# Swiss Law Update on Bonds – New SIX-Circular No. 4 and the Listing of High Yield Bonds at SIX Swiss Exchange

01.07.2016

**The SIX Swiss Exchange (SIX) recently issued Circular No. 4. This new circular is a restatement of the Regulatory Board's practice on the listing of bonds. Circular No. 4 will be updated continually to reflect the Regulatory Board's applicable practice at any given time. This will enhance clarity and understanding of the practice of listing bonds at SIX. In substance, the restatement does not lead to material changes. In particular, the Regulatory Board's decision of July 2014 that paved the way for High Yield Bond (HYB) listings at SIX remains in effect and unchanged.**

Key takeaways:

- **SIX has restated its practice on listing bonds in new Circular No. 4**
- **Circular No. 4 will be updated continually to reflect applicable practice at any given time**
- **Circular No. 4 restates the Regulatory Board's 2014 decision allowing HYB listings at SIX**
- **In line with practice in Luxembourg and in Ireland, increased disclosure requirements apply to HYB listings**
- **Despite the appeal of the new practice, no HYBs have been listed at SIX so far**

## 1. New Circular 4: Restatement of Practice of Listing Bonds at SIX

Until recently, the practice of the SIX Regulatory Board on the listing bonds was governed by a number of Regulatory Board Communications which were published in chronological order on the website of the SIX Exchange Regulation.

Pestalozzi Rechtsanwälte AG
Feldeggstrasse 4
CH-8008 Zürich
T +41 44 217 91 11
zrh@pestalozzilaw.com

Pestalozzi Avocats SA
Cours de Rive 13
CH-1204 Genève
T +41 22 999 96 00
gva@pestalozzilaw.com

pestalozzilaw.com

Over time, it became increasingly difficult for users to maintain an overview and determine with certainty which Communications were still in force and which ones had either been replaced by newer Communications, or had been adopted in the Listing Rules (LR) resp. the Additional Rules Bonds (ARB) and the implementing decrees.

To enhance clarity and understanding of the practice of listing bonds at SIX, the Regulatory Board issued a new Circular No. 4 "Practice for the Listing of Bonds" as per 1 June 2016. Circular No. 4 is a restatement of the Regulatory Board's practice on listing bonds. It consolidates all of the Regulatory Board's Communications that are currently in force, and thereby effectively repeals all of its previous Communications.

The SIX Exchange Regulation announced that Circular No. 4 will be updated regularly so that it always reflects the Regulatory Board's applicable practice on listing bonds at any given time. In summary, this means that the practice of listing bonds at SIX is now governed by one single Circular (see SIX Exchange Regulation Communiqué No. 5/2016 of 1 June 2016).

Circular No. 4 also provides additional guidance, in particular, on listing HYBs and asset-backed securities (ABS), as well as on trading in defaulted bonds after the expiry of arrangements for admission to trading.

## 2. Listing HYBs at SIX

Circular No. 4 also restates the decision of the SIX Regulatory Board published in October 2014 which prepared the ground for HYB listings in Switzerland (see Regulatory Board Communiqué 5/2014).

Prior to that decision, the listing of HYBs was not possible in practice. The reason being that HYBs are typically issued by special purpose vehicles (SPVs), and such SPVs were not able to satisfy the listing requirements of SIX (e.g., three year track record). Also, it was not possible in practice to have the listing requirements satisfied by a substitute guarantor because SIX only allowed direct or indirect parent companies to act as substitute guarantors (downstream).

The restrictive practice resulted from concerns that – given Swiss corporate law limitations on cross and upstream guarantees – the value of guarantees by direct or indirect subsidiaries or sister companies would not be ensured at all times. As HYB issuers resp. the SPV typically benefit from upstream and/or cross-stream guarantees by direct or indirect subsidiaries or sister companies, there would not be an eligible substitute guarantor. Consequently, even SIX-listed companies (i.e., with their shares listed at SIX) have listed their HYBs abroad, frequently in Luxembourg or Ireland.

In October 2014, the Regulatory Board published its change in practice: subject to certain conditions, alternative fulfilment of the listing requirements by a substitute guarantor, that is a direct or indirect subsidiary or sister company of the issuer, became possible.

Circular No. 4 restates the conditions:

- Upon formal request, such alternative fulfilment is permitted on condition that the guarantor’s subsidiaries or affiliates account for a significant share of the group’s EBIT, or

another key financial indicator, thus ensuring that the guarantee has a certain value.

- Approval for substitute fulfilment by subsidiaries and affiliated companies must be requested as part of the pre-verification application, and evidence must be supplied that the guarantor's subsidiaries and affiliated companies account for a significant share of the group's EBIT.

- More stringent obligations for transparency in connection with the listing prospectus to ensure that investors are able to make a well-founded assessment of the value of the guarantee, and the particular risks arising from its structure. These transparency obligations are essentially in line with standard practice, in particular with respect to HYB listings in Luxembourg or in Ireland.

It is noteworthy that SIX rules also allow the listing of bonds governed by a foreign law provided that the relevant jurisdiction is an OECD member state. HYBs that are subject to the terms of a New York law governed indenture are therefore eligible.

Despite the change of practice in 2014, no HYBs have been listed at SIX so far. Reasons such as a rather slow HYB market deserve mention. Also, Swiss companies, that have previously issued HYBs abroad, may choose to continue replacing expiring HYBs with new ones in that same jurisdiction in the interests of efficiency.

A SIX-listing of HYBs could be particularly attractive for SIX-listed companies as, in such a case, they only need to comply with one single disclosure regime. The SIX regulations, including Circular No. 4, provide clear guidance on the requirements and the process. To the extent that a lack of precedent presents uncertainty regarding HYB specifics, officers of SIX have in the past proven to be supportive and efficient in providing guidance during the pre-verification procedure, as well as informally beforehand if necessary.

## Beat Schwarz

Partner
Attorney at law

Pestalozzi Attorneys at Law Ltd
Feldeggstrasse 4
8008 Zurich
Switzerland
T +41 44 217 92 44
beat.schwarz@pestalozzilaw.com



## Christian Leuenberger

Partner
Attorney at law, Dr. iur.
Co-Head Capital Markets

Pestalozzi Attorneys at Law Ltd
Feldeggstrasse 4
8008 Zurich
Switzerland
T +41 44 217 92 13
christian.leuenberger@pestalozzilaw.com

