

New Rules and Regulations on the Duty to Publish a Prospectus in Switzerland: Scope of Application, Exemptions and Alleviations

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On 1 December 2020, the revised duty to publish an approved prospectus in accordance with the Swiss Financial Services Act (FinSA) and the Swiss Financial Services Ordinance (FinSO) became fully effective. From a practical perspective, the scope of application of the duty to publish a prospectus has been significantly expanded and extended. Another remarkable novelty is the introduced set of explicit exemptions and alleviations from such duty, which are largely in line with the Prospectus Regulation (earlier, the Prospectus Directive) of the European Union. There are not only similarities, however, but also differences.

This article analyses and discusses the scope of application, exemptions and alleviations from the duty to publish a prospectus under the new rules and regulations in Switzerland. Using a functional and comparative approach, the article focuses on differences between European and Swiss law in this regard and further examines the new rules and regulations applicable to Swiss public offers for acquisition of securities and admission of securities to trading on a Swiss trading venue in light of European compatibility.

Keywords: duty to publish a prospectus, scope of application, public offer, admission to trading, exemptions, subsequent resale of securities, alleviations, abridgments, simplified disclosure regime, proportionate disclosure regime, omission of information

1. PARADIGM CHANGE UNDER NEW RULES AND REGULATIONS

On 1 January 2020, the Swiss Financial Services Act (FinSA) and the Swiss Financial Services Ordinance (FinSO) entered into effect, which represent an important cornerstone of the new financial market architecture in Switzerland.¹ Since the Swiss Financial Market Supervisory Authority FINMA licensed the newly required reviewing body for prospectuses with effect from 1 June 2020, thereby triggering the statutory transition period of six months, the revised duty to publish an approved prospectus became fully effective on 1 December 2020.² The new rules and regulations on the duty to publish a prospectus lead to a veritable paradigm change, in particular due to the introduction

of a product-neutral approach, the inclusion of secondary market transactions and the stipulation of exemptions and alleviations.³

In comparison with the previously applicable financial market architecture in Switzerland, the scope of application of the duty to publish a prospectus has been significantly expanded and extended. The old Swiss prospectus regime required the publication of a rather short offering prospectus for primary market transactions and a quite long listing prospectus for a stock exchange listing.⁴ Under the new rules and regulations, a full prospectus must be published when securities are offered to the public or when admission of securities to

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1 Federal Act on Financial Services of 15 June 2018, CC 950.1; Ordinance on Financial Services of 6 Nov. 2019, CC 950.11.

2 See <https://www.finma.ch/en/news/2020/05/20200528-mm-prospektpruefstellen> (accessed 30 Nov. 2020).

3 For a practical perspective, see C. Rehm & R. Bösch, *The Proposed New Swiss Prospectus Regime – A First Analysis*, CapLaw-2016-1 (23 Feb. 2016), <https://www.capl原因.ch/2016/the-proposed-new-swiss-prospectus-regime-a-first-analysis> (accessed 30 Nov. 2020); C. Rehm & R. Bösch, *The Proposed New Swiss Prospectus Regime – An Interim Report*, CapLaw-2017-01 (7 Feb. 2017), <https://www.capl原因.ch/2017/the-proposed-new-swiss-prospectus-regime-an-interim-report> (accessed 30 Nov. 2020); C. Rehm & R. Bösch, *The New Swiss Prospectus Regime*, CapLaw-2018-56 (19 Dec. 2018), <https://www.capl原因.ch/2018/the-new-swiss-prospectus-regime> (accessed 30 Nov. 2020); C. Rehm & R. Bösch, *The New Swiss Prospectus Regime*, CapLaw-2019-51 (20 Dec. 2019), <https://www.capl原因.ch/2019/the-new-swiss-prospectus-regime-2> (accessed 30 Nov. 2020).

4 See ex-Arts 652a (shares) and 1156 (bonds) of Swiss Code of Obligations of 30 Mar. 1911 (SCO), CC 220; ex-Arts 5 (structured products), 75 (open-ended collective investment schemes) and 116 (investment company with fixed capital) of Swiss Federal Act on Collective Investment Schemes of 23 June 2006 (CISA), CC 951.31. See also Art. 27 of Listing Rules of SIX Swiss Exchange of 8 Nov. 2019 (LR-SIX); Art. 9 of Listing Rules of BX Swiss of 9 Nov. 2020 (LR-BX). From the literature, see R. Watter, *Prospekt(haft)pflicht heute und morgen*, 2 AJP 48 (1992); P. Schleiffer & C. Rehm, *Zum Prospekt nach Obligationenrecht: Vorgeschriebener minimaler Inhalt*, 12 ST 1021 (2005); F. Contratto, *Der vereinfachte Prospekt für strukturierte Produkte nach Art. 5 KAG – Pandorabüchse oder wirksame Anlegerschutzmassnahme?*, 1 GesKR 193 (2006); M. Eggen, *Die schweizerische Prospektpflicht für Effekten – eine rechtsvergleichende Untersuchung der bestehenden Rechtslage*, 82 SZW 203 (2010); P. Schleiffer & D. Fischer, *Prospektfreie Platzierungen*, in *Kapitalmarkttransaktionen* V 121 (T. U. Reutter & T. Werlen eds, Schulthess: Zurich 2010).

trading is sought, both for primary and secondary market transactions.⁵

Another remarkable novelty of the new rules and regulations consists of the explicit stipulation of exemptions and alleviations from the duty to publish a prospectus. These exemptions and alleviations were largely inspired by international standards, embodied in the Prospectus Directive (applicable at the time) and the Prospectus Regulation (applicable today) of the European Union.⁶ The Prospectus Regulation namely provides for exemptions by type of security, for a public offer, by type of offering and for admission to trading.⁷ FinSA and FinSO are based on a very similar system of prospectus exemptions. In addition, both the Prospectus Regulation and FinSA and FinSO provide for certain alleviations.

Although the new Swiss prospectus regime is closely based on European prospectus law, there are still numerous deviations. This applies to individual exemptions, but also to the approach to alleviations. The Prospectus Regulation provides for a simplified disclosure regime for secondary market transactions and a proportionate disclosure system.⁸ The approach under FinSA and FinSO is slightly different.

In this article, I analyse and discuss the scope of application, exemptions and alleviations from the duty to publish a prospectus under the new rules and regulations in Switzerland. Using a functional and comparative approach, I focus on differences between European and Swiss law in this regard and further examine the new rules and regulations applicable to Swiss public offers for acquisition of securities and admission of securities to trading on a Swiss trading venue in light of European compatibility.⁹

2. SCOPE OF APPLICATION OF DUTY TO PUBLISH A PROSPECTUS

2.1. Material Scope of Application

2.1.1. Public Offer for Acquisition of Securities

According to Article 35 (1) FinSA, any person who makes a public offer for the acquisition of securities must publish a prospectus.¹⁰ But the concept of public offer is not clearly delimited in every respect. This naturally gives rise to various questions of interpretation. The same applies to the notion of securities.

An offer is defined in Article 3 (g) FinSA as any invitation to acquire a financial instrument that contains sufficient information on the terms of the offer and the financial instrument itself.¹¹ Financial instruments are defined in Article 3 (a) FinSA as equity securities, debt instruments, units in collective investment schemes, structured products, derivatives, certain deposits and bonds. Article 3 (1) FinSO also clarifies that claims arising from an account or custody agreement for payment or physical delivery of foreign currencies, fixed-term deposits or precious metals are not deemed to be financial instruments. In addition, Article 3 (5) FinSO specifies that an offer exists, if a communication of any kind is made, which (1) contains sufficient information on the terms of the offer and the financial instrument and (2) is customarily intended to draw attention to a certain financial instrument and to sell it. More specifically, the activities described in Article 3 (6) FinSO are not deemed to be an offer. These activities include (1) the making available of information at the request or initiative of the client, which information was not preceded by advertising relating to the concrete financial instrument by the offeror or its agent, (2) the mentioning by name of financial instruments

5 See Art. 35 FinSA; Art. 43 FinSO. From the literature, see C. Rehm & T. Werlen, *Paradigmenwechsel in der Primärkapitalmarktregulierung*, in *Kapitalmarkttransaktionen IX* 55 (T. U. Reutter & T. Werlen eds, Schulthess: Zurich 2014); T. Spillmann & R. Meyer, *FIDLEG – Prospektregelung*, in *Kapitalmarkttransaktionen X* 7 (T. U. Reutter & T. Werlen eds, Schulthess: Zurich 2016); R. Bösch, *Das neue Schweizer Prospektrecht gemäss E-FIDLEG – eine Bestandsaufnahme und erste Würdigung*, 136 ZSR 81 (2016); R. Bösch, *Neues Prospektrecht gemäss E-FIDLEG: Schnittstellen – Gereimtes und Ungereimtes – Verpasste Chancen*, in *Aktuelle Herausforderungen des Gesellschafts- und Finanzmarktrechts* 495 (R. H. Weber et al. eds, Schulthess: Zurich 2017); R. Bösch, *Das FIDLEG-Prospektrecht ante portas – Guter Anlegerschutz?*, 90 SZW 451 (2018); P. Schleiffer & P. Schärli, *Ausnahmen von der Prospektpflicht unter dem künftigen Finanzdienstleistungsgesetz*, 13 GesKR 1 (2018); T. Spillmann & A. Giger, *Ein modernes Prospektrecht für die Schweiz: Prospektpflicht, Prospektinhalt und Prospektprüfung gemäss dem neuen Finanzdienstleistungsgesetz*, 14 GesKR 182 (2019); Y. Mauchle, *Pflicht zur Erstellung eines Prospekts und Ausnahmen*, in *Neue Finanzmarktarchitektur – Das Wichtigste aus FIDLEG und FINIG* 99 (Baker McKenzie Zurich ed., Stämpfli: Berne 2020); M. Courvoisier, *Inhaltliche Anforderungen an den Prospekt und Erleichterungen*, in *Neue Finanzmarktarchitektur – Das Wichtigste aus FIDLEG und FINIG* 115 (Baker McKenzie Zurich ed., Stämpfli: Berne 2020); M. Courvoisier, *Prospektpflicht nach FIDLEG*, 92 SZW 307 (2020). See also V. Jentsch, *Exemptions and Alleviations from the Duty to Publish a Prospectus Under FinSA and FinSO – A Practical Perspective*, CapLaw (forthcoming).

6 Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, OJ L 168/12 (30 June 2017); Directive 2003/71/EC of the European Parliament and of the Council of 4 Nov. 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, OJ L 345/64 (31 Dec. 2003); Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities, OJ L 184/1 (6 July 2001).

7 See Arts 1 (2) (type of security), 1 (3) (public offer), 1 (4) (type of offering) and 1 (5) (admission to trading) of Prospectus Regulation. See also Art. 3 (2) of Prospectus Regulation.

8 See Arts 14 (simplified disclosure regime) and 15 (proportionate disclosure regime) of Prospectus Regulation.

9 On European compatibility of Swiss law in general, see M. P. Wyss, *Europakompatibilität und Gesetzgebungsverfahren im Bund*, 17 AJP 717 (2007); M. Oesch, *Die Europäisierung des schweizerischen Rechts*, in *Die Europakompatibilität des schweizerischen Wirtschaftsrechts: Konvergenz und Divergenz* 13 (T. Cottier ed., Helbing Lichtenhahn: Basel 2012). On European compatibility of Swiss financial market law in particular, see R. H. Weber & R. Sethe, *Äquivalenz als Regelungskriterium im Finanzmarktrecht*, 110 SJZ 569 (2014); R. Sethe, *Das Drittstaatenregime von MiFIR und MiFID II*, 86 SZW 615 (2014); T. Jutzi, *Der Einfluss des EU-Rechts auf das schweizerische Recht der kollektiven Kapitalanlagen*, 25 AJP 1 (2015); F. Contratto, *Sanktionen: Neue Gretchenfrage im Ringen um den Marktzugang in der EU?*, 90 SZW 653 (2018); S. Emmenegger & A. Bigler, *Fortress Europe: Die Äquivalenzverfahren der EU im Bereich der Finanzdienstleistungen*, 91 SZW 155 (2019).

10 From Swiss literature, see Spillmann & Meyer, *supra* n. 5, at 12 et seq.; Bösch, *supra*, at 88; Spillmann & Giger, *supra*, at 184 et seq.; Courvoisier, *supra*, at 308 et seq. For the European equivalent, see Art. 3 (1) of Prospectus Regulation. From a European perspective, see also Art. 1 (1) of Prospectus Regulation.

11 From Swiss literature, see Schleiffer & Schärli, *supra* n. 5, at 2 et seq.; Spillmann & Giger, *supra*, at 185 et seq.; Courvoisier, *supra*, at 308 et seq.

without or in connection with factual, general information, (3) the mere making available of factual information and (4) the preparation and making available of legally or contractually required information and documents on financial instruments to existing clients or financial intermediaries. Due to these detailed provisions in the implementing legislation, the concept of offer under the new rules and regulations in Switzerland should be determined independently of the very broad concept of offer under European prospectus law.

A public offer is defined in Article 3 (h) FinSA as an offer made to the public.¹² Article 3 (7) FinSO specifies that the offer is deemed to be aimed at the public, if it is aimed at an unlimited number of persons. From a practical perspective, it is surprising that the new rules and regulations do not specify more precisely, when and under which conditions an offer qualifies as public. It would have been worthwhile to create more legal certainty in this respect, although a flexible solution might have its advantages as well. Against this backdrop, the question was raised in Swiss literature, whether the term public has an independent meaning or not.¹³ All together, it still seems to be the prevailing opinion, however, that the notion of public offer is based on qualitative rather than quantitative criteria. In addition, scholars and practitioners in both Europe and Switzerland raised the question, whether the concept of non-public offer has meanwhile been abolished, as the new notion of public offer has become extremely broad in a European and in the Swiss context.¹⁴ This is certainly not the case, although such concept might have lost practical significance due to the introduced set of explicit exemptions and alleviations.

Securities are defined in Article 3 (b) FinSA as standardized certificated and uncertificated securities, derivatives and intermediated securities, which are suitable for mass trading.¹⁵ Defining an apple as an apple, this is certainly not the most sophisticated definition I have ever seen.

2.1.2. Admission of Securities to Trading on Trading Venue

Pursuant to Article 35 (1) FinSA, any person who seeks the admission of securities to trading on a trading venue must publish a prospectus.¹⁶ This concept is certainly less problematic. Both the notion of trading venue and admission of securities to trading are

governed by the Swiss Financial Market Infrastructure Act (FMIA) and the Swiss Financial Market Infrastructure Ordinance (FMIO).¹⁷

A trading venue, as defined in Article 26 (a) FMIA, is either a stock exchange or a multilateral trading facility. Beyond that, Article 26 (b) FMIA also defines stock exchange and Article 26 (c) FMIA defines multilateral trading facility. Article 35 FMIA and Article 33 FMIO require the stock exchange to issue regulations on the admission of securities to trading, in particular for the listing of securities. Similarly, Article 36 FMIA and Article 34 FMIO require the multilateral trading facility to issue regulations on the admission of securities to trading. It should be noted, however, that the duty to publish a prospectus is governed exclusively by the relevant provisions under FinSA and FinSO.¹⁸

2.2. Personal Scope of Application

The personal scope of the duty to publish a prospectus pursuant to Article 35 (1) FinSA, which simply speaks of any person, is very broad. In case of primary market transactions, the offeror or issuer is clearly covered. In case of secondary market transactions, selling blockholders are also covered. In practice, however, such prospectuses will probably only rarely exist.

The main reason for that is a somewhat unusual provision in the new Swiss prospectus law. According to Article 35 (2) FinSA, the issuer of securities (that is, the company) is under no duty to cooperate with the preparation of the prospectus, if it does not participate in a public offer made by a third party, typically a selling blockholder. The idea behind this provision was to limit company's liability, but it would have been better to address this issue in the context of prospectus liability, not in the present context.¹⁹

In most cases, this provision will probably cause the blockholder to choose a different transaction structure, not involving a prospectus, if no exemption or alleviation is available. The reason for such preference lies in the difficulties associated with the preparation of a prospectus by outside third parties, who cannot obtain necessary information from the company. But all this is less problematic in a case, where a blockholder is closely associated with the company and the flow of information works well.

12 From Swiss literature, see Schleiffer & Schärli, *supra* n. 5, at 3 et seq.; Spillmann & Giger, *supra*, at 186 et seqq.; Courvoisier, *supra*, at 309 et seq. From a European perspective, see Art. 2 (d) of Prospectus Regulation.

13 See Schleiffer & Schärli, *supra* n. 5, at 3 et seq.; Spillmann & Giger, *supra*, at 186 et seqq.

14 For Europe, see A. Pietrancosta & A. Marraud des Grottes, *La notion de « placement privé » abolie par le règlement Prospectus du 14 juin 2017?*, 26 BJB 60 (2018); A. Pietrancosta & A. Marraud des Grottes, *Has the Notion of « Private Offerings » Been Abolished by the Prospectus Regulation of 14 June 2017?*, SSRN (1 Mar. 2018), <https://ssrn.com/abstract=3124225> (accessed 30 Nov. 2020). For Switzerland, see T. Spillmann & A. Giger, *Non-Public Offerings in Switzerland – An Endangered Species*, ILO (14 May 2019), <https://www.internationallawoffice.com/Newsletters/Banking-Financial-Services/Switzerland/Niederer-Kraft-Frey/Non-public-offerings-in-Switzerland-an-endangered-species> (accessed 30 Nov. 2020).

15 From Swiss literature, see Courvoisier, *supra*, at 310 et seq. From a European perspective, see Art. 2 (a) of Prospectus Regulation.

16 From Swiss literature, see Bösch, *supra*, at 89; Spillmann & Giger, *supra*, at 190 et seq.; Courvoisier, *supra*, at 311. For the European equivalent, see Art. 3 (3) of Prospectus Regulation. From a European perspective, see also Art. 1 (1) of Prospectus Regulation.

17 Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading of 19 June 2015, CC 958.1; Ordinance on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading of 25 Nov. 2015, CC 958.11.

18 See Arts 35 (2^{bis}) (stock exchange) and 36 (3) (multilateral trading facility) FMIA.

19 See Art. 69 FinSA. For the European equivalent, see Art. 11 of Prospectus Regulation.

2.3. Geographical Scope of Application

The geographical scope of the duty to publish a prospectus always requires a reference to Switzerland.²⁰ Accordingly, only a public offer for the acquisition of securities within Switzerland or the admission of securities to trading at a Switzerland-based trading venue is covered by the new rules and regulations.

A public offer outside Switzerland is not subject to the new rules and regulations, even if the offeror is incorporated under Swiss law. Conversely, a public offer by a foreign offeror in Switzerland generally triggers the duty to publish a prospectus, unless the offer qualifies for a specific exemption. Particular problems arise with public offers launched abroad but aimed at the Swiss market.²¹

The wording of Article 35 (1) FinSA refers explicitly to Switzerland with regard to public offers, but not with regard to trading venues. The *ratio legis* clearly indicates, however, that only trading venues in Switzerland are covered, not foreign ones.

2.4. Temporal Scope of Application

The new Swiss prospectus regime was phased in step-by-step, starting on 1 January 2020.²² While certain elements of the new regime applied immediately, others applied only after a transition period expiring no earlier than 1 October 2020. The relevant transitional provision is Article 109 FinSO.

As mentioned above, the temporal scope of the duty to publish a prospectus became effective on 1 December 2020, after a six-month transition period following the licensing of the newly required reviewing body for prospectuses, which FINMA has done as of 1 June 2020.²³ The first-ever prospectus complying with the new Swiss prospectus regime is acclaimed to be the base prospectus of 18 June 2020, issued by Credit Suisse in order to launch its Swiss covered bond program.²⁴

In two specific cases, however, the new Swiss prospectus regime will only come into force from 1 January 2022. Pursuant to Article 95 (4) FinSA, this is the case for (1) securities for which a public offer was made or a request was made for admission to trading on a

trading venue before 1 January 2020 or (2) financial instruments that were offered to retail clients before 1 January 2020.

3. EXEMPTIONS FROM DUTY TO PUBLISH A PROSPECTUS

3.1. System of Prospectus Exemptions

3.1.1. Exemptions for Public Offer by Type of Offering

According to legislative materials,²⁵ exemptions by type of offering are to be understood conclusively. Consequently, a total of six exemptions can be distinguished.²⁶ If the requirements of a private placement exemption are given, a public offer can be made without publishing a prospectus. Pursuant to relevant legislative materials,²⁷ all these exemptions are justified from the perspective of investor protection and for reasons of proportionality:

- Article 36 (1) (a) FinSA applies to public offers that are exclusively addressed at investors classified as professional clients within the meaning of Article 4 (3) FinSA.²⁸ From a practical perspective, this exemption is of particularly high relevance.
- Article 36 (1) (b) FinSA relates to public offers that are addressed at fewer than 500 investors.²⁹ Other than in Europe, it is arguably not possible to combine the 500 exemption with the exemption for professional clients.³⁰ First, Swiss law does not provide for this option. Second, the threshold of 500 is much higher than 150. Apart from that, the 500 exemption is apparently not very practical, if the offering is handled by a consortium of investment banks as such banks hardly ever let each other look into their books.
- Article 36 (1) (c) FinSA refers to public offers that are addressed at investors acquiring securities to the value of at least CHF 100,000.³¹ Assuming that wealthy investors are more sophisticated and thus need no protection, this exemption is somewhat similar to, but still different from, the professional clients exemption mentioned above.
- Article 36 (1) (d) FinSA is available for public offers with a minimum denomination per unit of CHF 100,000.³² This

20 From Swiss literature, see Schleiffer & Schärli, *supra* n. 5, at 4; Spillmann & Giger, *supra*, at 190; Courvoisier, *supra*, at 310. For the European equivalent, see Arts 3 (1) (public offer) and 3 (3) (admission to trading) of Prospectus Regulation. From a European perspective, see also Art. 1 (1) of Prospectus Regulation.

21 See Spillmann & Giger, *supra*, at 190; Courvoisier, *supra*, at 310.

22 From a European perspective, see Art. 49 of Prospectus Regulation.

23 See <https://www.finma.ch/en/news/2020/05/20200528-mm-prospektpruefstellen> (accessed 30 Nov. 2020).

24 For further details, see https://www.credit-suisse.com/about-us/de/investor-relations/anleiheninhaber/covered-bonds/swiss-covered-bond-programme.html?t=604_0.3438894781103021 (accessed 30 Nov. 2020).

25 See Message of Swiss Federal Council of 4 Nov. 2015, FG 2015, at 8971.

26 On exemptions for public offer by type of offering, see Jentsch, *supra* n. 5. From the literature, see Rehm & Werlen, *supra* n. 5, at 77 et seq.; Spillmann & Meyer, *supra* n. 5, at 16 et seq.; Bösch, *supra*, at 89 et seq.; Schleiffer & Schärli, *supra* n. 5, at 4 et seq.; Spillmann & Giger, *supra*, at 191 et seq.

27 See Message of Swiss Federal Council of 4 Nov. 2015, FG 2015, at 8971 (public offers in general), 8972 (financial service providers).

28 From Swiss literature, see Mauchle, *supra* n. 5, at 103; Courvoisier, *supra*, at 311 et seq. For the European equivalent, see Art. 1 (4) (a) of Prospectus Regulation.

29 From Swiss literature, see Mauchle, *supra* n. 5, at 104 et seq.; Courvoisier, *supra*, at 312. For the European quasi-equivalent, see Art. 1 (4) (b) of Prospectus Regulation (150 natural or legal persons per Member State, other than qualified investors).

30 Same: Courvoisier, *supra*, at 312. Different: Schleiffer & Schärli, *supra* n. 5, at 7; Spillmann & Giger, *supra*, at 194.

31 From Swiss literature, see Mauchle, *supra* n. 5, at 105; Courvoisier, *supra*, at 312 et seq. For the European equivalent, see Art. 1 (4) (d) of Prospectus Regulation.

32 From Swiss literature, see Mauchle, *supra* n. 5, at 105 et seq.; Courvoisier, *supra*, at 313. For the European equivalent, see Art. 1 (4) (c) of Prospectus Regulation.

exemption is particularly important for bonds and other debt instruments.

- Article 36 (1) (e) FinSA covers public offers not exceeding a total value of CHF 8 million over a twelve-month period.³³ Due to these thresholds, it can be expected that mainly small and medium-sized enterprises or start-up companies will claim this exemption.
- An additional exemption, which is applicable to financial service providers only, is enacted in Article 36 (4) FinSA.³⁴ It is restricted to securities offered publicly at a later stage and requires (a) existence of a valid prospectus and (b) consent for use of the issuer or persons, who have assumed responsibility for the prospectus, within the meaning of Article 45 FinSO.

Article 36 (5) FinSA contains a delegation clause, which is unique in Swiss legislation to date. According to this clause, the Swiss Federal Council may adjust the number of investors and the amounts under letters (b) to (e) of Article 36 (1) FinSA, thereby taking account of recognized international standards and legal developments abroad. These rather tight restrictions reasonably limit delegation power.

3.1.2. Exemptions for Public Offer by Type of Security

According to legislative materials,³⁵ exemptions by type of security can be justified by the fact that investor protection in the form of a prospectus is not necessary in all these cases, since investors are sufficiently protected or at least informed about these securities in another comparable way. This list of exemptions is relatively long and at first glance perhaps somewhat opaque.³⁶

- First of all, Article 37 (1) FinSA applies to equity securities (a) issued outside the scope of a capital increase in exchange for previously issued equity securities of the same class,³⁷ (b) issued or delivered on the conversion or exchange of financial instruments³⁸ of the same issuer or corporate group or (c) issued or delivered following exercise of a right linked to financial instruments³⁹ of the same issuer or corporate group. With a view to practical relevance, convertible or exchangeable bonds

and similar instruments are among the most likely candidates claiming this exemption.

- Article 37 (1) FinSA also applies to securities (d) offered for exchange in connection with a takeover⁴⁰ or (e) offered or allocated in connection with a merger, division, conversion or transfer of assets,⁴¹ provided that information equivalent in terms of content to a prospectus is available. With regard to the equivalence requirement, which is defined in Article 46 (1) FinSO, it is interesting to note that pursuant to Article 46 (3) FinSO, information in a prospectus for public exchange offers is deemed to be equivalent under these rules and regulations, but this assumption does not exist for the documentation relating to mergers and other corporate restructurings.
- Article 37 (1) (f) FinSA is applicable to equity securities distributed as dividends to holders of equity securities of the same class,⁴² provided that there is information on the number and type of equity securities and on reasons for and details of the offer. For such dividends, in cases where there is no election by shareholders between dividend in kind and cash dividend, the exemption does not have to be relied on in the first place because there is no (public) offer at all.
- Without further requirements, Article 37 (1) (g) FinSA relates to securities offered or allocated to current or former members of the board of directors or management board or to employees.⁴³ The logic behind this exemption is that there are other means of protection vis-à-vis employers that do not warrant another protection by way of disclosure.
- With a view to the type of issuer, Article 37 (1) (h) FinSA covers securities issued by or with an unlimited and irrevocable guarantee from the Confederation or cantons, an international or supranational public entity, the Swiss National Bank or foreign central banks.⁴⁴ It is unfortunate that municipal public entities (in particular large cities) were not included in the list; this should be amended, even though investors are often not so well informed about municipalities.
- Due to a lack of significant threat to investor protection, Article 37 (1) (i) FinSA refers to securities issued by non-profit institutions for raising funds for non-commercial purposes.⁴⁵

33 From Swiss literature, see Mauchle, *supra* n. 5, at 106; Courvoisier, *supra*, at 313 et seq. For the European quasi-equivalent, see Art. 1 (3) of Prospectus Regulation (EUR 1 million).

34 From Swiss literature, see Mauchle, *supra* n. 5, at 106 et seq.; Courvoisier, *supra*, at 314. For the European equivalent, see Art. 5 (1) of Prospectus Regulation.

35 See Message of Swiss Federal Council of 4 Nov. 2015, FG 2015, at 8972 et seq.

36 On exemptions for public offer by type of security, see Jentsch, *supra* n. 5. From the literature, see Rehm & Werlen, *supra* n. 5, at 78 et seq.; Spillmann & Meyer, *supra* n. 5, at 17 et seq.; Schleiffer & Schärli, *supra* n. 5, at 5 et seq.; Spillmann & Giger, *supra*, 192 et seq.

37 From Swiss literature, see Mauchle, *supra* n. 5, at 107 et seq.; Courvoisier, *supra*, at 314 et seq. For the European equivalent, see Art. 1 (4) (e) of Prospectus Regulation.

38 From Swiss literature, see Mauchle, *supra* n. 5, at 108; Courvoisier, *supra*, at 315.

39 *Ibid.*

40 From Swiss literature, see Mauchle, *supra* n. 5, at 109; Courvoisier, *supra*, at 316. For the European equivalent, see Art. 1 (4) (f) of Prospectus Regulation.

41 From Swiss literature, see Mauchle, *supra* n. 5, at 110; Courvoisier, *supra*, at 316 et seq. For the European equivalent, see Art. 1 (4) (g) of Prospectus Regulation.

42 From Swiss literature, see Mauchle, *supra* n. 5, at 110; Courvoisier, *supra*, at 317 et seq. For the European equivalent, see Art. 1 (4) (h) of Prospectus Regulation.

43 From Swiss literature, see Mauchle, *supra* n. 5, at 111; Courvoisier, *supra*, at 318. For the European equivalent, see Art. 1 (4) (i) of Prospectus Regulation.

44 From Swiss literature, see Courvoisier, *supra*, at 318. For the European equivalent, see Arts 1 (2) (b), 1 (2) (c) and 1 (2) (d) of Prospectus Regulation.

45 From Swiss literature, see Courvoisier, *supra*, at 318. For the European equivalent, see Art. 1 (2) (e) of Prospectus Regulation.

- Finally, Article 37 (1) FinSA is available for (j) medium-term notes, (k) money market instruments and (l) derivatives not offered in the form of an issue.⁴⁶ These exemptions are convincingly formulated and make sense.

Article 37 (2) FinSA contains a delegation clause, which is more comprehensive than the one discussed above. Pursuant to this clause, the Swiss Federal Council may provide for additional exemptions from the duty to publish a prospectus for further types of publicly issued securities, again taking account of recognized international standards and legal developments abroad. This clause is certainly not unproblematic, as it considerably weakens the rule of law. After all, it allows a rather fast change of the regime in FinSA as compared to a change of FinSO itself.

3.1.3. Exemptions for Admission to Trading

Exemptions for admission to trading are mostly adapted to the corresponding European rules and regulations.⁴⁷ However, they take into account certain specialties of the Swiss capital market. This includes in particular exemptions by type of security, since only those are controllable by a trading venue:

- Article 38 (1) (a) FinSA covers equity securities that over a period of twelve months account for less than 20% of the number of equity securities of the same category already admitted to trading on the same trading venue.⁴⁸ Compared to the previously applicable standard in the Listing Rules of SIX Swiss Exchange, this exemption represents a significant expansion in size. However, the exemption does no longer apply to increases of debt instruments.
- Article 38 (1) (b) FinSA applies to equity securities issued upon conversion or exchange of financial instruments or following the exercise of rights linked to financial instruments,⁴⁹ provided that those equity securities are equity securities of the same category as those already admitted to trading. This is the case, if essential characteristics of equity securities are basically identical.
- Article 38 (1) (c) FinSA relates to securities admitted to trading on a foreign trading venue,⁵⁰ provided that such venue's regulation, supervision and transparency are acknowledged as being appropriate by the domestic trading venue or transparency for investors is ensured by other means. The concept of

recognized foreign trading venue is specified in Article 48 FinSO. Similarly, Article 47 FinSO relates to securities admitted to trading on another Swiss trading venue.⁵¹

- Article 38 (1) (d) FinSA refers to securities for which admission is sought for a trading segment open exclusively to professional clients,⁵² provided that such investors are trading for their own account or for the account of other professional clients. This exemption is also legitimate – yet, no such segment exists today.

Article 38 (2) FinSA further provides that exemptions from the duty to publish a prospectus by type of offering and by type of security apply by analogy to admission to trading. Article 49 FinSO specifies, where and to what extent this is the case.⁵³ However, looking at the wording of Article 49 FinSO, it should not be assumed that this provision is exhaustive because, that is, the minimum denomination exemption could also be applicable in this respect.

3.2. Equal Treatment of Investors

Article 39 FinSA provides equal treatment with regard to information.⁵⁴ Pursuant to this provision, which applies to information beyond the scope and in the absence of a duty to publish a prospectus, offerors or issuers shall treat investors alike, when sending them essential information on a public offer. As briefly discussed here, this provision gives rise to many conceptual issues and interpretative questions.

On a conceptual level, it is important to note that this provision does in fact not add anything new, as the equal treatment of investors follows already from the (unwritten) general principle of capital market law on equal treatment of market participants in general and investors in particular. Just like this general principle of law, Article 39 FinSA requires no absolute equality, but only relative equality (no selective disclosure). Under certain circumstances, a differentiated treatment of various investors can be justified. It is required, however, that such treatment is based on objective reasons and proportionate. An objective reason may be given, if such action lies in the best interest of all investors or if investor protection is ensured by other means.

In addition, the scope of application of Article 39 FinSA is unclear. With regard to the personal scope of application, reference is made to offerors and issuers, suggesting that there is a public offer or admission to trading. With respect to the material

⁴⁶ From Swiss literature, see Courvoisier, *supra*, at 319.

⁴⁷ On exemptions for admission to trading, see Jentsch, *supra* n. 5. From the literature, see Schleiffer & Schärli, *supra* n. 5, at 6 et seq.; Spillmann & Giger, *supra*, at 193 et seq.

⁴⁸ From Swiss literature, see Mauchle, *supra* n. 5, at 113 et seq.; Courvoisier, *supra*, at 319 et seq. For the European quasi-equivalent, see Art. 1 (5) (a) of Prospectus Regulation. From a European perspective, see also Art. 1 (5) (i) of Prospectus Regulation (non-equity securities issued by credit institution).

⁴⁹ For the European equivalent, see Arts 1 (5) (b) and 1 (5) (c) of Prospectus Regulation.

⁵⁰ From Swiss literature, see Mauchle, *supra* n. 5, at 114; Courvoisier, *supra*, at 320 et seq. For the European equivalent, see Art. 1 (5) (j) of Prospectus Regulation.

⁵¹ From Swiss literature, see Mauchle, *supra* n. 5, at 114; Courvoisier, *supra*, at 320 et seq. For the European equivalent, see Art. 1 (5) (d) of Prospectus Regulation.

⁵² From Swiss literature, see Courvoisier, *supra*, at 321. For the European equivalent, see Art. 5 (2) of Prospectus Regulation.

⁵³ See Schleiffer & Schärli, *supra* n. 5, at 7; Spillmann & Giger, *supra*, at 194; Mauchle, *supra* n. 5, at 112 et seq. From a European perspective, see Art. 1 (6) of Prospectus Regulation.

⁵⁴ On equal treatment of investors, see Jentsch, *supra* n. 5. For a rather critical assessment, see Rehm & Werlen, *supra* n. 5, at 79 et seq.; Spillmann & Meyer, *supra* n. 5, at 19 et seq.; Spillmann & Giger, *supra*, at 194.

scope of application, the wording clearly refers to essential information on a public offer. In addition, both the heading (information beyond the scope of the duty to publish a prospectus) and the introductory sentence (in the absence of a duty to publish a prospectus) indicate that there is no need for an offer at all.

Consequently, Article 39 FinSA not only applies to private placements, which benefit from an exemption from the duty to publish a prospectus, but also to other capital market transactions, in which no public offer was made and no admission to trading was sought in the first place. Therefore, this provision, which is designed to prevent unjustified disclosure, also includes the process of an accelerated bookbuilding and blocktrades in particular.

4. ALLEVIATIONS FROM DUTY TO PUBLISH A PROSPECTUS

4.1. General-Abstract Approach to Abridgments

4.1.1. *Alleviations by Type of Issuer*

The general-abstract alleviations by type of issuer, which provide for certain abridgments, are largely in line with European rules and regulations, while at the same time taking into account particularities of the Swiss market.⁵⁵

- Article 47 (1) FinSA applies to economically less important companies, in particular small and medium-sized enterprises.⁵⁶ FinSO annexes 1 to 5 all include alleviations for such companies, but the abridgments are practically inexistent.
- Article 47 (2) (a) FinSA relates to small caps, that is, issuers with low market capitalization on a trading venue.⁵⁷ FinSO annexes 1 to 5, however, do not contain any alleviations and abridgments for small caps.
- Article 47 (2) (c) FinSA refers to well-known seasoned issuers, that is, issuers that regularly offer securities publicly or whose securities are admitted to trading on a foreign trading venue, whose regulation, supervision and transparency are acknowledged as being appropriate by a domestic trading venue.⁵⁸ Article 57 (2) FinSO defines well-known seasoned issuers as issuers that (a) have been listed with equity securities on the Swiss benchmark index for at least two years and (b) have debt instruments outstanding with a total par value of at least CHF 1 billion. FinSO annexes 1 to 5 all include alleviations and several abridgments for well-known seasoned issuers.
- Moreover, Article 47 (2) FinSA may also be applicable to other issuers, for example, start-up or growth companies. Other than

the European rules and regulations, FinSO annexes 1 to 5 do not contain any alleviations and abridgments specifically for such companies.

In addition, Article 47 (3) (e) FinSA provides that alleviations by type of issuer shall be granted uniformly and with respect to business activities and size of issuers. At least to some extent, this rule enables the consideration of particularities of start-up or growth companies.

4.1.2. *Alleviations by Type of Offering*

The general-abstract alleviations by type of offering, which also provide for certain abridgments, are perfectly congruent with the European rules and regulations and with the previously applicable Listing Rules of SIX Swiss Exchange.⁵⁹

- Article 47 (2) (b) FinSA covers and FinSO annexes 1, 4 and 5 include alleviations by type of offering.⁶⁰ According to those schemes, some abridgments are available for issues of subscription rights in particular, but not for rights issues in general.
- In my opinion, however, Article 47 (2) (b) FinSA also covers issues of advance subscription rights. Therefore, similar abridgments should be included in FinSO annex 2.

In addition, Article 47 (3) (b) FinSA provides that alleviations by type of offering shall be granted uniformly and with respect to issue volume. This makes perfect sense, as existing investors are less affected by smaller offers.

4.1.3. *Alleviations for Other Reasons*

Providing for further abridgments, the general-abstract alleviations for other reasons include in particular alleviations by type of transaction, but also alleviations by type of security, for the market and for investors.⁶¹

- Article 47 (2) FinSA implicitly allows and FinSO annexes 1 to 5 include alleviations by type of transaction. According to these regulations, a few abridgments are available for a public offer without admission to trading and for the admission to trading without public offer.⁶²
- Article 47 (2) FinSA implicitly permits further alleviations, for example, by type of security, for the market and for investors. However, FinSO annexes 1 to 5 do not contain any alleviations and abridgments of this kind, at least not in the current version.

After all, Article 47 (3) FinSA provides that alleviations for other reasons shall be granted uniformly and in particular with respect

55 On alleviations by type of issuer, see Jentsch, *supra* n. 5.

56 From Swiss literature, see Courvoisier, *supra*, at 125 et seq. For the European quasi-equivalent, see Art. 15 (1) (a) of Prospectus Regulation.

57 From Swiss literature, see Courvoisier, *supra*, at 126. For the European quasi-equivalent, see Arts 15 (1) (b) and 15 (1) (c) of Prospectus Regulation.

58 From Swiss literature, see Courvoisier, *supra*, at 126. For the European quasi-equivalent, see Art. 14 (1) of Prospectus Regulation.

59 On alleviations by type of offering, see Jentsch, *supra* n. 5.

60 From Swiss literature, see Courvoisier, *supra*, at 126.

61 On alleviations for other reasons, see Jentsch, *supra* n. 5.

62 From Swiss literature, see Courvoisier, *supra*, at 125.

to (a) type of securities issued, (c) market environment and (d) investors' specific requirements for transparent information. In this respect, I am convinced that legal scholarship and capital market practice will point the way forward in the coming months and years.

4.2. Individual-Concrete Approach to Abridgments

Besides the general-abstract approach discussed above, another approach exists.⁶³ Under the individual-concrete approach, the reviewing body is in charge of granting abridgments, that is, by deciding whether and to what extent certain information need not be included in the prospectus on a case-by-case basis:

- Article 41 (1) (a) FinSA applies to disclosure seriously detrimental to offerors or issuers.⁶⁴ Besides disclosure being seriously detrimental, this alleviation requires that an omission would not mislead investors with regard to facts and circumstances essential to an informed assessment of quality of issuer and characteristics of securities. In practical terms, this alleviation may apply to a situation, where offerors or issuers are in the process of planning future transactions.
- Article 41 (1) (b) FinSA relates to information of minor importance.⁶⁵ Under this alleviation, information is only of minor importance, if it has no bearing on the assessment of business situation and main prospects, risks and litigation of the issuer or guarantor and security provider. In practice, this alleviation may be relevant for changes of notes in financial statements.
- Article 41 (1) (c) FinSA refers to securities traded on another trading venue. This alleviation covers securities traded on a trading venue, provided that issuer's periodic reporting over the last three years complied with applicable financial reporting requirements. In my understanding, this alleviation only applies to public offers, as corresponding exemptions already exist with regard to admission to trading, notably in Article 38 (1) (c) FinSA and Article 47 FinSO.

Pursuant to Article 41 (2) FinSA, the reviewing body may, to a limited degree, grant further alleviations,⁶⁶ provided that interests of

investors remain protected. Article 52 (1) FinSO clarifies that it may depart from requirements in accordance with FinSO annexes 1 to 5. Article 52 (2) FinSO specifies that it may grant further alleviations dependent on conditions such as incorporation of further or additional details. For example, where collateralized securities are issued, information on the issuer or guarantor is less important than information on the collateral.

5. EUROPEAN COMPATIBILITY OF NEW RULES AND REGULATIONS

Using a functional and comparative approach, this article focuses on differences between European and Swiss law regarding the duty to publish a prospectus. More specifically, it aims to further examine the new rules and regulations applicable to Swiss public offers for acquisition of securities and admission of securities to trading on a Swiss trading venue in light of European compatibility. Understanding that there is no need for equivalence of the prospectus regime,⁶⁷ the new rules and regulations implemented in Switzerland are nonetheless highly comparable with relevant rules and regulations in Europe.

The scope of application of the duty to publish a prospectus has been significantly expanded and extended under the new rules and regulations.⁶⁸ Under the old Swiss prospectus regime, a rather short offering prospectus (below international standards) was required for the offering of new shares, issuance of bonds and distribution of structured products or certain collective investment schemes, while a quite long listing prospectus (in line with international standards) was required for a listing on the stock exchange.⁶⁹ The new Swiss prospectus regime abolishes the distinction between offering and listing prospectus and introduces a product-neutral duty to publish a prospectus for primary and secondary market transactions.⁷⁰ Consequently, the new Swiss prospectus regime is in principle congruent with the European prospectus regime, even if there may be differences in the details (for example, non-public offers).⁷¹

The introduced exemptions from the duty to publish a prospectus under the new rules and regulations are largely in line with the Prospectus Regulation.⁷² In two specific cases, exemptions for a public offer by type of offering are more liberal in Switzerland than in Europe.⁷³ On the one hand, certain exemptions for a public offer

63 On individual-concrete approach to abridgments, see Jentsch, *supra* n. 5. From the literature, see Courvoisier, *supra*, at 125.

64 For the European equivalent, see Art. 18 (1) (b) of Prospectus Regulation.

65 For the European equivalent, see Art. 18 (1) (c) of Prospectus Regulation.

66 From Swiss literature, see Courvoisier, *supra*, at 125.

67 See Sethe, *supra* n. 9, at 617 (Prospectus Directive); Emmenegger & Bigler, *supra* n. 9, at 171 (Prospectus Regulation).

68 See s. 2 above. For the old regime, see Watter, *supra*, at 51 et seq.; Schleiffer & Rehm, *supra*, at 1022 et seq. (shares), 1024 et seq. (bonds); Contratto, *supra*, at 194; Eggen, *supra* n. 4, at 204 et seq. For the new regime, see Bösch, *supra*, at 88 et seq.; Spillmann & Giger, *supra*, at 183 et seq.; Mauchle, *supra* n. 5, at 99 et seq.; Courvoisier, *supra*, at 08 et seq.

69 See ex-Arts 652a (shares) and 1156 (bonds) SCO; ex-Arts 5 (structured products), 75 (open-ended collective investment schemes) and 116 (investment company with fixed capital) CISA. See also Art. 27 LR-SIX; Art. 9 LR-BX.

70 See Art. 35 FinSA; Art. 43 FinSO.

71 From a European perspective, see Arts 3 (1) (public offers) and 3 (3) (admission to trading) of Prospectus Regulation. On private offerings in Europe, see Pietrancosta & Marraud des Grottes, *supra*. On non-public offerings in Switzerland, see Spillmann & Giger, *supra*.

72 See s. 3 above. For the old regime, see Schleiffer & Fischer, *supra* n. 4, at 127 et seq. (public offer), 166 et seq. (admission to trading). For the new regime, see Schleiffer & Schärli, *supra* n. 5, at 2 et seq.

73 For Switzerland, see Arts 36 (1) (b) (500 investors) and 36 (1) (e) (CHF 8 million) FinSA. For Europe, see Arts 1 (4) (b) (150 natural or legal persons per Member State, other than qualified investors) and 1 (4) (e) (EUR 1 million) of Prospectus Regulation.

by type of security exist only under FinSA and FinSO, but not under the Prospectus Regulation.⁷⁴ On the other hand, certain exemptions for a public offer by type of security exist only under the Prospectus Regulation, but not under FinSA and FinSO.⁷⁵ When it comes to admission to trading, increases of debt instruments no longer benefit from an exemption in Switzerland, although this is still the case in Europe.⁷⁶ More generally, however, the new Swiss prospectus regime provides for equal treatment of investors beyond the scope and in the absence of a duty to publish a prospectus, a concept not familiar within the European prospectus regime.⁷⁷

The introduced alleviations from the duty to publish a prospectus under the new rules and regulations are also largely in line with the Prospectus Regulation.⁷⁸ Although definitions of economically less important companies such as small and medium-sized enterprises, small caps and well-known seasoned issuers are not identical, alleviations by type of issuer are still comparable under both rules and regulations.⁷⁹ While FinSA and FinSO

provide for certain alleviations by type of offering, the Prospectus Regulation does not.⁸⁰ Similarly, FinSA and FinSO provide for further alleviations for other reasons, but not the Prospectus Regulation.⁸¹ Finally, the Swiss reviewing body may grant similar alleviations as the European reviewing body, but there is a difference in one respect.⁸²

As a result, the new rules and regulations on the duty to publish a prospectus in Switzerland are compatible with the Prospectus Regulation. The introduced exemptions and alleviations represent no farewell to the information model in Swiss prospectus law,⁸³ notably because of the duty to treat investors equally. In addition, Swiss offerors and issuers may prepare a prospectus in accordance with European requirements and use it in the European Union and in Switzerland.⁸⁴ Although Europe does not require equivalence with regard to third states' prospectus regimes, it is still good to know that Swiss law is compatible with European law in this respect, especially in view of access to the European single market.

74 See Arts 37 (1) (b) (conversion or exchange of financial instruments), 37 (1) (c) (exercise of a right linked to financial instruments), 37 (1) (j) (medium-term notes), 37 (1) (k) (money market instruments) and 37 (1) (l) (derivatives not offered in the form of an issue) FinSA.

75 See Arts 1 (2) (a) (collective investment undertakings other than closed-end type), 1 (2) (f) (right to occupy apartment, other form of immovable property) and 1 (4) (j) (non-equity securities issued by credit institution) of Prospectus Regulation.

76 See Art. 1 (5) (i) of Prospectus Regulation (non-equity securities issued by credit institution).

77 See Art. 39 FinSA.

78 See s. 4 above. From the legislative materials, see Message of Swiss Federal Council of 4 Nov. 2015, FG 2015, 8979. See also Courvoisier, *supra*, at 125 et seq.

79 For Switzerland, see Arts 47 (1), 47 (2) (a) and 47 (2) (c) FinSA; Arts 57 (1) and 57 (2) FinSO. For Europe, see Arts 14 (1) and 15 (1) of Prospectus Regulation.

80 See Art. 47 (2) (b) FinSA; Art. 57 (1) FinSO.

81 See Art. 47 (2) FinSA; Art. 57 (1) FinSO.

82 For a Swiss particularity, see Art. 41 (1) (c) FinSA (securities traded on another trading venue). For a European particularity, see Art. 18 (1) (a) of Prospectus Regulation (disclosure contrary to public interest).

83 On the foundations of the information model in European company law, see S. Grundmann, *Information und ihre Grenzen im Europäischen und neuen englischen Gesellschaftsrecht*, in *Festschrift für Marcus Lutter zum 70. Geburtstag* 61 (U. H. Schneider et al. eds, Otto Schmidt: Cologne 2000); S. Grundmann, *Ausbau des Informationsmodells im Europäischen Gesellschaftsrecht*, 42 DStR 232 (2004).

84 See Art. 54 (2) FinSA; Art. 70 (3) FinSO. See also Emmenegger & Bigler, *supra* n. 9, at 171.