ADMISSION BOARD COMMUNIQUÉ NO. 5/2006 OF 15 SEPTEMBER 2006

New practices for public-sector issuers and/or guarantors concerning the content of bond prospectuses

Decision of the Admission Board: 8 August 2006
Entry into force: 1 October 2006

I. BACKGROUND

The Listing Rules already contain **special regulatory provisions** for public-sector issuers – but only for those which are Swiss. For example, Art. 41 LR states that Swiss regional or local authorities and dependent public-sector bodies may **omit issuer particulars** from the listing prospectus. To date, this regulation has been applied strictly to Swiss issuers and – by extension – to Swiss guarantors only. This regulation has not been amended.

According to the wording of the EU Prospectus Directive (PD), bonds which are issued or guaranteed by regional or local public authorities in the EU are not subject to the PD, i.e. such bonds may be offered to the public and admitted to trading/listed without a prospectus.

Art. 8 para. 3 of the Swiss Stock Exchange and Securities Trading Act (SESTA) states that the stock exchange must take internationally recognized standards into account in its admission regime. EU harmonization in the PD with regard to prospectus requirements represents such a standard.

With this in mind, the Admission Board has decided that more latitude (albeit within a very narrow and clearly defined framework) may be permitted with regard to bonds issued by public-sector issuers and guarantors, whether Swiss or foreign. A distinction must be made here between the following cases:

II. EXPLANATIONS

1. The issuer is a public-sector body

If the **issuer is a public-sector body**, the information relating to **Point 2 of Scheme B – Bonds (information on the assets and liabilities, financial position and profits and losses)** may be **omitted**. Other particulars, specifically those relating to the issuer, the security and the declarations of responsibility, must continue to be contained in the prospectus.

2. The guarantor is a public-sector body

If the issuer is **guaranteed by a public-sector body**, the information with regard to the guarantor relating to **Point 2 of Scheme B – Bonds (information on the assets**

and liabilities, financial position and profits and losses) may now be **omitted, subject to the provisions set out in Point 4 below**. Other particulars, specifically those relating to the guarantor, as well as the guarantor's declarations of responsibility, must continue to appear in the prospectus.

The issuer of a bond issue that is guaranteed by a public-sector body must still include all information in the prospectus, specifically the particulars of the issuer, data on the asset and liabilities, financial position and profits and losses and on the security, as well as the responsibility declarations, unless it is itself a public-sector issuer as described in Point 1 above.

3. Information on court, arbitral and administrative proceedings

In the case of public-sector bodies it is very difficult to publish information on court, arbitral and administrative proceedings in the prospectus. One of the reasons for this is that the spectrum of tasks performed by public-sector bodies is very broad, and the potential for legal action is correspondingly wide. Furthermore, these proceedings often have no significant impact on the public-sector body's creditworthiness as it affects the aspects of the prospectus described above.

The Admission Board has therefore also decided that **public-sector bodies acting as issuers or guarantors generally do not need to satisfy the corresponding requirements of Point 1.3.6 of Scheme B, subject to the provisions set out in Point 4 below**.

4. Restrictions on the public-sector bodies covered by these changes

The application or non-application of the PD to bonds issued or guaranteed by public-sector bodies is not automatic in the EU. Its application must be determined individually by each Member State, which means that **rules differ within the EU itself**. With this in mind, Switzerland is justified in applying these **more relaxed regulations for bond prospectuses** with the aforementioned issuers or guarantors **to certain countries only**.

Consequently, only **state-level** bodies may benefit from the new rules described above, i.e. they do not apply to *Länder*/cantons or municipalities. Public-sector agencies are also excluded from the new regulations. They must continue to fulfil all transparency requirements.

At present, the new rules apply only to the following states (the list may be extended in due course):

- Australia
- Belgium
- Canada
- France
- Germany
- Italy
- Japan
- Netherlands
- Spain
- Sweden
- Switzerland
- United Kingdom
- USA

III. ENTRY INTO FORCE

This new practice enters into force on **1 October 2006**, i.e. it applies to all securities that are to be listed from this date onwards.

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