

ADMISSION BOARD COMMUNIQUÉ NO. 12/2006 OF 14 DECEMBER 2006

Amendment of the Directive on Applicable Law and Place of Jurisdiction for Debt Securities and the Directive on Guarantee Commitments

Decision of the Admission Board: 20 September 2006

Entry into force: 1 January 2007

I. BACKGROUND

Upon the 1 February 2005 entry into force of the Additional Rules for the Listing of Bonds, the **Directive on Applicable Law and Place of Jurisdiction for Debt Securities** (Directive on Applicable Law) and the **Directive on Guarantee Commitments** (Directive on Guarantee Commitments) were revised. In particular, the new possibility of listing debt securities under foreign law with a corresponding place of jurisdiction was allowed. It was prescribed that the legal consequences at variance with Swiss Law must be disclosed in the prospectus as follows:

- **Directive on Applicable Law:** if the fact that the given debt security is subject to foreign law and a foreign place of jurisdiction implies that investors bear special legal consequences that are at variance with normal practice in Switzerland, this must be clearly disclosed in the listing prospectus (ref. no. 9). Ref. nos. 10–12 describe the criteria for which an explicit statement of position must be provided.
- A materially identical provision is included in the **Directive on Guarantee Commitments:** in application of ref. no. 18, the listing prospectus must indicate the applicable law and place of jurisdiction. If the fact that the given debt security is subject to foreign law and/or a foreign place of jurisdiction implies that investors bear special legal consequences that are at variance with normal practice in Switzerland, this must be clearly disclosed in the listing prospectus (ref. no. 19). As a part of this, ref. nos. 20–26 list a number of criteria for which an explicit statement of position must be provided.

II. ABROGATION OF REF. NOS. 9–12 OF THE DIRECTIVE ON APPLICABLE LAW AND ABROGATION OF REF. NOS. 19–26 OF THE DIRECTIVE ON GUARANTEE COMMITMENTS

It has been demonstrated that the description of the special legal consequences under ref. nos. 9–12 of the Directive on Applicable Law and ref. nos. 19–26 of the Directive on Guarantee Commitments poses great difficulties for issuers in actual practice. It is hardly practicable from a legal point of view to include in the prospectus which represents the basis for liability of the issuer a summary comparative presentation of the legal position in various countries. The increasing complexity of the various legal systems, as well as the very broad formulation of the corresponding provisions in the aforementioned

Directives make it difficult to arrive at a binding description of the specific legal consequences that could arise from the applicable foreign law as well as the authority of foreign courts. This is especially the case when the applicable law is part of another legal system than Swiss law, and certain institutions are not recognised by both systems in the same form and are thus hardly comparable.

A waiver of the various descriptions is also justified given the fact that both ref. no. 10 of the Directive on Applicable Law and ref. no. 3 of the Directive on Guarantee Commitments provide that SWX recognises only those legal systems that correspond to acknowledged international standards on rules governing investor protection and transparency. Hence investor protection is ensured via those provisions, which is why the Admission Board, in view of the tremendous difficulties in implementing the rules as provided for in ref. nos. 9–12 of the Directive on Applicable Law and ref. nos. 19–26 of the Directive on Guarantee Commitments, has decided to **abrogate those rules without replacement**.

III. ENTRY INTO FORCE

The changes as per Point II above shall enter into force on **1 January 2007**.

The printed versions of the amended Directives will be sent with the next delivery of change pages for the “Admission of Securities” manual. However, those Directives are available immediately on the Internet at:

– Directive on Applicable Law:

http://www.swx.com/download/admission/regulation/guidelines/swx_guideline_20070101-3_en.pdf

– Directive on Guarantee Commitments:

http://www.swx.com/download/admission/regulation/guidelines/swx_guideline_20070101-4_en.pdf

The Admission Board Communiqués are available in English, German and French at http://www.swx.com/admission/regulation/messages/2006_en.html