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Editors:
René Bösch
Thomas U. Reutter
Philippe A. Weber
Thomas Werlen




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# International Offerings of Equity Securities in Switzerland by non-Swiss Issuers—Swiss Prospectus Requirements

Reference: CapLaw-2009-54

This position paper addresses the requirements of Swiss law relating to the documentation of public offerings of shares by non-Swiss issuers in Switzerland. In particular, we discuss the question of to what extent a non-Swiss issuer of shares is required to observe the Swiss statutory requirements relating to the contents of an offering prospectus.

*By Credit Suisse / UBS AG / Bär & Karrer AG / Baker & McKenzie / Homburger AG / Lenz & Staehelin / Niederer Kraft & Frey AG / Vischer AG / Walder Wyss & Partner AG*

## 1) Scope

This position paper addresses the requirements of Swiss law relating to the documentation of public offerings of shares by non-Swiss issuers in Switzerland. In particular, we discuss the question of to what extent a non-Swiss issuer of shares is required to observe the Swiss statutory requirements relating to the contents of an offering prospectus (this position paper does not deal with the public offering of debt instruments, any derivatives or units in collective investment schemes. Under Swiss law, the offering of certain equity securities of issuers such as, for example, foreign companies whose purpose is collective capital investment could be characterized as an offering of units in collective investment schemes. Therefore, it is recommended to seek independent Swiss law advice in each individual transaction involving the offering of shares).

This position paper and the views expressed herein do not constitute legal advice in relation to individual transactions and may not be relied upon or used as a substitute for legal advice taken in the individual case.

For purposes of this position paper, we have assumed the following:

a) A non-Swiss company (the Issuer) makes a public offering of shares (the Offering) to its existing shareholders;

b) the Offering will be based on an offering prospectus that complies with the prospectus requirements applicable in the European Union or the United States of America; and

c) the existing shares of the Issuer are not listed on a Swiss stock exchange, in particular not on SIX Swiss Exchange, and no listing in Switzerland is sought with respect to the shares to be issued in connection with the Offering.

## 2) Legal Analysis

### a) Rules of Swiss Law on Securities Prospectuses

If an equity offering is made without a concurrent listing in Switzerland, the information documents disseminated in connection with the Offering are not subject to filing with or approval by any Swiss regulatory or self-regulatory authority: in Switzerland, unlike many other jurisdictions, shares can be offered to the public on the basis of a prospectus that has never been vetted by a local regulator.

Public offerings of new shares by Swiss companies are, however, subject to certain prospectus requirements set out in the Swiss Code of Obligations (CO) (article 652a CO). In particular, the prospectus must disclose the following:

- the contents of the issuer's entry in the commercial register;
- the amount and structure of the issuer's share capital;
- the most recent audited statutory (holding company only) and consolidated financial statements of the issuer. In addition, if the prospectus is published more than nine months after the end of the balance sheet date, unaudited statutory and consolidated interim financial statements must also be included;
- the issuer's dividend history for the past five years preceding the date of issuance of the new shares; and
- the issuer's resolution regarding the issuance of the new shares.

In relation to international offerings, *i.e.,* offerings of non-Swiss issuers, the Swiss prospectus requirements must be put into perspective in two respects: First, the prospectus requirements do not apply in cases of non-public offerings, *i.e.,* private placements. Second, the Swiss prospectus disclosure requirements have been designed for equity offerings by Swiss corporations (for example, the reference to the commercial register *(Handelsregister),* a public trade register for Swiss business associations, only makes sense for Swiss companies). This raises the question of whether the Swiss prospectus requirements are applicable also to non-Swiss issuers making an Offering in Switzerland.

No reported case decided whether a foreign issuer must comply with Swiss law prospectus requirements when issuing shares in Switzerland. Learned writing is divided:

- Some authors hold that the reference to Swiss prospectus liability provisions in the rules governing the conflict of laws do not extend their effect to a statutory provision in Swiss company law on prospectus requirements which was drafted solely for Swiss companies. Following this analysis, Swiss prospectus requirements would not apply at all to international share offerings of non-Swiss issuers. Two decisions of the Swiss Federal Tribunal regarding bond issues support this approach: they held that article 752 CO only applies to Swiss companies and not to foreign issuers. The Swiss Federal Tribunal, however, held that another provision regarding prospectus liability specifically addressing bond issues was applicable.

– Other authors highlight the risk that a Swiss court could apply Swiss prospectus requirements to non-Swiss issuers as well. Broadly, their reasoning is as follows:

  – Under Swiss law rules on the conflict of laws (article 156 of the Swiss Federal Act on Private International Law), an investor who has suffered damage in a public offering of bonds or shares may choose to base its claim on either Swiss law or on the law of the place of incorporation of the issuer.

  – If Swiss law applies, the relevant statutory rules sanction, among other things, a prospectus that has not been prepared in compliance with the Swiss statutory requirements.

  – Accordingly, if an issuer fails to observe the Swiss statutory requirements discussed above, it may be subject to the Swiss liability regime.

As noted, the question is not resolved by the courts.

### b) Consequences of Non-Compliance with Swiss Statutory Prospectus Requirements

Non-compliance with Swiss statutory prospectus requirements in an offering prospectus for a public equity offering in Switzerland is enforced under Swiss law through civil prospectus liability. However, a respective claim could be successful only if, *inter alia,* the plaintiff could establish causation. In other words, the plaintiff must show that the failure to provide certain information in the prospectus was an actual and adequate cause of the damage he has suffered. For example, if a prospectus does not record the dividend history of an issuer for the last five years, an investor may only successfully recover damages from the Issuer or anyone who participated in the Offering if he can prove:

– that he would not have bought the shares, or would have bought them at a different price, if he had known of the information in question; and

– that the failure to provide the information caused the damage in question.

If the failure to publish certain information does not constitute cause for the damage in question, there is no cause of action for prospectus liability.

### c) Impact of Swiss Prospectus Requirements on International Offerings

If a non-Swiss Issuer undertakes an Offering that is also directed to, or open to, the Swiss market, such issuer typically will have prepared a comprehensive information document under the laws of its place of incorporation or the laws of its place of listing. We understand that in the member states of the European Union and the United States of America, the requirements for the contents of a prospectus go beyond the statutory requirements of Swiss law discussed above and, consequently, that information relating to the Issuer and the Offering will generally be much more comprehensive than any investor could expect solely on the basis of Swiss statutory rules (the situation may be different if, pursuant to local laws no prospectus at all or just in a very brief disclosure document is prepared in relation to a public offering of new shares).

However, as a matter of practice certain information required to be disclosed under Swiss statutory law is often missing from an international prospectus. This is frequently the case in respect of:

- the five-year dividend history;
- contributions in kind; and
- the statutory (holding company only) financial statements.

As stated above, it is uncertain whether Swiss law requires a non-Swiss Issuer to disclose such information items in an offering prospectus. Moreover, even if one takes the view that Swiss law requires the disclosure of such information in case of an Offering by a non-Swiss Issuer, Swiss prospectus liability would only arise if (i) the relevant information was missing, (ii) the plaintiff could, *inter alia,* show that the failure to provide such information had an impact on his or her investment decision, and (iii) the plaintiff could show that the failure to provide the information was the actual and adequate cause of the damage suffered. This will, in our view, typically not be the case—even more so since we understand that under the applicable rules in the EEA and in the United States of America, the prospectus must contain all information allowing the investor to take an informed investment decision, so that any relevant information should in any event be directly or indirectly included in the prospectus.

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## The New Act on Book-Entry Securities

Reference: CapLaw-2009-55

On 1 January 2010 the Act on Book-Entry Securities (Book-Entry Securities Act, BESA) will enter into force. BESA substitutes the current regulation for securities held with intermediaries considered out-dated. By introducing the book-entry security as a new legal concept BESA provides for an up-to-date legal regime for indirectly held securities. In addition, with the entry into force of BESA new conflict-of-laws rules for securities held with intermediaries will be introduced.

This is the first of a series of articles covering BESA.

*By Renato Costantini*

### 1) Background

Under current law, securities may be issued either in certificated or in uncertificated form. Whereas ***certificated securities*** grant ownership rights (*i.e. in rem* rights) to their holders, ***uncertificated securities*** qualify as mere contractual rights against the respective securities issuer. Consequently, certificated securities are transferred by (1) handing over the respective certificates (plus, if not in bearer form, endorsement) or (2), in case of securities held with an intermediary, by any legal surrogate of such physical transfer provided by law. By contrast, uncertificated securities are transferred by way of assignment.

In case certificated securities are held through intermediaries (rather than directly) the securities owner's entitlement bases on a co-ownership interest in either the pool of fungible securities deposited with the central custodian (collective custody) or in a global certificate deposited with the central custodian (global certificate).

These legal concepts ***(collective custody, global certificate*** and ***uncertificated security),*** even though mainly developed for intermediate custody, do not fully accommodate the move from direct to indirect holding patterns. In particular, the construction of a co-ownership interest in certificated securities, be it based on collective custody or be it based on global certificates, has turned out to be a difficult and rather artificial approach. The same is true for indirectly held uncertificated securities which are transferred by way of assignment (rather than by book-entry transfer).

The importance of an up-to-date set of principles and rules governing interest in indirectly held securities has, thus, led to the introduction of an ***entirely new legal concept:*** the ***book-entry security.*** It is, however, important to note that the book-entry security as provided by BESA does not abolish the legal regime described above. Rather, a valid creation of a book-entry security even requires observance of the above custody principles. This is emphasized by the fact that with the entry into force of BESA (i) collective custody, (ii) global certificates and (iii) uncertificated securities will be put on an explicit statutory basis (articles 973a-c of the Code of Obligations as amended per 1 January 2010).

## 2) Key Principles and Provisions

### a) Creation and Extinction of Book-Entry Securities

Book-entry securities constitute fungible claims or membership rights against a securities issuer, credited to a securities account. They are ***created*** as follows: ***Certificated securities*** must (1) be deposited with an intermediary (as defined by law), be it in form of collective custody or global certificate, and additionally (2) be credited to (one or several) securities accounts. ***Uncertificated securities*** must (1) be registered with the main register of an intermediary (as defined by law) and additionally (2) be credited to (one or several) securities accounts. In particular, the following financial institutions qualify as ***intermediaries in the sense of BESA:*** Banks, securities dealers and fund managers regulated by Swiss law, the Swiss National Bank as well as comparable foreign financial intermediaries, provided that they maintain securities accounts in the course of their ordinary business.

The holder of book-entry securities may, at any time, require from its intermediary ***physical delivery*** of certificated securities corresponding to the book-entry securities credited to its securities account. In case the respective book-entry securities were created based on a global certificate or uncertificated securities (as opposed to collective custody of single certificates) physical delivery is, however, only possible to the extent permitted by the respective issuer's conditions. Instead of physical delivery of certificated securities as explicitly provided by law and to the extent respective book-entry securities were originally created based on uncertificated securities, legal doctrine also allows to have book-entry securities ***reconverted into uncertificated securities.*** In both cases (redelivery of certificated securities and reconversion into uncertificated securities) the securities accounts are debited respectively, whereby the corresponding book-entry securities ***extinguish.***

### b) Transfer of Title in Book-Entry Securities

The ***transfer*** of book-entry securities ***from one account holder to another*** requires (1) a transfer order of the disposing account holder to its intermediary and (2) the credit entry of the respective book-entry securities to the acquirer's account. The order may be cancelled until such point in time as agreed in the custody agreement or as set forth in the applicable regulations of the respective clearing and settlement system. In any event, the transfer order becomes, however, irrevocable upon the debit of the book-entry securities on the account of the disposing account holder.

This applies regardless of whether book-entry securities are ***transferred outright*** (*i.e.* full title transfer by, *e.g.,* way of straight sale or based on a repo or securities lending transaction) or whether they are ***given in security.*** In addition to this, a ***security interest in book-entry securities*** may also be granted ***by agreement*** between the account holder (security provider) and its intermediary, in that the intermediary irrevocably stipulates to execute orders received from the security taker without any further consent of the account holder.

### c) Rights Arising out of Book-Entry Securities

In order to ensure the global stability and safety of indirect security holding systems, it is generally believed that an investor should, in principle, only have a claim against its own intermediary, with no look-through to upper-tier intermediaries or the securities issuer. Consequently, book-entry securities as provided for by BESA do not confer rights on upper-tier intermediaries or the securities issuer ***(no upper-tier attachment).***

As a result of this, an account holder's interest in book-entry securities credited to an account with an intermediary ***cannot exceed a pro rata interest in what its intermediary actually holds.*** Therefore, BESA provides for protection of the account holder in case of the ***intermediary's bankruptcy.*** Thus, upon the opening of bankruptcy proceedings any of the following assets are immediately segregated from the bankruptcy estate and are, therefore, not available to the intermediary's ordinary creditors ***(insolvency immunity):*** (i) book-entry securities credited with the intermediary's upper-tier intermediary, (ii) certificated securities deposited with the intermediary, (iii) uncertificated securities registered with the intermediary's main register, as well as (iv) claims on delivery of book-entry securities against third parties. Subsequently, such segregated assets are either credited to a third party intermediary (designated by the account holder) or physically delivered to the account holder in form of certificated securities. In the event book-entry securities credited to the account holders exceed the assets segregated with the intermediary ***(shortfall),*** such loss is proportionally apportioned among the relevant account holders.

During the time securities are credited with an intermediary as book-entry securities, any disposal or collateralisation thereof is, in general, exclusively governed by BESA. Consequently, rights arising out of property or similar entitlements in certificated and / or uncertificated securities ***are considered 'suspended'*** until the extinction of the respective book-entry securities. It is, however, important to note that BESA does not explicitly address each and every aspect of the ***relationship between the book-entry securities and their underlyings*** (*i.e.* certificated and uncertificated securities). In particular, conversion from ***security interests in underlyings*** into ***security interests in book-entry securities*** upon creation of book-entry securities (and vice versa), may require further clarification.

### d) PRIMA, the New Conflict-of-Laws Principle

Under current law, the content and exercise of *in rem* rights to tangible property (such as certificated securities) is subject to the substantive law at the *situs* of the respective property. By contrast, uncertificated securities are subject to conflict-of-laws rules applicable to the assignment of claims. Accordingly, the assignment of a claim is, in general, subject to the law chosen by the parties to the assignment, or absent such choice, the law governing the claim. However, any such choice could not be asserted against the issuer of uncertificated securities without its consent. This conflict-of-laws regime ***does not reflect the reality*** of how securities are held, transferred and pledged in today's electronic securities holding systems.

Thus, new conflict-of-laws principles for securities held with an intermediary needed to be developed. Although different in specification, modern conflict-of-laws regimes for indirectly held securities generally base on the ***Place of the Relevant Intermediary Approach (PRIMA).*** Accordingly, the rules determining the substantive law applicable to securities held with an intermediary focus on the relationship between an account holder and its immediate—or relevant—intermediary. In line with this, the 2002 Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary (the ***Hague Securities Convention***) states that the applicable law governing all interests in securities held with an intermediary is, primarily, the law ***selected by the parties to the securities account agreement.*** In absence of a choice-of-law, the Hague Securities Convention provides for a cascade of fallback rules. This leads, in the first place, to the application of the ***law of the jurisdiction wherein the branch office,*** with which the account agreement has been entered into, is located and, ultimately, results in the application of the ***law of the jurisdiction wherein the relevant intermediary is incorporated or otherwise organised.*** The principle advantage of PRIMA is that it subjects all of an account holder's interests with respect to a portfolio of securities to the law of one single jurisdiction, even in case issuers, registers, certificates evidencing the underlying securities, or any upper-tier intermediaries are situated in different countries.

So far, the Hague Securities Convention has been signed by Switzerland and the US, but could not yet enter into force due to lack of a further signatory state. However, conflict-of-laws rules as set forth by the Hague Securities Convention ***will be applied in Swiss courts upon 1 January 2010,*** regardless of whether the Hague Securities Convention will have become effective at that point in time. This is because upon entry into force of BESA the content of the Hague Securities Convention will automatically become part of Swiss law (article 108c of the Act on Private International Law as amended per 1 January 2010).

### 3) Outlook

The BESA follows a pragmatic approach, based on real world needs. It ***enhances certainty and predictability as to the crucial legal issues*** that are of practical importance for ***holding, transfer*** and ***pledge of securities held with an intermediary.*** In line with similar developments in other jurisdictions, it is meant to provide proper legal certainty for transactions and entitlements, to reduce systemic risk and to respond to the legitimate needs and practices of the financial industry. But, as it also modifies existing Swiss securities law principles fundamentally, its implementation will have to be analyzed and followed carefully.

In particular, the ***need for adaptation of any existing contractual documentation*** related to securities held with an intermediary (including, but not limited to, general terms and conditions of future BESA intermediaries) as well as the ***relationship between the book-entry security and its underlyings*** mandate further analysis. For instance, the fact that BESA does not explicitly address all aspects in connection with the conversion from ordinary securities into book-entry securities, entails the question on what effects book-entry securities have on pre-existing security interests in the respective underlyings. The coming issues of CapLaw will focus on some of these debated topics under the new BESA.

*Renato Costantini (renato.costantini@nkf.ch)*

## Aquamit Succeeds With Tender Offer for Quadrant—Or Not

Reference: CapLaw-2009-56

Subject to the Federal Administrative Court's decision with regard to a qualified shareholder's appeal claiming the offer price of CHF 86 to be too low, Aquamit B.V. (Aquamit), a Dutch joint venture between Mitsubishi Plastics Inc. (Mitsubishi) and members of the target's board of directors, declares the friendly tender offer for Quadrant AG (Quadrant), a Swiss based public company involved in the manufacturing of polymer and thermoplastic materials, to be successful (see CapLaw-2009-47).

*By Eva R. Leuthold*

### 1) The Tender Offer in a Nut-Shell

Aquamit pre-announced its tender offer for Quadrant with an offer price of CHF 86 per Quadrant share on 4 May 2009. Aquamit, a joint venture vehicle solely incorporated for the purpose of launching the offer, is owned to 50% by Mitsubishi and to 50% by four members of the board of directors and founders of Quadrant (Founders). The Founders subscribed and paid for their Aquamit shares in kind by contributing Quadrant shares and call-options for Quadrant shares.

Only four days prior to the pre-announcement, the Founders sold part of their stake in Aquamit to Mitsubishi for CHF 114.50 per Quadrant share. Their call-options were valued according to the Black-Scholes formula with an underlying Quadrant share value of CHF 107. The sale was examined and deemed fair by Deloitte AG. One day prior to the pre-announcement, selected shareholders of Quadrant with substantial shareholdings received CHF 104.50 per Quadrant share sold. The board of directors of Quadrant and the board's independent committee, who had instructed PricewaterhouseCoopers AG as an independent auditor to issue a fairness opinion on the offer price, decided to support Aquamit's offer.

The qualified shareholder Sarasin Investmentfonds AG (Sarasin) challenged the Takeover Board's (TOB) decision on the offer's compliance with statutory takeover provisions on several grounds, mainly by alleging that the minimum price rule was not adhered to.

### 2) Violation of the Minimum Price Rule?

The minimum price rule of article 32 (4) Stock Exchange Act (SESTA) states that the offer price must be (i) at least as high as the stock exchange price and (ii) not lower than 25% of the highest price paid by the acquirer in the preceding twelve months (known as 'price of the prior acquisition'). The minimum price rule with its double threshold is further outlined in the FINMA Stock Exchange Ordinance (SESTO-FINMA): article 40 (2) SESTO-FINMA provides that the stock exchange price corresponds to the volume-weighted average price of all on-exchange transactions executed during the 60 trading days prior to the offer's publication or pre-announcement, as the case may be, and article 41 (4) SESTO-FINMA states that if the acquirer rendered other substantial services in connection with a prior acquisition (*e.g.,* granting assurances or material benefits), the price of the prior acquisition must be increased (or reduced) by the value of these services. It is continuous TOB practice to consider payments made by persons acting in concert with the acquirer as payments of the acquirer. Interestingly, under the Stock Exchange Ordinance of the former Federal Banking Commission the provision regarding 'other substantial services' was drafted optional ('can'), not compulsory ('must') as it is today.

While the first threshold did not raise any issues (CHF 86 corresponds to a premium of almost 60% when compared to the stock exchange price), Sarasin challenged the second threshold. Even though the 25% limit is—narrowly, but clearly—met (CHF 86 corresponds to a 24.9% discount when compared to CHF 114.50 as the highest price paid by Mitsubishi in the twelve preceding months), Sarasin claims that the highest price paid is indeed higher since Mitsubishi provided additional substantial services to the Founders in exchange for their Quadrant shares and call-options (*i.e.,* Mitsubishi arranged for very favourable financing of Aquamit and refinancing of Quadrant, granted purchase and sale options to the Founders, etc.).

Deloitte and TOB dealt with the question of how to value these other substantial services. The unanimous conclusion was that these services, to the extent that they even qualify as such, cannot be reasonably valued due to too many unknown factors in the 'joint venture equation'. FINMA confirmed and added that from an overall view, both Mitsubishi but also the Founders contribute to the joint venture. Since the services go both ways, seem balanced and are very difficult to assess, FINMA does not see the added-value of a third party evaluation and accordingly refrains from requiring one.

Sarasin also contested the Black-Scholes formula in general by arguing that this formula can never correctly reflect an option's value if the target is subject to a takeover. FINMA agrees, but states that absent a more precise formula, the TOB's current practice of accepting the Black-Scholes formula need not be changed, moreover, must not be changed unless absolute and clear exceptional circumstances require otherwise.

### 3) The Milestones of the Proceedings

Following the pre-announcement on 4 May 2009, the TOB assessed the offer and confirmed its compliance with Swiss takeover law with decision 410/01 of 29 May 2009. Sarasin was granted party status, however, not immediately as requested, but only as per the date of the prospectus' publication. With Sarasin objecting decision 410/01 on 9 June 2009, the TOB reassessed but fully confirmed its initial findings with decision 410/02 of 16 June 2009. Sarasin appealed the TOB's second decision to FINMA on 23 June 2009. After having heard all parties involved, FINMA rejected Sarasin's appeal on 8 July 2008. Sarasin now waits for the Federal Administrative Court to issue a final decision, pending which Aquamit has declared the offer to be successful. The extended offer period expired on 26 August 2009.

### 4) Conclusions and Outlook

It seems unlikely that the Federal Administrative Court's final decision will overrule the findings of TOB and FINMA. Valuations have their flaws and are only what they purport to be—valuations. The Swiss legislator's explicit intention (unique if compared to UK or EU regulations) to allow the acquirer to pay premiums to selected shareholders of up to 25% of the offer price is a further obstacle for Sarasin to win. It is of course somewhat frustrating for Sarasin, in particular in view of the new and more stringent wording of article 41 (4) SESTO-FINMA, to see that FINMA in fact acknowledges the existence of 'other substantial services' and also the imperfectness of the Black-Scholes formula, but refrains at the same time from taking corrective measures due to the inherent difficulties and / or lack of alternatives.

Sarasin also claimed that the Founders were committing insider transactions within the meaning of article 161 Penal Code. The TOB declared that such offenses would need to be dealt with in a separate proceeding, not the takeover proceeding. It remains open whether the TOB initiated such separate proceedings. It remains further open whether Sarasin's allegations could potentially backfire.

While the newly introduced objection and appeal rights of qualified shareholders definitely increase shareholder protection overall, the prolonged duration and uncertainty of the takeover proceedings is the flip side of the coin. Mitsubishi and Quadrant have engaged in strategic talks late last year, the parties and market participants will, however, only know after the Federal Administration Court's final decision whether the tender offer ist indeed successful, Quadrant no longer «Swiss» and listed.

*Eva R. Leuthold (eva.leuthold@nkf.ch)*

## Hybrid Instruments within the Insurance Regulatory Framework

Reference: CapLaw-2009-57

In light of the performance of various hybrid instruments throughout the credit crisis, certain rating agencies are considering recalibrating their equity credit criteria for hybrid instruments and introducing new hybrid notching methodology. Similarly, the current crisis may have an impact on the regulatory assessment of hybrid instruments issued in the insurance sector. Given that rating agency assessments usually involve an analysis of supervisory regulations and their application to the issuer, the regulatory and rating agency initiatives should be coordinated. Once issues of hybrid capital pick up again, the Swiss Financial Market Supervisory Authority FINMA and the leading rating agencies should have harmonized their methodologies for the equity treatment of hybrid instruments. In order to revive the global hybrid capital market, uniform definitions of equity criteria for hybrid instruments are essential. In the absence of a functioning hybrid capital market, efficient capital management to achieve optimized capital structures is undermined.

*By Hansjürg Appenzeller*

### 1) Hybrid Capital Market

The global hybrid capital market has grown significantly over the years until its development was suppressed by the current financial and credit crisis. The hybrid market has been hit hard by investors' risk aversion and loss concerns as well as by credit rating downgrades.

First issues of European subordinated bank and insurance debts this year, however, could be a sign of a more general reopening of the hybrid market as investors appear, against the background of regained risk appetite, prepared to step back into the riskier areas of funding.

Hybrid capital instruments combine debt and equity features. Issuers and investors worldwide have embraced hybrid capital instruments as an alternative capital markets opportunity. For issuers, hybrids are a flexible tool for managing their regulatory, rating and economic capital requirements. For investors, the hybrid asset class offers incremental investment yield opportunities.

### 2) Insurance Regulatory Framework

Insurance groups and companies use hybrid capital instruments to meet their regulatory solvency and capital adequacy requirements. These requirements are essential within the regulatory framework in which insurance companies operate.

Typically, the aim of insurance supervisory laws is to maintain efficient, fair, safe and stable insurance markets for the benefit and protection of policyholders. Capital adequacy and solvency regimes, which include regulatory capital requirements, are one of the most important elements in the supervision of insurance companies.

In conducting insurance activities, insurers face uncertainty both as underwriters of risk and as general business enterprises. An insurer's capital functions as a shock absorber should such risks materialize. Sufficient capital is critical to an insurer's ability to meet its obligations to policyholders and creditors and to finance future growth in its business. An insurance company is considered solvent if it is able to fulfill its obligations under all contracts under all reasonably foreseeable circumstances.

In order to protect policyholders from undue loss, it is necessary that a sound solvency regime is established by insurance supervisory laws. Such a solvency regime takes into account not only the sufficiency of technical provisions to cover all expected and some unexpected claims and expenses but also the sufficiency of capital to absorb significant unexpected losses—to the extent not covered by the technical provisions—on the risks for which capital is explicitly required.

The Swiss solvency regime assesses the financial position of an insurer for supervision purposes in a broad sense, addressing the insurer's technical provisions, required capital and available capital resources. In addition to minimum capital, an insurer must keep adequate disposable and unencumbered capital resources to cover all its activities. In calculating the solvency margin, the risks to which the insurer is exposed, the insurance classes involved, the extent of the business, the geographical scope and internationally recognized principles are taken into account. Solvency is determined based on two independent methodologies:

- Solvency I: this involves calculating a margin applying defined percentages to a base equal to the higher of gross annual premium and gross claims for the last three available years and comparing coverage in terms of eligible equity.

- Swiss Solvency Test (SST): under this approach, capital adequacy is found if risk bearing capital exceeds target capital. This involves a more economic analysis, which provides for a market-consistent valuation of all assets and liabilities of the insurer, together with a methodological approach to risk categories (insurance risk, credit risk, etc.), which subjects them to scenario stress tests at a basic level in the context of the standard regulatory approach. Where appropriate, the use of internal models is permitted in the overall management of risk, once such models are validated by the Swiss Financial Market Supervisory Authority FINMA (FINMA). The SST is very close to the future *Solvency II* standard of the European Union, which is working its way through various stages of the European legislative process, but is already operational.

### 3) Hybrid Instruments

The Swiss capital adequacy and solvency regimes define the form of capital that is deemed suitable to provide support when an insurer encounters an unexpected or extreme event. Hybrid instruments (whether placed in a public offering or private placement or incorporated into an agreement) may qualify as eligible equity for Solvency I and SST purposes. In order for hybrid instruments to be eligible as equity capital, the following criteria need to be fulfilled:

– The hybrid instruments must be effectively paid in and not be secured with assets of the issuer.

– They cannot be set-off against claims on the part of the issuer.

– The hybrid instruments must be subordinated to other obligations of the issuer in the case of liquidation, bankruptcy or a composition agreement relating to the issuer, and such subordination must be contractually and irrevocably stipulated. In Switzerland, it is established practice that at least the subordination clause of hybrid instruments is made subject to Swiss law; other terms of the instrument may be governed by foreign law. This is to ensure that the subordination provision will be effective in case of a liquidation or bankruptcy of the issuer as, based on the principle of territory, liquidation and bankruptcy proceedings in Switzerland are necessarily subject to Swiss law. The insurance supervisory law does not, however, provide any guidance as to how claims arising from other hybrid instruments with the same or similar features will rank among each other. Claims arising from hybrid instruments that meet all requirements set out in the insurance supervisory law constitute a specific category, which shall be referred to as the category of *hybrid capital*. Within this hybrid capital category there can be different layers of subordination. This hybrid capital category in its entirety, however, must be subordinated to all other debt (that does not fall under such hybrid capital category).

– The underlying contract grants the issuer the right to defer payment of interest due on debts.

- The debt and the unpaid interest must jointly bear a loss without the issuer being forced to discontinue its business activities.

- Except in the case of liquidation of the issuer, the contract may not include any clauses stating that the debt becomes repayable prior to the repayment date under any circumstances.

- Hybrid instruments shall not be redeemable at the option of the debtholder prior to their maturity date, but only at the option of the issuer with the prior approval of FINMA. Application must be made for such approval no later than six months prior to the proposed repayment date. In practice, this period often is shortened or waived by the supervisory authority. The repayment is subject to the issuer proving that the repayment will not result in the available solvency margin falling below the required solvency margin.

The Swiss regulatory framework sets limits on the amount of hybrid capital that is eligible for capital adequacy and solvency requirements. The following restrictions apply to the recognition of hybrid instruments: in total, hybrid instruments with no fixed maturity *(undated)* can be credited up to 50 per cent of the lower of the available solvency margin and the required solvency margin with respect to Solvency I and up to 100 per cent of the core capital with respect to SST (so-called upper additional capital or upper tier 2 instruments). By contrast, fixed term *(dated)* hybrid instruments can be credited up to a maximum limit of 25 per cent of the lower of the available solvency margin and the required solvency margin and up to 50 per cent of the core capital with respect to the Solvency I method and SST (so-called lower additional capital or lower tier 2 instruments), respectively; the amount credited is reduced in the last five years of the term of the instrument by 20 per cent of the original principal amount per year (for both Solvency I and SST). If a right of termination is granted to the creditor, the earliest possible repayment date is deemed to be the applicable maturity date.

As a result, insurers reap the following benefits when issuing hybrid instruments:

- Hybrid instruments provide an additional layer of capital with loss absorption features. As a result, if properly structured, they are eligible as regulatory capital for solvency purposes and may even be treated as equity-like for rating agency purposes.

- Issues of hybrid capital help achieve efficient capital structures; to that end, capital must be optimized by appropriate capital management. Significant overcapitalization with respect to the regulatory, rating or economic capital needed has a negative impact on the return on equity, one of the key valuation measures for insurance companies. Competitive return on equity requires optimization of capital structures.

- Hybrid capital enables an issuer to raise *risk capital* without having to issue equity and thereby diluting existing shareholders; by issuing hybrid capital, particularly in a Swiss corporate law context, capital is efficiently raised.

- Hybrid instruments are attractive from a tax perspective since interest paid thereon is often tax-deductible of the interest paid thereon.

- Despite their equity characteristics, they do not fall under the equity asset class. Issuers are enabled to tap complementary investor classes.

## 4) Features of Hybrid Instruments

The product developments within the hybrid market are often in response to changes in legal, accounting, tax, regulatory or rating agency frameworks, which impact the terms, form and applicability of hybrid instruments. Hybrid instruments are often individually structured, containing different features depending on investors' demand or regulatory or rating agency objectives of the insurer. Terms and conditions (*e.g.*, with or without step-ups, perpetual or fixed term maturity, cumulative or noncumulative interest, redeemable or irredeemable) vary on an issue-by-issue basis.

Furthermore, there are areas where uncertainty exists as to the regulatory assessment and rating agency treatment of hybrid instruments. First, hybrid instruments may be eligible as regulatory equity on a consolidated, i.e. group level but not on the operating entity level (*i.e.* on a solo basis). This is particularly true if hybrid instruments are issued by special purpose vehicles or subsidiaries of operating insurance companies rather than by the insurance company itself. Hybrid instruments issued by special purpose vehicles or subsidiaries can be accounted for as available capital for solvency purposes of the parent company on a group level, but, depending on the circumstances, not for the solo Solvency I and SST calculation of the operating insurance company.

Second, rating agencies usually employ methodologies for analyzing hybrid instruments that parallel the regulatory approach. Rating assessments therefore involve an analysis of prudential regulations and their application to the issuer. However, in light of the performance of various hybrid instruments throughout the credit crisis, certain rating agencies are considering recalibrating their equity credit criteria for hybrid instruments and introducing new hybrid notching methodology. Hybrid instruments are viewed sometimes as debt, equity or something between debt and equity, depending on their features and the circumstances.

Certain features, such as a coupon step-up or a call, may undermine fundamental criteria for evaluating the equity content of hybrid instruments and create incentives not in compliance with equity capital. These concerns can often be mitigated by legally binding covenants or other documents. For instance, if issues arise relating to the permanence of hybrid instruments, rating agencies may require replacement capital covenants that express the intent to replace the hybrid with similar capital if the issue is redeemed. The standards often vary from rating agency to rating agency.

Therefore, a harmonized regulatory and rating agency framework setting out the key features for a uniform definition of hybrid instruments and applicable to hybrid instruments issued by insurance companies should be adopted to establish a transparent and reliable hybrid capital market. FINMA should launch the necessary initiatives. For so long as common characteristics that such instruments must fulfill in order to be eligible to account for regulatory capital or equity are lacking, regulatory arbitrage is possible and Swiss insurance companies will be at a competitive disadvantage.

*Hansjürg Appenzeller (hansjuerg.appenzeller@homburger.ch)*

## U.S. Legislation on Over-the-Counter Derivatives

Reference: CapLaw-2009-58

The U.S. Department of the Treasury has recently delivered to Congress legislation that regulates over-the-counter derivatives. The major goals of the proposed legislation are to provide for regulation and transparency of derivative transactions, to regulate the conduct of derivative dealers and to improve regulatory and enforcement tools to prevent manipulation, fraud and other abuses. If enacted, the proposed legislation would result in significant structural changes in over-the-counter derivatives markets.

*By Thomas Werlen / Stefan Sulzer*

One of the most significant changes in the world of finance in recent years has been the explosive growth and rapid innovation in the markets for credit default swaps (CDS) and other over-the-counter (OTC) derivatives. These markets have largely gone unregulated since their inception. Risks built up in these markets contributed to the collapse of major financial firms in the past year and severe stress throughout the financial system.

Acting on its commitment to restoring stability in the financial system, the Obama Administration submitted to the U.S. Congress on 11 August 2009, less than two months since the release of its white paper, *Financial Regulatory Reform: A New Foundation* (available at http://www.financialstability.gov/roadtostability/regulatoryreform.html), its final piece of draft reform legislation, the *Over-the-Counter Derivatives Markets Acts of 2009* (available at http://ustreas.gov/press/releases/tg261.htm). The proposed legislation is intended to provide comprehensive regulation of all OTC derivatives markets, including CDS and market participants.

The main features of the proposed legislation are as follows:

## 1) Regulating OTC Derivatives Markets

### a) Central Counterparties

To reduce risks to financial stability that arise from the web of bilateral connections among major financial institutions, the proposed legislation would require that all 'standardized' OTC trades be (i) cleared through a clearing organization regulated by the U.S. Commodity Futures Trading Commission (CFTC) or a securities clearing agency regulated by the U.S. Securities and Exchange Commission (SEC), depending on the product, and (ii) traded either on a regulated exchange or a regulated 'alternative swap execution facility'. A swap that is accepted for clearing by any registered derivatives clearing organization will be presumed to be standardized. In addition, the SEC and CFTC must by rule jointly define the term 'standardized' as broadly as possible. Various factors should be taken into account, such as volume, similarity to other contracts that are cleared, and extent of dissemination of the terms to third parties.

The proposed legislation contains an exemption from the clearing and trading requirement which will permit a bilaterally negotiated OTC market for certain transactions to continue. Pursuant to this exemption, the clearing and trading requirements do not apply if (i) no clearing organization accepts the swap for clearing, or (ii) one of the counterparties is not a 'swap dealer' or 'major swap participant' and does not meet eligibility requirements of any clearing organization that accepts the swap for clearing.

### b) Trade Repository

Both counterparties to a non-cleared swap must report the swap either to a swap repository or, if there is no repository that would accept the swap, to the SEC or the CFTC. Such reporting must occur for swaps entered into before enactment of the proposed legislation within 180 days and for any new swaps within 90 days or any other time prescribed by the SEC or CFTC by rule or regulation.

### c) Jurisdiction over OTC Derivatives Markets

Instead of establishing one single agency as regulator for derivatives, the proposed legislation divides the jurisdiction among the SEC, the CFTC, and federal banking agencies, while seeking to assure substantially similar requirements for functionally or economically similar products. The regulatory authority over the OTC market is split between the SEC and the CFTC. The SEC has jurisdiction over security-based swaps (including CDS), on individual securities and narrow-based indices while the CFTC will regulate all other OTC derivatives, including swaps (including CDS) involving broad-based indices.

This effectively requires dual registration and regulation by the SEC and CFTC of major market dealers, market participants, exchanges and clearing organizations and thus may complicate the regulatory landscape. For example, trading broad-based index CDS would be subject to CFTC jurisdiction, but single name CDS would be subject to SEC jurisdiction.

### 2) Regulating Market Participants

The proposed legislation does not ban any particular product or class of product (*e.g.*, CDS) or treat CDS as insurance, as proposed by some legislators and commentators.

Instead, the proposed legislation requires any firm that deals in OTC derivatives and any other firm that takes large positions in OTC derivatives to register with the SEC and/or the CFTC and be subject to federal supervision and substantive regulation. As applied to non-dealer market participants, this will mark a significant expansion in the scope of regulation. The proposed legislation establishes new categories of *swap dealers* and *major swap participants* to be subject to these requirements. *Swap dealer* is defined analogously to *dealers* for purposes of the securities laws (but without exceptions for banks). *Major swap participant* is defined as any non-dealer that maintains a substantial net position in swaps, other than for an effective hedge under generally accepted accounting principles, to be further jointly defined by the CFTC and SEC. The impact of these new requirements will depend on the scope of the *major swap participant* definition.

To further protect unsophisticated parties from entering into inappropriate derivatives transactions, the proposed legislation also seeks to tighten the definition of eligible participants in these markets. In particular, the SEC and CFTC will review the criteria for participation in the OTC markets and, among other matters, define the term *eligible contract participant* under the Commodity Exchange Act.

### 3) Preventing Market Manipulation and Fraud

#### a) Position Limits

To prevent fraud and manipulation, the SEC and CFTC may impose position limits on swaps within their jurisdiction that 'perform or affect a significant price discovery function' with respect to regulated markets. To determine whether a swap performs or affects a significant price discovery function, the SEC and CFTC will consider, as appropriate, (i) the linkage of the swap price to the price of contracts traded on a regulated market, (ii) the extent to which transactions in other contracts on a regulated market reference the swap price, (iii) the volume of swaps being traded, and (iv) such other factors specified by the SEC and the CFTC.

The potential imposition of such limits would be a marked change from the current OTC markets. Its impact would depend, among other factors, on the types of contracts covered, types of restrictions imposed, aggregation rules and any available exception.

### b) Beneficial Ownership

Under Section 13(d) of the Securities Exchange Act of 1934 (Exchange Act), generally, any person who acquires beneficial ownership of more than five percent of a registered class of security must disclose the acquisition and information required by Schedule 13D within ten calendar days. Schedule 13D's reporting requirements are fairly detailed.

The proposed legislation would add security-based swaps to the definition of 'security' under the Exchange Act and would give the SEC the authority to define certain security-based swaps as conferring beneficial ownership of the underlying securities for reporting purposes under Section 13(d) and (g) of the Exchange Act.

## 4) Moving Forward

If enacted, the proposed legislation would result in significant structural changes in the OTC derivatives markets. Many aspects of the proposed legislation may, of course, be modified as lobbyists, industry officials, and lawmakers engage in a debate on the future derivatives markets regulation. It is intended to pass the regulatory reform bill by the end of the year. We will continue to monitor and report on these proposals as the legislation evolves.

*Thomas Werlen (thomas.werlen@novartis.com)*
*Stefan Sulzer (stefan.sulzer@novartis.com)*

# Federal Supreme Court Finds Share Swap Transaction Not a Voidable Preference

Reference: CapLaw-2009-59

The Federal Supreme Court finds share swap transaction not a voidable preference *(paulianisch anfechtbar)* under Swiss insolvency law, arguing that the share swap transaction under review constituted a wholly bilateral contract *(vollkommen zweiseitiger Vertrag)* and that the payments made by the parties under the agreement could not be qualified as a repayment of a loan or the subsequent posting of collateral.

The Federal Supreme Court confirmed the decision of the lower court which did not find any damage to the other creditors as a consequence of the payments made under the agreement and, therefore, abstained from scrutinizing whether there was an intent of the parties or foreseeable consequence to enter into the transaction for the detriment of other creditors.

Whether or not the same analysis will apply to other swap agreements must be determined in each individual case.

*By David Känzig*

On 28 May 2009, the Federal Supreme Court held the share swap transaction entered into by SAir Group not to be a voidable preference *(paulianisch anfechtbar)* under Swiss insolvency law (the decision may be downloaded under http://jumpcgi.bger.ch/cgi-bin/JumpCGI?id=28.05.2009_5A_420/2008).

## 1) Facts

In December 2000, SAir Group sold 250,000 of its own shares to X at the then market price of CHF 275 per share (Initial Price). The agreement provided for a cash settlement of the difference between the Initial Price paid and the final purchase price corresponding to the market price at the end of the agreed period. The difference was to be paid by (i) either X, if the share price at the end of the agreed period was above the Initial Price, or (ii) SAir Group, in case the share price at the end of the agreed period was lower than the Initial Price.

There was no obligation on SAir Group to buy back the shares. In addition, SAir Group had the right to terminate the transaction prior to the expiration of the agreed period under certain circumstances.

During the term of the agreement, SAir Group had to pay interest and X had to transfer the dividends to SAir Group received under the shares transferred. X was further entitled to adjustment payments (Collaterals) if the market price for the shares fell below 50% of the Initial Price and X was under an obligation to make payments to SAir Group, if the market price increased again to over 60% of the Initial Price. SAir Group made payments in excess of CHF 60 Million and X made adjustment payments in the amount of CHF 12.2 Million to SAir Group under this clause of the agreement.

The liquidator of the SAir Group challenged the payments made by SAir Group to X as a voidable preference *(paulianische Anfechtung),* arguing in substance that the agreement entered into with X was a loan agreement and that the payments made by SAir Group constituted subsequent collateral posted or a repayment of the loan by SAir Group to the detriment of the other creditors. The Commercial Court of the Canton of Zurich (Commercial Court) rejected the avoidance action by decision of May 15, 2008.

## 2) Decision

The Federal Supreme Court rejected the appeal of SAir Group and upheld the decision of the Commercial Court rejecting the liquidator's avoidance action.

The Federal Supreme Court argued that the agreement was to be qualified as a so called *Innominatkontrakt, i.e.* a contract which is not particularly dealt with in the Code of Obligations and which consisted of several elements.

The Federal Supreme Court reasoned that the basic structure of the share swap transaction was one of a purchase of shares which contained an adjustment of the final price at the end of the agreed period. In addition, the agreement also had a term element, during which the parties were under an obligation to make certain payments and which element distinguishes the agreement from a plain-vanilla purchase agreement.

The Federal Supreme Court also found that the only element which the agreement had in common with a loan agreement was the element of certain duration but that the central elements were the mutual obligations to make payments during the term. The Federal Supreme Court also found the agreement to be a wholly bilateral contract *(vollkommen zweiseitiger Vertrag),* whereas a loan agreement is typically qualified as an incomplete bilateral contract *(unvollkommen zweiseitiger Vertrag).* It further argued that the agreement was not one of a fiduciary transfer of title under which X was under an obligation to retransfer the shares received to SAir Group. The parties' intent was a full transfer of title to the shares.

The Federal Supreme Court then proceeded to analyze, whether the Collaterals are subject to challenge as a voidable preference *(paulianisch anfechtbar).* As mentioned above, the Federal Supreme Court stated that the transaction was not one of a loan agreement and the only resemblance of the transaction to a loan agreement was the element of certain duration. It also concluded that the share swap transaction fulfilled all the criteria of a wholly bilateral contract *(vollkommen zweiseitiger Vertrag)* and that therefore the Collaterals cannot be qualified as a (partial) repayment of a loan.

The Federal Supreme Court also rejected the argument that the Collaterals should be qualified as the subsequent posting of a security and characterised the Collaterals as a periodical adjustment of the final price during the term and as consideration for the continuing provision of liquidity and as a so called synallagmatic contract.

The Federal Supreme Court relied on the fact finding of the Commercial Court which found that the agreement could be terminated by X in the case of a default by SAir Group under the periodical payment obligation and that by reference to the ISDA Master Agreement the transaction was even terminated automatically. Therefore, the Federal Supreme Court concluded that the financial situation of SAir Group would not have been any different, had the Collaterals not been provided and the agreement terminated, since, in the case of a default, a cash settlement or optional physical settlement would have occurred on the basis of the then prevailing share price and SAir Group would have been required to seek liquidity in the marked. Furthermore, the Federal Supreme Court did find relevance in the fact that neither party could directly influence the share price and, therefore, the amount of Collaterals to be exchanged. In addition, the Federal Supreme Court found that the development of the share price was not foreseeable at the time of entering into the transaction.

The Federal Supreme Court finally rejected SAir Group's avoidance action on the basis that the Commercial Court had already denied the objective element of a damage to the creditors. Consequently, the question whether or not there was an intent to harm other creditors or whether such effect was foreseeable was not to be dealt with.

### 3) Comment

The decision of the Federal Supreme Court appears to be the first one where it had to deal with an avoidance action of a share swap transaction.

The Federal Supreme Court's decision hinges upon the fact that the agreement was qualified as a full two way contract and not a loan agreement.

Whether or not this qualification can be upheld also in respect of other swap transactions must be analyzed in each and every single case.

*David Känzig (d.kaenzig@thouvenin.com)*

## Swiss Confederation Sells UBS Stake

Reference: CapLaw-2009-60

On 20 August 2009, the Swiss Confederation announced that its stake in UBS which has been issued out of the conditional capital of UBS upon conversion of the Mandatory Convertible Notes (MCN) has been placed with institutional investors at a price of CHF 16.50 per UBS share. The gross proceeds for the 332 million UBS shares sold by the Swiss Confederation amount to approximately CHF 5.5 billion. In addition to the proceeds of the placement of UBS shares, the Swiss Confederation received a cash payment of CHF 1.8 billion equaling the cash equivalent of future coupon payments under the MCN.

## Separation of Julius Baer Private Banking and Asset Management. Merger of Julius Baer Invest and Creinvest

Reference: CapLaw-2009-61

The separation of Julius Baer's Private Banking and Asset Management businesses into two independently listed companies announced on 20 May 2009 and approved by the extraordinary general meeting of shareholders on 30 June 2009 is expected to be completed during the third quarter 2009. Following the completion of the transaction, Julius Baer Group Ltd. will focus on private banking while the asset management business will be conducted by GAM Holding Ltd.

On 26 June 2009, Julius Bär Invest AG, a subsidiary of Julius Bär Holding AG, and Creinvest AG, an investment company listed on the SIX Swiss Exchange, announced to merge their businesses. On 3 August 2009, the merger was approved by the shareholders of both companies.

## Vontobel Exchange Offer for BB Medtech

Reference: CapLaw-2009-62

On 7 July 2009, Vontobel Beteiligungen AG pre-announced a public exchange offer for all publicly held shares of BB Medtech AG. By decision of the same date, the Takeover Board declared the terms of the offer to be in compliance with statutory takeover provisions. On 9 July 2009, the offer was published. Shareholders will receive one fund share in Bellevue Funds (Lux)—BB Medtech for each share tendered. Due to the extension of the offer period until 28 August 2009, closing is now expected to occur on 2 October 2009.

## Takeover Board Decision on Mobimo Exchange Offer for LO Holding

Reference: CapLaw-2009-63

On 23 July 2009, Mobimo Holding AG (Mobimo) pre-announced a public exchange offer to acquire all publicly held shares of LO Holding Lausanne-Ouchy S.A. (LO Holding) directly or indirectly by extending the offer to all shares of JJM Participations SA (JJM), a company founded on 31 July 2009 by way of a contribution in kind of all LO Holding shares previously owned by its parent company JJM Holding SA. Mobimo also disclosed that on the day prior to the publication of the pre-announcement it had concluded a share purchase agreement to acquire a stake of 21.8% in LO Holding.

Due to the offer structure, the pre-announcement had to provide for two different exchange ratios (for the LO Holding and the JJM shares). Since JJM had also assumed certain debts from its parent company, the exchange ratio for JJM shares was adjusted accordingly by deducting the per-share debt amount. On 19 August 2009, the Takeover Board ruled that due to the fixed per-share deduction included in the formula, changes in the share price of Mobimo would not affect LO Holding and JJM shareholders to the same extent and could therefore potentially result in an unequal treatment of the shareholders of the two companies. The exchange ratio would thus have to be calculated based on the Mobimo share price around the time of the closing of the offer to account for fluctuations in the share price.

## Aquamit Publishes Final Result of Tender Offer for Quadrant

Reference: CapLaw-2009-64

On 1 September 2009, Aquamit B.V. published the final result of its tender offer for all publicly held shares of Quadrant AG launched in June. Under the offer, a total of 1,723,256 Quadrant shares have been tendered. Taking into account the shares already held, this results in Aquamit holding 95.33% of all Quadrant shares.

## Quo Vadis—Financial Center Switzerland? Impact of the Financial Crisis on Switzerland as a Financial Center (Quo Vadis – Finanzplatz Schweiz? Auswirkungen der Finanzkrise auf den Finanzplatz Schweiz)

Zurich, 18 September 2009, Chair: Prof. Dr. Rolf H. Weber, Prof. Dr. Peter Nobel, Dr. Eva Hüpkes

www.eiz.uzh.ch

## 3rd Intensive Seminar on Mergers & Acquisitions (3. Intensiv-Seminar Mergers & Acquisitions)

Lucerne, 22 September 2009, Chair: Dr. Christoph Neeracher, Oliver Arter

www.irp.unisg.ch

## St. Gallen Stock Company Law Forum 2009 (St. Galler Aktienrechtsforum 2009)

Zurich, 27 October 2009, Chair: PD Dr. Lukas Glanzmann, Prof. Dr. Vito Roberto

www.irp.unisg.ch

## 3rd SFA Asset Management Conference (3. SFA Asset Management Konferenz)

Zurich, 27 October 2009

www.sfa.ch

## Financial Market Regulation 2009—Current Legal Issues (Finanzmarktregulierung 2009 – Aktuelle Rechtsprobleme)

Zurich, 20 November 2009, Chair: Prof. Dr. Urs Bertschinger

www.es.unisg.ch

## Capital Market Transactions V (Kapitalmarkttransaktionen V)

Zurich, 26 November 2009, Chair: Dr. Thomas U. Reutter, Dr. Thomas Werlen

www.eiz.uzh.ch

## GesKR Symposia on the Impact of the Revision of Stock Company Law on Practice (GesKR-Tagungen zu den Auswirkungen der Aktienrechtsrevision auf die Praxis)

Zurich, 2 December 2009 (first symposium) and 29 June 2010 (second symposium)
Chair: Prof. Dr. Rolf Watter

www.geskr.ch