

Cross-border Listings / Dual Listings

by Dr. Christoph Balsiger,
Attorney-at-law, Partner
& Andrea Huber,
Attorney-at-law, LL.M.,
Counsel,
Niederer Kraft & Frey AG

Cross-border and dual listings have gained in importance over the past few decades as many companies have become more international in their orientation. In addition, technological progress and the liberalisation of capital flows have fostered considerable competition among global stock exchanges for equity listing and trades. Access to a broader investor base and increased marketability of a firm's securities are the main benefits of pursuing cross-border and dual listings.

SIX Swiss Exchange has issued a Directive on the Listing of Foreign Companies ("DFC"). If a foreign company is not yet listed on another stock exchange recognised by the SIX Swiss Exchange Regulatory Board, its only route to go is a primary listing. By contrast, if a company is already listed on a recognised stock exchange with equivalent listing provisions, it may choose between a primary listing and a secondary listing. The same applies if a company is to be listed simultaneously on its primary exchange and on SIX Swiss Exchange, also known as dual listing. Where the form of securities is subject to the law of the issuer's home country, the applicant must ensure that trades can be cleared and settled efficiently on SIX Swiss Exchange.

Primary Listing

Listing Requirements

Securities from an issuer having its registered office outside of Switzerland and that are not listed on a stock exchange either in the issuer's home country or in a third country may only be listed on SIX Swiss Exchange if the issuer can provide confirmation that the absence of listing in these countries is not due to non-fulfilment of investor protection regulations. Thus, issuers must provide either a legal opinion from an independent law firm or a relevant extract from the rejection decision issued by the competent authority in the home country in connection with the registration process in question. It must be clear from this extract that the company was not refused listing because it failed to comply with the pertinent investor protection regulations. Prospectus requirements for equity securities are the same as for Swiss issuers.

Listing Procedures

The issuer must describe in the listing prospectus those publications in which the announcements required under the home country's company law will appear. In addition to the issuer declaration required under Art. 45 SIX Swiss Exchange Listing Rules, the issuer must recognise the Swiss courts as having jurisdiction over claims arising out of or in connection with the listing on SIX Swiss Exchange.

The SIX Swiss Exchange Regulatory Board reserves the right, however, to modify the listing procedures as appropriate if, under the home

country's company law, the time at which the shares are legally created is not the same as that under Swiss law (such as entry in the Commercial Register).

Being Public

Primary-listed foreign companies are generally subject to the same reporting obligations as companies incorporated in Switzerland.

Financial Reporting

The SIX Swiss Exchange Directive on Financial Reporting specifies the accounting standards recognised by the SIX Swiss Exchange Regulatory Board. With respect to the listing according to the International Reporting Standard of SIX Swiss Exchange, it accepts either IFRS or US GAAP. Foreign incorporated issuers may also apply the accounting standards of their home country if these standards are recognised by the SIX Swiss Exchange Regulatory Board. Issuers of debt securities only that are not incorporated in Switzerland may use other accounting standards if certain requirements are met as described in the SIX Swiss Exchange Directive on Financial Reporting.

Corporate Governance

The SIX Swiss Exchange Directive on Information relating to Corporate Governance also applies to foreign incorporated issuers whose equity securities are listed on SIX Swiss Exchange but not in their home country. Such issuers are further obliged to apply Art. 14–16 of the ordinance against excessive compensation at listed joint-stock companies ("OaEC") analogously.

Disclosure of Shareholdings/ Takeover Laws

The rules on disclosure of shareholdings pursuant to Art. 20 of the Federal Act on Stock Exchanges and Securities Trading ("SESTA") do apply to foreign incorporated companies whose shares are listed on SIX Swiss Exchange as well. Likewise, the SESTA rules on public tender offers apply to both Swiss and foreign companies whose equity securities are, in whole or in part, listed on a stock exchange in Switzerland.

Secondary Listing

Listing Requirements

The requirements that apply to the issuer are regarded as having been fulfilled if its equity securities are listed in its home country or in a third country on a stock exchange recognised by the Regulatory Board with equivalent provisions. By appointing auditors, the issuer must fulfil the requirements of the Federal Act on the Admission and Oversight of Auditors. The issuer must report any changes concerning its auditors immediately to SIX Exchange Regulation.

The free float is considered adequate if the capitalisation of the shares circulating in Switzerland is at least CHF 25 million, or if the applicant can demonstrate otherwise that there is a genuine market for the equity securities.

Listing Procedures

If an issuer submits a listing application for equity securities within six months of the same equity securities being listed on the primary ex-

change, the SIX Swiss Exchange Regulatory Board will recognise the listing prospectus drawn up in connection with listing on the primary exchange, as approved by the competent body of that exchange, provided that technical information such as security number, Swiss paying agent, settling agent and trading currency be added for the Swiss market.

An abridged prospectus for secondary listing on SIX Swiss Exchange must be submitted if the initial SIX Swiss Exchange listing takes place more than six months after listing on the primary exchange, and a listing prospectus was produced in connection with the primary listing. Please note that each abridged prospectus must also contain a "no material change" declaration.

In addition to the fulfilment of the provisions concerning form and timing, a listing notice must further contain reference to the secondary listing, including mention of the home country exchange and the trading symbol used there and trading currency on SIX Swiss Exchange.

In case of all capital transactions that are subject to a listing application, as well as the reporting of dividend payments, the issuer must ensure that an official notice is submitted to SIX Exchange Regulation.

Being Public

Confirmation from the primary exchange of the current number of listed equity securities must be submitted once a year.

Facts arising in the issuer's sphere of activity that are potentially relevant to the price of the equity securities must be published in accordance with the regulations of the primary exchange. The issuer must ensure that SIX Exchange Regulation and the primary exchange are supplied with the information at the same time.

SIX Exchange Regulation conducts an annual data collection survey among secondary-listed issuers with respect to data such as information about the company and the securities, its capital structure, dividend payments, etc. Further, the issuer must ensure that all information that is published under the primary exchange's regulations is also made known to the Swiss investing public. In addition to the annual data collection survey, specific reporting obligations exist vis-à-vis SIX Swiss Exchange concerning financial statements, change of name or registered office, capital reduction and dividend payments.