concluding the investigation had not yielded reliable results. In particular, the company determined that the likelihood of needing to restate prior financials was not "more likely than not".

The investigation continued. A week before the eventual Ad hoc Announcement, investigation counsel advised the company that, based on further investigations, it was now "more likely than not" that certain bookings were materially noncompliant with applicable accounting standards. This change in assessment prompted the company to issue the Ad hoc Announcement.

Following the Ad hoc Announcement, the investigation was expanded further. Upon conclusion, the company issued a second ad hoc announcement confirming that a restatement of previously published financial statements was required.

### b) Procedural Posture

After preliminary investigations, SER submitted a sanctions proposal to the Sanctions Commission of SIX Group AG (the **Sanctions Commission**), alleging in particular a grossly negligent violation of the ad hoc disclosure obligations under article 53 LR. The allegations focused on X. AG's failure to disclose at the time of the Status Update in an ad hoc announcement that an investigation into accounting practices prompted by whistleblower reports was ongoing and that a restatement of previously published financial figures would likely be necessary.

The Sanctions Commission found that X. AG had grossly negligently breached its ad hoc disclosure obligations in connection with the Ad hoc Announcement by failing to publish already at the time of the Status Update an ad hoc announcement that an investigation into accounting matters related to whistleblower reports was ongoing and that such investigation had produced concrete interim findings.

X. AG subsequently challenged the Sanctions Commission's decision by initiating arbitration proceedings. On 28 February 2025, the Tribunal rendered its Award, declaring that the company had not been required to issue an ad hoc announcement at the time of the Status Update and that the Ad hoc Announcement had been published in a timely manner.

### 3) Ad Hoc Disclosure Threshold in Internal Investigations

#### a) The Tribunal's Holding in X. AG v. SER

The Tribunal first addressed the issue of the relevant disclosure standard. It recalled that pursuant to article 53(2) LR an issuer must disclose a price-sensitive fact by means of an ad hoc announcement as soon as it becomes aware of the fact "*in its essential points*" – even if it does not yet know **all** the details of such fact. The Tribunal further noted that, under article 53(2) LR and article 5 DAH and the Sanctions Commission's practice, knowledge of the fact exists when: (i) a member of management or a non-executive board member possesses the knowledge, and (ii) one of these individuals has knowledge of the essential points of the fact (Award, at paras. 270 *et seq.*).

The Tribunal then turned to the question of the disclosure threshold in evolving factual situations (Award, at para. 272; emphasis added, unofficial translation of German original):

"The question of how long an issuer can delay publication is subject to controversy among the parties, especially concerning the 'concept of staggered disclosure in extended or complex factual situations.' **To avoid uncertainties and collateral damage for both the company and the capital market, the management should be granted the right to conduct the necessary internal investigations with due haste.**"

Relying in particular on a quote from *Peter Böckli* (Ad hoc-Publizität, Kursrelevanz als Kernkriterium der Bekanntgabepflicht, 86(1) *Swiss Review of Business and Financial Market Law* 2 (2014), at p. 10 *et seq.*), the Tribunal held (Award, at paras. 273 *et seqq.*; emphasis added, unofficial translation of German original):

"[X. AG] must be afforded an **adequate period for investigation** to determine whether the potential allegations raised (notably regarding intentional misstatements and improper EBITDA steering) can be substantiated. In complex factual situations, internal investigations may indeed require a longer period, especially when extensive and intricate investigations are necessary. Therefore, **it is generally legitimate and within the issuer's duly exercised discretion** (see below, [...]) **for a company to wait until it is established with preponderant probability** [*überwiegende Wahrscheinlichkeit*]

**that price-sensitive facts exist** before proceeding with disclosure. **This approach prevents the market from being prematurely misinformed about facts and that announcements may later need to be corrected or retracted.**

**It is in the interest of all stakeholders that an ad hoc disclosure obligation regarding a specific event is not triggered solely because the occurrence of the event is possible, i.e., falls within a low probability range. Only in this way can the risk be limited that the market must later be corrected with further ad hoc announcements.**

**Although article 53 LR aims to ensure capital market transparency, it does not require the issuer to inundate the market with indications, rumors, personal opinions, suspicions or facts that are not yet sufficiently substantiated (in the sense of preponderant probability).** In cases of uncertain or unclear factual situations, i.e., situations that could have occurred in one way or another, the issuer is obliged, in the interest of market functionality, to conduct further investigations and to either obtain sufficiently substantiated information from indications, rumors, opinions, suspicions, etc., or to refute them. To qualify as a fact, the information must have reached ‘a sufficient degree of substantiation so that the publication of the information does not mislead market participants’. A price-sensitive fact ‘can only be assumed when the company’s decision-making process has been concluded or has progressed to such an extent that the market is not misled by the publication’.

The question of whether a fact, whose occurrence was known to [X. AG] on [the date of the Status Update], merely as ‘possible’ (and not preponderantly probable), later turned out to be untrue or not, is irrelevant in this context. As previously noted, the assessment of the ad hoc disclosure obligation is exclusively based on the **ex-ante perspective**. So-called **hindsight bias must be avoided.**”

Applied to the specific circumstances of X. AG, the Tribunal found that at the time of the Status Update, it was not established with preponderant probability (“more likely than not”) that the company had engaged in improper accounting practices and that, at that stage, there were no potentially price-sensitive facts established in their essential points with preponderant probability based on the whistleblower reports. Therefore, in the Tribunal’s view, X. AG was entitled to await the outcome of further investigative steps before proceeding with the publication of an ad hoc announcement (Award, at paras. 313 *et seqq.*).

The Tribunal considered that an investigation into the accounting practices of a large multinational corporation – which can encompass hundreds of bookings, millions of underlying documents and data points, and dozens of employees in a variety of countries – was an endeavor of immense complexity. At the time of the Status Update, the work of X. AG’s forensic accounting review advisors was still at a very preliminary stage. The Tribunal further found that information gathered from interviews with employees supported the assessment of investigation counsel and the forensic accounting review advisors that further investigations were necessary before the relevant facts could be sufficiently substantiated (Award, at para. 340 *et seqq.*).

In particular, the Tribunal reasoned that the bookings identified as potentially problematic in the Status Update were only investigated after that date to determine whether or not they constituted improper misstatements necessitating a restatement. As of the time of the Status Update, these bookings could not yet be classified with a preponderant probability as improper misstatements, nor was there a preponderant probability at that time that a restatement would be necessary (Award, at paras. 361 *et seqq.*).

Finally, the Tribunal rejected SER's position that the mere fact that an internal investigation is ongoing could trigger an ad hoc disclosure obligation (Award, at paras. 415 *et seq.*; emphasis added, unofficial translation of German original):

"The Tribunal notes that **an internal investigation does not constitute a *per se* basis for an ad hoc disclosure obligation**; what matters are always the particular circumstances and, in particular, whether the issuer has knowledge of a price-sensitive fact in its essential points. [X. AG] was required to assess whether the existing indications had been sufficiently clarified and substantiated, respectively, whether a potentially price-sensitive fact was established with a preponderant probability.

**The investigation itself is precisely the means of determining whether a (price-sensitive) fact exists, which is why the investigation as such cannot trigger a disclosure obligation.** In this case, it is clear that as of [the time of the Status Update], the investigation with the external experts was still in its initial phase, and only preliminary and fragmentary investigation results were available at that time. According to the experts – whose assessment [X. AG] adopted – these results needed to be further examined."

## b) Discussion

The Award provides welcome guidance on the threshold for ad hoc disclosure in the context of internal investigations and evolving factual situations more broadly by establishing the criterion of preponderant probability ("more likely than not") as the relevant standard.

Thus, the Award departs from the previous enforcement practice of SER and the Sanctions Commission. SER had endorsed the concept of staggered disclosure or a "*step-by-step publication strategy*" in the DAH Guideline (DAH Guideline, at para. 41: "*In the case of complex events [...] SER recommends to inform the public in several stages with ad hoc announcements*"). The Award also overrules the Sanctions Commission's position that in cases of doubt, it is better to publish a prompt ad hoc announcement that clearly highlights the remaining uncertainties.

By highlighting the risks and potential harm of premature disclosure, the Tribunal clarified that the concept of staggered disclosure runs counter to the objectives of ad hoc disclosure rules, particularly in the context of internal investigations. Indeed, the purpose of ad hoc disclosure is to ensure that issuers provide information to the market "*in a truthful, clear, and complete manner*" (article 1 DAH). While this favors timely market information, it does not mandate premature disclosure. Rather, there are legitimate interests on the side of both issuers and investors in delaying disclosure until the issuer has made sufficient progress in its investigation



of the facts. Premature announcements of preliminary findings or low-probability events carry the risk of misleading the market and causing significant and unwarranted damage for both the company and the capital market.

More specifically, disclosing partial or preliminary information prematurely may result in a yo-yo effect on the share price – initially swinging in one direction due to incomplete information, only to later correct when updates follow. However, staggered, premature ad hoc announcements can lead to fundamental market uncertainty. There is therefore no guarantee that the share price will recover quickly, which can entail that the issuer's market capitalization could suffer lasting damage from a premature ad hoc announcement. At the same time, the transparency gain from premature disclosure is limited, as the information is still provisional and may fundamentally change. In that sense, the Tribunal's ruling also confirms that the ad hoc disclosure rules are not intended to pursue market transparency at all costs.

Moreover, the Award also aligns with the latest developments in the European Union. Originally, the Court of Justice of the European Union had held that an ad hoc disclosure obligation could arise at any stage in an evolving process, *i.e.*, not just at its final outcome, if an intermediate step was sufficiently precise and likely to have a significant effect on the share price (CJEU, no. C-19/11, *Geltl v. Daimler*). This meant that issuers could be required to disclose information at earlier stages, before the final outcome was certain. However, calls for more mature and accurate information for investors and for more legal certainty for issuers have since led to an amendment of the Market Abuse Regulation (**MAR**), which will enter into force in 2026. Under this amendment, "*intermediate steps in protracted processes*" are now exempt from ad hoc disclosure obligations; issuers will only need to disclose information concerning the final circumstances or event that the process is intended to achieve or results in (article 17(4a) MAR).

Finally, the Tribunal expressly acknowledged the risk of hindsight bias in SER's and the Sanctions Commission's review of issuers' decisions on ad hoc disclosures. In cognitive psychology, hindsight bias refers to the tendency to overestimate the predictability of an event after it has already occurred. Article 4(2) DAH addresses this risk by stipulating that the assessment of price relevance must always be made from an *ex ante* perspective ("*prior to the event becoming known or being announced*"). In the *X. AG v. SER* arbitration, SER argued that the share price drop and media reports following the Ad hoc Announcement indicated that a price-sensitive fact had already existed at the time of the Status Update. The Tribunal explicitly rejected this position.

## 4) Protection of the Issuer's Duly Exercised Discretion in Ad hoc Disclosure

### a) The Tribunal's Holding in *X. AG v. SER*

The Tribunal further addressed the question of whether article 53 LR and the DAH afford issuers a margin of discretion in determining whether a price-sensitive fact exists and specified the contours of this margin. In the same context, the tribunal also discussed whether the scope

of subsequent regulatory or arbitral review of the issuer's determination is unlimited (SER's position) or limited (X. AG's position). Relying in particular on a publication by *Andreas Müller* and *Anna Peter* (Revidierte Regularien zur Ad hoc-Publizität, 16(2) *Swiss Review of Corporate & Capital Markets Law* 149 (2021), at p. 157), the Tribunal held (Award, at paras. 284 *et seqq.*; emphasis added, unofficial translation of German original):

"According to article 4(3) RAhP, as mentioned, the issuer must make its decision regarding the price sensitivity of a fact using its duly exercised discretion. **The regulations issued by SER explicitly grant the issuer a margin of discretion** in this regard. **A violation of the ad hoc disclosure obligation can therefore only occur in cases of an abuse or improper exercise of that discretion.** [SER] acknowledges that issuers are indeed entitled to a certain level of discretion when assessing forward-looking elements related to the ad hoc disclosure obligation.

In scholarly writing, drawing on the Swiss Federal Supreme Court's case law regarding the 'business judgment rule' and its counterpart for legal interpretation decisions, the 'legal judgment rule', it has been argued that an issuer exercises its discretion properly 'if (1) in terms of form, a plausible decision-making process is followed, and (2) in terms of substance, the available information is reasonably considered, and the assessment of price sensitivity is not carried out based on clearly unsuitable criteria'. These authors further note: 'In any case, SER must not replace the issuer's *ex-ante* discretion with its own *ex-post* judgment during a review of the decision. Only a clearly improper exercise of discretion should give rise to sanctions against the issuer.'

[...]

The arbitral tribunal notes that the stock exchange regulations undisputedly grant the issuer a certain margin of discretion in assessing the price sensitivity of a fact, and that this decision must be made within the bounds of duly exercised discretion. **According to the tribunal, an issuer generally exercises its discretion properly if: (1) a plausible decision-making process is followed, and (2) the available information is reasonably considered and the assessment of price sensitivity is carried out on the basis of 'suitable criteria'.** By the same token, **in evaluating whether certain criteria are 'suitable' or adequate, the issuer must also be granted a certain margin of discretion.** [Footnote in the Award: This approach does not necessarily coincide with the doctrine mentioned above, according to which a violation of the ad hoc obligation can only be affirmed if, 'in terms of substance, [...] the assessment of price sensitivity is not carried out based on clearly inadequate criteria'.] **Determining whether the issuer has 'knowledge of a fact in its essential points' (article 5 DAH) likewise ultimately requires a discretionary judgment.** Once the issuer has established such a criterion, it is generally expected to apply it consistently.

**If SER were granted the authority to conduct a full substantive review of the decision, the discretion afforded to the issuer would be eroded."**



Applied to the specific circumstances of X. AG, the Tribunal found that the company had duly exercised its discretion, consistent with the two-prong test set out above, when it decided not to publish an ad hoc announcement at the time of the Status Update. In terms of form, the Tribunal held that X. AG had followed a plausible decision-making process by engaging leading external experts to assess the factual and legal situation regarding the existence of an ad hoc disclosure obligation. These experts thoroughly examined the allegations raised by the whistleblowers reports through diligent investigation measures. At the time of the Status Update, the company shared the reasonable views of its external experts that further investigative steps were required to sufficiently clarify the facts relevant to determining an ad hoc disclosure obligation. Accordingly, the Tribunal concluded that the company had undertaken a plausible decision-making process in terms of form (Award, at paras. 291 *et seqq.*).

In terms of substance, the Tribunal found that X. AG had also appropriately considered all available information and assessed the existence of a price-sensitive fact based on suitable criteria – the criterion of preponderant probability (see above). In the Tribunal's view, it was reasonable to examine whether there was a price-sensitive fact that was sufficiently substantiated using this standard. Despite certain indications of suspicion in the initial findings of the investigation presented in the Status Update, the company reasonably concluded that the forensic investigation as of that date was not yet sufficiently advanced to establish with preponderant probability whether or not improper accounting practices had occurred, or whether the integrity of X. AG's employees was no longer ensured. This view had also been confirmed by the company's disclosure counsel (Award, at paras. 313 *et seqq.*).

The Tribunal concluded that X. AG had therefore acted within the bounds of its duly exercised discretion by deciding, under the given circumstances and in alignment with its professional advisors, to await the outcome of further investigative steps to ensure the reliability of the whistleblower allegations. Accordingly, the company correctly concluded that as of the time of the Status Update, there was no obligation to issue an ad hoc announcement and that the relevant factual elements needed to be further examined through continued investigation.

Finally, the Tribunal also examined whether X. AG's Ad hoc Announcement, published on a Monday, was belated because the company had been informed a week before, also on a Monday, that further investigations conducted since the Status Update showed that it was "more likely than not" that there had been improper accounting practices. The Tribunal found – again citing *Peter Böckli (op. cit.)* – that while the threshold of preponderant probability was thereby met, an issuer must be granted "*a reasonable short period to discuss the results internally*" and to consult the competent corporate bodies. "*As a rule, at least three to five calendar days are considered reasonable*" (Award, at para. 422).

In X. AG's case, this meant that the board of directors had to be consulted. The board meeting took place on the Sunday before the Ad hoc Announcement. In this specific instance, the Tribunal also found that the company was entitled to await the meeting with its auditor on Friday. Therefore, the Tribunal concluded that X. AG acted within the bounds of its duly exercised discretion to wait for these meetings before proceeding with the ad hoc disclosure (Award, at paras. 423 *et seqq.*).

## b) Discussion

The Award in *X. AG v. SER* provides important clarification on the level of scrutiny that SER and the judicial bodies of SIX Swiss Exchange can apply when reviewing an issuer's decision whether to publish an ad hoc announcement. By confirming that article 53 LR and the DAH afford issuers a margin of discretion in making this determination, the Tribunal considerably limits the scope of subsequent regulatory and arbitral review. SER's position that the decision must be subject to a full and unrestricted review was therefore rejected by the Tribunal and can no longer be considered good law in light of this ruling.

This is a particularly welcome development for issuers, marking the first time that a judicial body of SIX Swiss Exchange has explicitly recognized this margin of discretion. Notably, the Tribunal found that this discretion is not limited to the issuer's assessment of price sensitivity, as a narrow reading of article 4(3) DAH might suggest, but also extends to determining whether the issuer has knowledge of a fact in its essential points under article 5 DAH, as well as to the choice of suitable criteria used in assessing price sensitivity.

The Tribunal's reasoning further implies that the issuer's discretion also encompasses the steps required and time needed for the internal deliberation process with the competent corporate bodies prior to issuing an ad hoc announcement, with a minimum period of three to five days granted in circumstances such as the *X. AG v. SER* case. This aligns with article 4(3) DAH, which provides that issuers may take into account the company's internal allocation of responsibilities.

The Award also contributes to the broader debate about whether issuers can invoke the business or legal judgment rule, as posited in legal commentary and the *travaux préparatoires* of the DAH (see, e.g., *Andreas Müller & Anna Peter, op. cit.*, and, already earlier, *Frank Gerhard, Business Judgment Rule und Rechtsrisiken / Anerkennung einer Legal Judgment Rule für rechtlich gebundene Entscheide von Unternehmensorganen*, 88(3) *Swiss Review of Business and Financial Market Law* 254 [2016]). In 2023, an arbitral tribunal found in the context of the financial reporting requirements under article 51 LR that the business judgment rule applies exclusively to business decisions but not to decisions concerning supervisory or organizational duties, which include compliance with accounting rules. Such decisions remain fully reviewable. Further, said tribunal noted that the business judgment rule is relevant for assessing liability of corporate bodies, not for determining whether the company itself breached its regulatory obligations (final award of Dec. 20, 2022, *Tornos Holding AG v. SER*, at para. 4.4.2). The Swiss Federal Supreme Court subsequently found this assessment to be at least not arbitrary (SFSC, no. 4A\_63/2023, at para. 4.4.3).

The Tribunal in *X. AG v. SER* chose a different approach, basing its reasoning directly on an interpretation of article 53 and the DAH. Accordingly, it held that there was no need to consider whether the corporate law doctrines of the business or legal judgment rule should be applied by analogy (Award, at para. 288).

In its result, however, the Tribunal's holding on the issuer's margin of discretion and its two-prong test for assessing the exercise of that discretion share important structural similarities with

the business and legal judgment rules. Just like these doctrines, it shifts the focus away from a full substantive review of the issuer's decision to a "procedural" assessment of whether the issuer has duly exercised its discretion. Moreover, both the business and legal judgment rules and protection of the issuer's duly exercised discretion ultimately concern the *ex post* review of a complex decision made under inherently uncertain conditions and involving forward-looking elements.

In that sense, the Tribunal respects that only the issuer itself is in the "hot seat" tasked with the weighty responsibility of deciding *ex ante* and under time pressure whether to make an ad hoc announcement.

Finally, the Tribunal's holding is consistent with the explanatory materials of the ongoing FMIA revision, which explicitly state that issuers already possess a margin of discretion under existing law in assessing whether information triggers an ad hoc disclosure obligation. Because this principle is a fundamental aspect of the concept of ad hoc disclosure, it is also intended to remain in the revised FMIA (see Explanatory Report on the Draft Amendment to the Financial Market Infrastructure Act, June 2024, accessible at: <https://www.news.admin.ch/news/message/attachments/88244.pdf>, at p. 31).

## 5) Key Takeaways and Precedential Value of *X. AG v. SER*

The Award in *X. AG v. SER* establishes an important precedent in the area of ad hoc disclosure, largely rejecting the concept of staggered disclosure – at least in the context of internal investigations and similar complex or evolving situations, and in the manner promulgated by SER in the past – and establishing the principle of preponderant probability ("more likely than not") as the applicable threshold triggering an ad hoc disclosure. Moreover, it confirms the issuer's discretion in determining whether information is subject to an ad hoc disclosure obligation, extends this discretion to, among other things, the question of whether the issuer has knowledge of a fact in its essential points pursuant to article 5 DAH, and limits SER's review powers accordingly.

Although arbitral awards are generally considered to have no precedential value and only effects *inter partes*, article 34 FMIA and article 1 LR enshrine the principle of equal treatment of issuers. This principle obliges SER and all other bodies of SIX Swiss Exchange to ensure that all issuers are treated equally, not only when adopting regulations but also when applying them in their enforcement practice (see, e.g., *Roland Truffer*, Commentary ad article 34 FMIA, in: Watter & Bahar [eds.], *Basel Commentary FINMASA / FMIA*, 3<sup>rd</sup> ed. [2019], at para. 6). This requirement underscores that even arbitral awards, while formally binding only on the parties involved, must be considered by SER and the Sanctions Commission in their future enforcement practice to preserve the uniformity and integrity of the regulatory framework.

In this way, the Tribunal's holding in *X. AG v. SER* will invariably shape how ad hoc disclosure obligations in evolving factual situations are assessed going forward, fostering greater

predictability and legal certainty for issuers. In light of this, the authors suggest that SER would be well advised to update the DAH Guideline accordingly at the earliest opportunity.

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## AGM SEASON 2025: A SHORT REVIEW

**Reference: CapLaw-2025-67**

The article reviews the 2025 AGM season of Swiss companies listed on SIX Swiss Exchange focusing on three main topics: (i) virtual annual general meetings, (ii) non-financial reporting, and (iii) compensation. While companies conducting virtual annual general meetings are still in a clear minority, an increasing number are opting for virtual shareholder meetings. The article also discusses the second AGM season of non-financial reporting, noting the ongoing debates in this area. Additionally, it addresses the increase in executive compensation in Switzerland, which remains the highest in Europe, and the contrasting views between local individual shareholders and international institutional investors on compensation-related topics.

***By Annette Weber / Thomas Reutter***

### 1) Virtual AGM

With the entry into force of the corporate law reform, Swiss companies have the possibility to allow for a virtual general meeting, i.e., a general meeting without a physical venue (cf. article 701d(1) of the Swiss Code of Obligations). While a sizeable number of companies have introduced the possibility of holding virtual general meetings in their articles of association, only a few companies have actually held virtual general meetings so far. In this AGM season, Aevis, ASMALLWORLD, Galderma, Swatch, Orascom and Carlo Gavazzi held their annual general meetings virtually. Barry Callebaut, having its annual general meeting in December of each year, also held its annual general meeting virtually last December. The same applies to ON Holding, a Swiss company listed abroad on NASDAQ. DSM-Firmenich, listed on Euronext, held its annual general meeting in a hybrid form, both physically and virtually. Despite these examples, the vast majority of Swiss listed companies still prefer the traditional method of inviting shareholders to a physical meeting. Although we did not conduct empirical research, the reasons for physical

meetings often include (i) the possibility of a formal and informal dialogue between company representatives and the shareholder constituency, (ii) a certain expectation, usually from smaller individual shareholders, to be invited to a physical meeting with a dinner or at least an aperitif, and (iii) a certain skepticism by proxy advisors towards virtual meetings.

The American proxy advisor Glass Lewis is open to virtual meetings, provided that clear procedures are in place to ensure that shareholders can effectively participate and communicate with the board of directors in a meaningful way. The other large American proxy advisor, ISS, is more stringent about virtual meetings and details several conditions for an affirmative recommendation: In addition to deciding on a case-by-case basis, it requires, among other things, that shareholders have the same rights as at an in-person meeting; assurance that it will be convened only in extraordinary circumstances; past use by the relevant company; and time restrictions (i.e., whether the authorization is limited in time or provides for an indefinite period of authorization). The Swiss proxy advisor, Ethos, seems to be even stricter though remains vague, stating that it will oppose amendments to the articles of association that include the possibility of virtual shareholder meetings without adequate justification. It does not outline what reasons it considers adequate. While we believe that Glass Lewis's condition requiring clear procedures for effective shareholder participation is meaningful (and also required), we have difficulties agreeing with the approaches of ISS and Ethos. It is unclear why ISS would like to see virtual meetings only in extraordinary circumstances and with limited authorization. Virtual meetings may also have the benefit of allowing more people to dial in more easily and avoid travel, which is arguably more eco-friendly. Ethos's approach primarily leaves companies with a question mark, given its unclear guidance.

Against this background, it is worth questioning whether a physical shareholder meeting is always preferable and represents better corporate governance than a virtual meeting. Firstly, this depends on the shareholder base. A company with a large shareholder base of individual shareholders in Switzerland, many of whom are former employees, might be better served with a physical meeting for live interaction between the company and its shareholders. However, many Swiss listed companies have institutional investors as their largest shareholder base, who typically vote in advance. It is therefore not surprising that the outcome of the voting is regularly already known ahead of the AGM, as the independent proxy often represents more than two-thirds of the votes at an AGM. For shareholders living outside of Switzerland, a virtual AGM may seem more shareholder-friendly as it allows easy access to the meeting without travel. The argument of proxy advisors that a virtual meeting is not shareholder-friendly because it does not allow the same level of interaction is questionable, particularly in today's world where communication technology is almost everywhere.

Critics may argue that shareholder presence at virtual shareholder meetings is often much lower than at physical shareholder meetings. Physical meetings offer the advantage of a lively interaction with shareholders, be it formally during the meeting or often also after the formal meeting during the lunch or aperitif that many companies offer. Shareholders physically present at AGMs of Swiss listed companies usually command only a very small portion of the total outstanding shares. Critics argue that absent any such lunch, aperitif or giveaway, shareholder

attendance would be much lower. If such benefits are indeed the only or main reason to attend physically, it is more than questionable whether good corporate governance is fostered with physical meetings. In our view, companies should not shy away from virtual meetings just because a small but very vocal local shareholder constituency favors them. Instead, they should look at shareholder meetings from a holistic corporate governance and investor relations perspective and decide what tools of interaction work best in light of their shareholder base.

## 2) Non-Financial Reporting

The year 2025 marks the second AGM season following the implementation of mandatory obligations under non-financial reporting, as stipulated in article 964a of the Code of Obligations. Consequently, much of the initial uncertainty observed last year has subsided.

A prominent topic during last year's voting season on non-financial reporting was whether the vote should be binding or consultative. Several larger corporations submitted their reports for consultative voting, despite vocal criticism from the Swiss proxy advisor Ethos, which argued against such a practice. However, these criticisms did not significantly alter many boards' decisions last year and also this year. In our opinion, the discussion surrounding binding versus consultative votes remains largely theoretical as a rejection of a non-financial report by shareholders does not have immediate consequences for the board (i.e., there is no requirement to revise the report and re-submit for approval). While not constituting an enforceable legal obligation, any board is well advised to review its strategy as to the matters included in the report and the manner of its reporting in case of a negative vote on the non-financial report, irrespective of whether the vote was binding or only consultative.

Despite a certain countermovement in the United States, this year's AGM season showed that investors are still interested in the sustainability of the companies in which they are invested, and assign sustainability a strategic role. While Ethos was more critical of non-financial reports and recommended a vote against roughly a fifth of the reports, the American proxy advisors were more relaxed. Despite the criticism, the reports were often approved with a rather high acceptance rate of more than 90%.

Currently, the Code of Obligations does not mandate third-party review of these reports. Nonetheless, almost half of the listed companies have opted for limited assurance from their auditors. Interestingly, this figure remained largely stable between last year and this year's AGM season. Companies with a more international shareholder base or orientation tend to seek limited assurance, given similar EU requirements, whereas smaller companies may often find it easier to forgo such reviews, although we found several smaller companies which have sought a limited assurance for their report. Additionally, as noted last year, a significant majority of companies continue to incorporate their non-financial reports into their annual reports.

Last year, the Federal Council proposed stricter regulations for non-financial reporting and initiated a consultation process. The aim was to align Swiss legislation with the EU framework while incorporating a "Swiss finish" to simplify certain EU requirements. However, the proposal



faced criticism from practitioners during the consultation period for being overly burdensome and bureaucratic. Further, many pointed out that the extension of the scope of application would impose an undue burden on smaller companies as they often lack the expertise and relevant human resources needed to produce such reports. Currently, this project is on hold due to the EU's omnibus package, which seeks to relax and postpone certain non-financial reporting rules.

### 3) Compensation

The median level of executive compensation in Switzerland has again increased during the last year and remains the highest in Europe (see HCM study "2025 SAY-on-Pay Outcomes & Trends in Board and Executive Compensation; hereafter the "2025 HCM Study"). It is therefore not surprising that compensation is usually the mostly hotly debated topic at AGMs of Swiss listed companies. However, the intensity of the debate, often triggered by local individual shareholders with a very limited holding of shares, has again contrasted with the outcome of compensation-related AGM votes, most often driven by international institutional investors. To our knowledge, no compensation related topic has been rejected by shareholders of a listed company in the 2025 AGM season. Also, approval rates have remained relatively high and even improved slightly according to the 2025 HCM study. This is in particular the case for the binding votes on the compensation budgets for the board of directors and the executive management.

Following the guidance of proxy advisors, shareholders are usually most critical through the consultative vote on the compensation report. The rationale seems to be that any potential rejection by shareholders of this agenda item has no legally enforceable consequences: the report does not have to be re-submitted to shareholders for approval, nor is there any impact on the compensation that has been paid or is planned to be paid. It is a "valve" for shareholders to voice satisfaction or dissatisfaction with compensation generally. Hence, 28% of the Swiss listed companies had approval rates for this agenda item below 80% (2025 HCM Study; same level as in the previous year). This percentage is usually considered as a threshold below which the affected companies, while strictly legally not obliged to do so, should address shareholders' compensation-related concerns in some way.

The reasons for shareholder dissent differ. According to the 2025 HCM Study, the most cited reasons were: Absolute level of compensation is perceived as too high; insufficient alignment between compensation and group performance; lack of transparency in compensation disclosures (criteria applied etc.); and general concerns with compensation structure and design. Companies that have received approval rates near or even below 80% are well advised to engage with their shareholders, identify their specific concerns and try to address them. In particular, it should be possible to address concerns around inadequate disclosure and insufficient alignment of pay to performance in time for the publication of the next compensation report.

## 4) Conclusion and Outlook

While the AGM 2025 did not reveal any groundbreaking changes, it highlighted certain trends. The rise in virtual AGMs, even if still small in number, is noteworthy, and it is conceivable that the number of virtual AGMs will continue to increase. Regarding non-financial reporting, we hope that companies may rely on a certain continuity, which will facilitate the reporting over time. Lastly, compensation will remain a hot topic and one to watch even though approval rates remain at a comfortable level overall. With compensation levels expected to further increase at executive level, compensation undoubtedly remain in the spotlight of shareholder attention – at least for those present at the AGM.

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## KAPITALMARKTRECHT IM FOKUS 2025 – CONFERENCE REPORT 20 AUGUST 2025, SIX CONVENTIONPOINT, ZURICH

**Reference: CapLaw-2025-68**

The inaugural 2025 edition of Kapitalmarktrecht im Fokus, a conference co-hosted by the University of St. Gallen's Institute for Law and Economics and CapLaw, gathered practitioners, regulators and academics to discuss two issues that are hotly debated in Swiss capital-markets practice: (i) the disclosure duties of underwriters and syndicate banks and (ii) the handling of insider information in M&A and capital-markets transactions. In two thematically focused panels, the speakers analyzed the statutory framework, explained practical frictions and debated possible reforms. Particular attention was devoted to the abolition of the former blanket disclosure exemption for underwriting syndicates, the pending revision of the Financial Market Infrastructure Act (FinMIA), the interaction between disclosure law and ad-hoc publicity and the narrow safe harbors for market soundings and selective information sharing. The following report summarizes the main arguments and take-aways for readers who could not attend.

***By Sandro Fehlmann / Benjamin Leisinger / Nina Reiser***

## 1) Introduction

Nina Reiser (University of St. Gallen) welcomed the attendees and panelists<sup>1</sup> to the first edition of *Kapitalmarktrecht im Fokus*, a conference organized in cooperation between the University of St. Gallen's Institute for Law & Economics and CapLaw. In her welcoming speech, she emphasized the importance of considering broader, academic questions, such as the appropriate level and type of transparency in capital markets, and the balance between detailed and principle-based regulation. Further, Nina Reiser discussed the recent FinMIA revision, which proposes changes like adjusting thresholds, reducing self-regulation and increasing FINMA's powers. She highlighted that the pros and cons of self-regulation versus state regulation must be considered, as well as the importance of legal certainty and the principle of legality, especially when criminal consequences are possible. In this context, Nina Reiser also addressed the challenges of expanding FINMA's enforcement powers, particularly regarding fines and the potential conflict between disclosure obligations and the right against self-incrimination, stressing the importance of always keeping fundamental legal principles in mind, even when dealing with technical details.

## 2) Panel 1 – Disclosure of Shareholdings of Underwriters / Syndicate Banks

Moderated by Sandro Fehlmann (Advestra), the first panel brought together, Matthias Courvoisier (Baker McKenzie), Sebastian Harsch (UBS), Deirdre Ni Annrachain (NKF) and Matthias Weger (SIX Exchange Regulation) to discuss the complex and evolving landscape of disclosure obligations for underwriters and syndicate banks in Swiss capital market transactions. The discussion began with a detailed review of the Swiss disclosure regime under article 120 FinMIA and its implementing ordinance. The panel highlighted that the Swiss threshold for disclosure is set at 3%, which is notably lower than the 5% initial threshold in many jurisdictions in the European Union and elsewhere. This threshold is triggered not by the settlement or public announcement of a transaction, but already by the signing of the purchase agreement. This early trigger, combined with the calculation method — where the denominator is the pre-money share capital and the numerator includes post-money shares — often results in initial (or premature) notifications that significantly overstate the actual percentage held. These inflated figures must later be corrected once the transaction is registered, leading to confusion and additional administrative work.

A key distinction was drawn between firm underwritings and best-efforts mandates. In firm underwritings, banks take on a firm purchase obligation and the associated underwriting risk, which very often causes the syndicate to exceed the 3% threshold at the time of signing. This triggers the need to seek a formal exemption from the disclosure requirement. In contrast, best-efforts mandates, where banks act solely as placement agents without a purchase obligation,

<sup>1</sup> The views and opinions expressed on the panels were those of the speakers and do not necessarily reflect the views or positions of any entities they represent.

generally do not result in a disclosure duty of the underwriters due to the lack of agreement on all *essentialia negotii* and the availability of exemptions when the notification duty is triggered (such as the intra-day exemption). The panel noted that this distinction is not always clear-cut in practice, especially in complex transactions involving multiple parties and layered commitments.

The panel then turned to the historical context, explaining that from 2009 to 2021, the Disclosure Office of SIX Exchange Regulation (OLS) provided a general exemption for syndicate banks under Disclosure Office Notice I/09 (available here: <https://www.ser-ag.com/dam/downloads/publication/obligations/disclosure/notices/disclosure-notice-i-09-en.pdf>), provided that certain details were disclosed in the prospectus published in connection with the transaction. This approach was widely regarded as efficient, reducing both costs and time pressure for market participants. However, the withdrawal of this general exemption in 2022 has in many cases resulted in syndicates being required to submit an individual, *ex-ante* exemption request to SIX Exchange Regulation. Failure to obtain such an exemption can expose banks to administrative and even criminal sanctions, a risk that has increased the compliance burden and introduced new uncertainties into transaction planning.

Matthias Weger emphasized that the practice that was permitted under the Disclosure Office Notice I/09 remains applicable, just not in form of a general exemption. In order for this exemption to be applied, a request, following a clearly defined process, must be filed with OLS. The OLS then issues a recommendation to the Financial Market Supervisory Authority (FINMA), which then tacitly approves the recommendation (absent any objection). Most participants of the panel agreed that the process is unnecessarily costly, consumes significant resources, and can jeopardize the timing of transactions. One panelist emphasized that, in practice, these exemption requests have become a formality, involving standardized applications that are almost always approved. This situation suggests that the process adds little substantive value and primarily serves as a bureaucratic hurdle.

The discussion also addressed the types of transactions most affected by these rules. Rights offerings with volume put arrangements, back-stop commitments by cornerstone investors, equity-linked financings such as AT1 and CoCo instruments, and SPAC and de-SPAC transactions were all cited as examples where banks or other parties often exceed the disclosure thresholds. In cases where banks are merely intermediating the settlement of the transaction, the disclosure duty is seen as artificial and disconnected from the underlying economic reality. Conversely, when banks act as investors of last resort, the pre-money calculation can result in reported positions as high as several hundred percent, figures that are clearly meaningless and potentially misleading to the market.

The panelists discussed various reform options, agreeing on the need for a statutory safe harbor that would restore the efficiency of the former blanket exemption. Ideally, such a safe harbor would be incorporated into the forthcoming FinMIA revision or the implementing rules. However, the panelists also agreed that a general exemption (similar to the one existing until 2021 under Disclosure Office Notice I/09) would still be desirable and facilitate efficient capital market transactions. In the interim, the market could benefit from practical measures such as an online one-page exemption form, automatic electronic acknowledgements, and clearer

guidance confirming that volume puts, sub-underwriters, and similar commitments are eligible for relief (for the current “Leaflet regarding applications for exemptions and easing provisions concerning disclosure in the prospectus for lockup groups and (sub-)underwriters” see: <https://www.ser-ag.com/dam/downloads/publication/obligations/disclosure/annual-reports/notice-202201-ols-en.pdf>; the current Disclosure Office Notice I/09 is available here: <https://www.ser-ag.com/dam/downloads/regulation/disclosure-shareholdings/notices/disclosure-notice-i-09-en.pdf>). Some speakers also suggested that Switzerland should consider aligning its disclosure threshold with the EU standard to facilitate cross-border transactions and reduce regulatory arbitrage.

The panel concluded with a broader reflection on the relationship between self-regulation and state law. One panelist criticized the current patchwork of self-regulation, such as ad-hoc publicity rules, and statutory disclosure duties, arguing that this fragmentation creates legal uncertainty and inefficiency. Other panelists acknowledged that while detailed legislation can reduce flexibility, it is essential to provide a clear legal basis for criminal liability. The overarching goal of any reform should be to enhance legal certainty without sacrificing the speed and adaptability that have traditionally characterized Switzerland’s principles-based regulatory model. The discussion underscored the need for a more coherent and practical framework that balances the interests of market participants, regulators, and the broader public.

### 3) Panel 2 – Handling of Insider Information in M&A and Capital-Markets Transactions

The second panel, moderated by Benjamin Leisinger (Homburger) and featuring Anna Peter (Homburger), Cédric Remund (Office of the Attorney General of Switzerland), Thomas Reutter (Advestra), and Patrick Schärli (Lenz & Staehelin), provided an in-depth exploration of the legal and practical challenges associated with insider information in the context of M&A and capital-markets transactions.

Cédric Remund began by outlining the seven elements that constitute a criminal insider-dealing offence under Swiss law: insider status (distinguishing between primary, secondary, and tertiary insiders), the act of trading or tipping, the existence of price-sensitive confidential information, a market reference, a causal link between the information and the action, the pursuit of a pecuniary advantage, and the requirement of intent. He emphasized that only primary insiders are subject to criminal liability for tipping, while secondary and tertiary insiders face administrative measures. The courts have adopted an *ex ante* probability-magnitude test, assessing whether a reasonable investor would consider the information significant, and have moved towards an objective standard in evaluating these cases.

The panel then addressed the notion of insider information in general as well as the nuanced relationship between insider information and ad-hoc publicity obligations, and explained that not necessarily all insider information automatically triggers an ad-hoc disclosure duty and *vice-versa*. For example, financial results that are about to be published may qualify as price

sensitive inside information, but only require immediate ad-hoc disclosure (ahead of the release of the financial results which qualify as a *per se* ad-hoc matter) if they deviate *materially* from the issuer's guidance or the previous year's results. The panel agreed that the insider and ad-hoc regimes serve different purposes and must be analyzed independently, with compliance assessments tailored to the specific requirements of each framework.

The discussion then turned to the practical challenges posed by leaks, rumors, and loss of confidentiality. One panelist described the constant "background noise" that surrounds listed companies, particularly those with active M&A strategies. He noted that if a press leak reveals only information that is already generally known – such as a company's strategic direction – confidentiality is maintained, and the issuer can continue to rely on the deferral of disclosure. However, if transaction-specific details emerge that could only have come from insiders, the issuer is obliged to publish a leak statement without delay. The panel stressed that the existence of market rumors does not legitimize trading by insiders; rather, it imposes an obligation on the issuer to inform the market through the appropriate channels.

A significant portion of the panel was devoted to the limitations of the current safe harbors for selective disclosure under article 128 of the Financial Market Infrastructure Ordinance (FinMIO). Disclosures to advisers are permitted, while disclosures to potential counterparties are allowed if they are indispensable for the transaction and protected by a confidentiality agreement. The panelists agreed that these provisions are too restrictive for modern market practice, where market soundings, cornerstone negotiations, and relationship agreements with major shareholders often require the exchange of sensitive information without a formal bilateral contract. The European Union's Market Abuse Regulation (MAR), which provides a more appropriate framework for such disclosures, was cited as a potential model for a Swiss reform.

The panel also provided practical insights into the mechanics of wall-crossings and market soundings. One panelist explained that buy-side institutions are typically unwilling to be "tainted" by insider information for more than 24 to 48 hours, which forces banks to structure wall-crossings with very tight timeframes, clear cleansing procedures, and fallback options such as volume-weighted pricing if a transaction is delayed. The panel warned that issuers who engage directly with investors without proper documentation and safeguards risk breaching insider trading rules. The use of intermediaries with established Chinese walls was recommended as a best practice to mitigate these risks.

The panel also discussed individual trading restrictions, particularly the use of blackout periods around the announcement of financial results. These periods combine statutory requirements with internal corporate policies to prevent insider trading. For insiders who are permanently restricted from trading – such as members of strategy teams in companies that are frequent acquirers – pre-arranged trading plans can provide a compliant way to execute trades. By delegating the execution of trades to a third party, the causal link between the insider's knowledge and the trade is broken. Cédric Remund confirmed that prosecutors generally respect properly structured trading plans, although any modifications during the term of the plan may raise suspicions and warrant further scrutiny.



Finally, the panel addressed the issue of corporate criminal liability for insider offences. To date, no Swiss issuer has been convicted under the corporate offence provisions, largely because the insider trading statute is not included in the catalogue of offences that trigger primary corporate liability and because prosecutors must demonstrate that the individual offender could not be identified due to organizational shortcomings. Nevertheless, the panel cautioned that careless treasury operations – such as selling or buying shares ahead of the release of negative, unpublished news – could attract regulatory scrutiny and potential investigations. Companies were advised to maintain thorough documentation of the rationale for all trading activities to mitigate the risk of enforcement actions.

#### 4) Key Take-Aways

The conference organizers were delighted with the lively discussions and the numerous comments from speakers and participants, which can be summarized as follows:

- The abolition of the general underwriting exemption has re-introduced costs, timing risk and legal uncertainty. A statutory safe harbor is urgently needed. However, a general exemption (similar to the one existing until 2021 under Disclosure Notice I/09) would still be possible and facilitate efficient capital market transactions.
- The Swiss disclosure threshold and the pre-/post-money calculation distort percentage figures and generate meaningless notifications. Harmonization with EU standards deserves assessment.
- Insider and ad-hoc regimes serve different purposes. Compliance assessments must therefore address both tracks separately.
- Selective disclosure safe harbors are too narrow for modern market-sounding practice. Broader exceptions, coupled with robust NDAs and insider lists, would enhance legal certainty without impairing market integrity.
- Trading plans, disciplined blackout-period policies and thorough documentation remain the most effective tools to mitigate insider-trading risk for executives and for treasury desks.

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## Banque Pictet and SIX's Joint Pilot Project to Tokenize and Fractionalize Financial Assets

**Reference: CapLaw-2025-69**

On 10 July 2025, SIX and Banque Pictet & Cie SA announced the successful conclusion of a joint pilot project, tokenising corporate debt instruments and allocating fractional quantities of these assets to portfolios managed by Pictet Asset Management SA. The pilot project focused on EUR- and CHF-denominated corporate bonds, held in custody at SIX SIS to be tokenized on the SDX platform. These were then allocated in fractions to the investors via the portfolios' custody bank account.

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## Banco de Chile's Issuance of CHF 100 Million Senior Fixed-rate Social Notes

**Reference: CapLaw-2025-70**

On 17 July 2025, Banco de Chile successfully closed the issuance of CHF 100 million senior fixed-rate social notes with a six-year maturity and a fixed annual coupon of 1.1875%. The bonds are listed on SIX Swiss Exchange. The net proceeds from the issue of the notes will be used by Banco de Chile to finance new or existing social and environmental projects that meet the eligibility criteria referred to under the Eligible Social Categories or Eligible Green Categories, with a particular focus on Women-Owned Enterprises, as set out in Banco de Chile's Sustainability Financing Framework.

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## CoinShares' Listing of Staked SEI ETP on SIX Swiss Exchange

**Reference: CapLaw-2025-71**

On 28 July 2025, CoinShares listed its Physical Staked SEI exchange-traded product (ETP) on SIX Swiss Exchange, as a zero fee ETP offering regulated exposure to SEI's high-performance blockchain infrastructure. CoinShares is publicly listed on Nasdaq Stockholm and the OTCQX.

## EQT, ADIA and Auba's Placement of 7.1% of Galderma's Share Capital

**Reference: CapLaw-2025-72**

On 31 July 2025, a consortium led by EQT together with ADIA and Auba Investment Pte. Ltd., successfully completed the placement of 17 million shares in Galderma Group AG at a price of CHF 123.00 per share via an accelerated bookbuilding process. The placement raised CHF 2.1 billion in total.

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## UBS's Issuance of USD 2 billion Tier 1 Capital Notes with an Equity Conversion Feature

**Reference: CapLaw-2025-73**

On 5 August 2025, UBS Group AG successfully completed its offering of USD 1,250,000,000 in aggregate principal amount of 7.000% Tier 1 Capital Notes and USD 750,000,000 in aggregate principal amount of 6.600% Tier 1 Capital Notes. The Notes are "high trigger" regulatory capital instruments that are eligible to fulfill UBS Group AG's Swiss going concern requirements. Upon occurrence of a "Trigger Event" or a "Viability Event", the Notes will be converted into ordinary shares of UBS Group AG in accordance with their terms. The Notes are governed by Swiss law and have been admitted to trading and are listed on the SIX Swiss Exchange.

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## UBS's Issuance of EUR 2 billion Fixed Rate/Fixed Rate Callable Senior Notes

**Reference: CapLaw-2025-74**

On 11 August 2025, UBS Group AG successfully completed its issuance of EUR 1.25 billion in aggregate principal amount of Fixed Rate/Fixed Rate Callable Senior Notes due 2036 and EUR 750 million in aggregate principal amount of Fixed Rate/Fixed Rate Callable Senior Notes due 2031 under its Senior Debt Programme. The Notes are bail-inable (TLAC) bonds that are eligible to count towards UBS Group AG's Swiss going concern requirement. The Notes are governed by Swiss law and the Notes have been provisionally admitted to trading, and application has been made for definitive admission to trading and listing of the Notes, on the SIX Swiss Exchange.

## UBS' Issuance of CHF 510 million Fixed Rate Covered Bonds

**Reference: CapLaw-2025-75**

On 13 August 2025, UBS Switzerland AG successfully completed its issuance of CHF 235 million 0.560% Fixed Rate Covered Bonds due 13 August 2030, and CHF 275 million 0.935% Fixed Rate Covered Bonds due 13 August 2035, under its Covered Bond Programme. The Covered Bonds are governed by Swiss law and are listed on SIX Swiss Exchange. The Covered Bonds are indirectly backed by a portfolio of mortgages from UBS Switzerland AG's domestic mortgage pool.

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## Zug Estate Group's Placement of CHF 100 million Green Bond

**Reference: CapLaw-2025-76**

On 21 August 2025, Zug Estates Holding AG successfully placed a CHF 100 million green bond in the Swiss market. The fixed-interest bond carries a coupon of 1.25% and a maturity of seven years. The proceeds will be used to refinance sustainable projects in accordance with Zug Estates' Green Finance Framework. Application will be made for admission to trading of the bonds on SIX Swiss Exchange.

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

**Reference: CapLaw-2025-77**

On 4 September 2025, Zürcher Kantonalbank successfully completed a further offering of Bail-in Bonds in the amount of EUR 500 million. ZKB's Bail-in Bonds, including the newly placed EUR 500 million 3.153% 6NC5 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) Bonds. If FINMA orders the partial or complete reduction of the bondholders' claims under the Bail-in Bonds, the bondholders are entitled to receive Recovery Certificates. Such Recovery Certificates include claims, subject to multiple conditions precedent, for subsequent future compensation payments for the full or partial reduction of the bondholders' claims under the Bail-in Bonds.

BNP PARIBAS, Deutsche Bank, UBS Investment Bank and Zürcher Kantonalbank acted as Joint Lead Managers.

## SGS's Placement of EUR 1 billion in Bonds

**Reference: CapLaw-2025-78**

On 4 September 2025, SGS successfully launched two tranches of EUR-bonds through its subsidiary SGS Nederland Holding B.V., which are guaranteed by SGS SA. Both tranches, each amounting to EUR 500 million, were listed and admitted to trading on SIX Swiss Exchange. The use of proceeds will be utilized for general corporate purposes, including the envisaged acquisition of Applied Technical Services (ATS). BNP PARIBAS, Citigroup, HSBC and UBS acted as Active Joint Lead Managers, while CIC Market Solutions, J.P. Morgan and Société Générale Corporate & Investment Banking acted as Passive Joint Lead Managers.

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## UBS's Issuance of CHF 1 billion Fixed Rate Covered Bonds

**Reference: CapLaw-2025-79**

On 9 September 2025, UBS Switzerland AG successfully completed its issuance of EUR 1 billion 2.783% Fixed Rate Covered Bonds due 9 September 2030, under its Covered Bond Programme. The Covered Bonds are governed by Swiss law and are listed on SIX Swiss Exchange. The Covered Bonds are indirectly backed by a portfolio of mortgages from UBS Switzerland AG's domestic mortgage pool.

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## Givaudan's Issuance of EUR 500 million Guaranteed Bonds due 2029

**Reference: CapLaw-2025-80**

On 9 September 2025, Givaudan Finance Europe B.V. successfully completed its issuance of EUR 500 million 2.875% Guaranteed Bonds due 2029 guaranteed by Givaudan SA. The Bonds are governed by English law and listed on Euronext Dublin.

## SMG Swiss Marketplace Group's IPO on SIX Swiss Exchange

**Reference: CapLaw-2025-81**

On 19 September 2025, SMG Swiss Marketplace Group Holding AG commenced trading on SIX Swiss Exchange. The transaction consisted of an offering by shareholders Ringier, Mobiliar and General Atlantic of 19,629,040 existing shares, with an over-allotment option of up to 2,944,353 existing shares. The price range for the offered shares was set at CHF 46.00 per share, resulting in an offer size of up to CHF 1,038 million (assuming full exercise of the over-allotment option) and an implied market capitalization of CHF 4.5 billion. Goldman Sachs Bank Europe SE, J.P. Morgan Securities plc and UBS AG acted as joint global coordinators and Barclays Bank PLC, BNP PARIBAS, Morgan Stanley & Co. International plc and Zürcher Kantonalbank as joint bookrunners.

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## UBS's Issuance of USD 5 billion Fixed Rate/Floating Rate Callable Senior Notes and Floating Rate Callable Senior Notes under its Senior Debt Programme

**Reference: CapLaw-2025-82**

On 23 September 2025, UBS Group AG successfully completed its issuance of (i) USD 1.25 billion Fixed Rate/Floating Rate Callable Senior Notes due December 2029, (ii) USD 700 million Floating Rate Callable Senior Notes due December 2029, (iii) USD 1 billion Fixed Rate/Floating Rate Callable Senior Notes due September 2031, (iv) USD 300 million Floating Rate Callable Senior Notes due September 2031, and (v) USD 1.75 billion Fixed Rate/Floating Rate Callable Senior Notes due March 2037 under its Senior Debt Programme. The Notes are bail-inable (TLAC) bonds that are eligible to count towards UBS Group AG's Swiss gone concern requirement. The Notes are governed by Swiss law and the Notes have been provisionally admitted to trading, and application has been made for definitive admission to trading and listing of the Notes, on the SIX Swiss Exchange.



## Rieter's CHF 400 Million Rights Offering and Concurrent CHF 77.4 million Private Placement

**Reference: CapLaw-2025-83**

On 18 September 2025, Rieter Holding AG announced the terms of a CHF 400 million rights offering. In the rights offering, existing shareholders received one subscription right for each share they held on 22 September 2025 after the close of trading. The new shares have been offered to existing shareholders at a ratio of 25 new shares for each subscription right held. The subscription rights were tradeable on SIX Swiss Exchange. Shares for which subscription rights were not exercised were placed in the market following expiry of the rights exercise period. The first trading day for the newly issued shares was 2 October 2025. UBS acted as Sole Global Coordinator for the rights offering. Concurrently with the rights offering, Rieter issued additional new shares in a CHF 77.4 million private placement. Shares in the private placement were subscribed for by Rieter's two largest shareholders. The proceeds of the rights offering and the private placement will be used to refinance Rieter's acquisition of the Bamag division from OC Oerlikon.

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## Salt Mobile's Issuance of EUR 550 million High-Yield Bonds due 2030

**Reference: CapLaw-2025-84**

On 18 September 2025, Salt Mobile through its parent company Matterhorn Telecom S.a. successfully completed its issuance of EUR 550 million 3.875% Guaranteed Bonds due 2030 guaranteed by Salt Mobile SA. The Bonds are governed by English law. Goldman Sachs and BofA Securities acted as Joint Global Coordinators and Joint Physical Bookrunners and BNP PARIBAS, Crédit Agricole CIB, J.P. Morgan, Société Générale and UBS Investment Bank acted as Joint Bookrunners.

## Geberit's Issuance of CHF 200 million Bonds due 2033

### Reference: CapLaw-2025-85

On 26 September 2025, Geberit AG successfully issued CHF bonds with a volume of CHF 200 million. The bonds have a coupon of 0.950% and will be due in 2033. The bonds will be listed on SIX Swiss Exchange and Geberit is expected to use the proceeds to refinance existing indebtedness as well as for general corporate purposes. The bond issuance was managed by UBS, Raiffeisen Schweiz Genossenschaft and St. Galler Kantonalbank.

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## AI Governance and Risk Management Roundtable for Banks (KI Governance & Risikomanagement Roundtable für Banken)

**Thursday, 20 November 2025, Zunfthaus zur Zimmerleuten, Zurich**

<https://fsi.unisg.ch/de/newsdetail/news/ki-governance-risikomanagement-roundtable-fuer-banken-praxisnaehe-trifft-regulierung/>

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