

Circular No. 4

Practice for the Listing of Bonds

(Circular No. 4, CIR4)

Status on 1 June 2016
 Basis Listing Rules (LR), Additional Rules Bonds (ARB) and implementing decrees

This Circular clarifies practice for the listing of bonds, and provides additional detail. The Circular is amended and updated continually. 1

1. Cross and upstream guarantees in connection with requirements for capital resources and the duration of existence of an issuer

a) Principle 2

The requirements imposed on issuers under Art. 11 LR and Art. 5 Additional Rules Bonds (duration and capital resources) may be waived if, instead of the issuer, a third party that fulfils those requirements (guarantor) provides a guarantee commitment in respect of the obligations associated with the securities. In most cases, the parent company of the issuer will act as guarantor within the meaning of Art. 9 Additional Rules Bonds (downstream guarantee).

Further to a decision made by the Issuers Committee of the Regulatory Board, as a general rule cross and upstream guarantees from the issuer's subsidiaries or affiliated companies are not eligible as alternative fulfilment by a guarantor in accordance with Art. 8 Additional Rules Bonds. Given the relationship between the issuer and guarantor, in such cases it is not possible to ensure the value of the guarantee commitment at all times, and any alternative fulfilment by a subsidiary or affiliated company would not be in accordance with Art. 9 Additional Rules Bonds. 3

b) Exception 4

Under certain circumstances, alternative fulfilment by a substitute guarantor which is a direct or indirect subsidiary or affiliate of the issuer may still be possible. Such circumstances exist where the issuer is a special purpose vehicle (SPV) which is at the same or higher level as the substitute guarantor within the same group of companies, or is not included in that group's scope of consolidation. Typically in such cases, a number of direct or indirect subsidiaries and affiliates will provide cross and upstream guarantees.

Upon application, alternative fulfilment by such a subsidiary or affiliate company is permitted on condition that the guarantor subsidiaries or affiliates account for a significant share of group EBIT, or another key financial indicator, thus ensuring that the guarantee commitment has a certain value. Approval for substitute fulfilment by subsidiaries and affiliated companies must be requested as part of the pre-verification application in accordance with Art. 23 Directive Procedures Debt Securities. Evidence must also be supplied that the guarantor subsidiaries and affiliated companies account for a significant share of the group's EBIT. If the application states that the subsidiaries and affiliated companies account for a significant share of a key financial indicator other than EBIT, the reasons for the relevance of this indicator must be given. 5

Furthermore, the listing prospectus must contain the following information in addition to the information required under Scheme E: 6

Transaction structure and risks:

The following information must be included prominently in a clear and comprehensible form:

- graphical presentation of how the transaction is structured;
- brief description of the transaction structure;
- brief description of the guarantee commitment, as well as any other collateral and the relationship between them;
- list of the specific risks attached to the transaction (e.g. structural subordination, limits on cross and upstream guarantees and further collateral), as well as information on where descriptions of such risks are included in the listing prospectus;
- statement that only the substitute guarantor, as guarantor within the meaning of the Listing Rules and their implementing decrees, is subject to the SIX Swiss Exchange rules and regulations.

In addition, the listing prospectus must contain the following information:

- description of the transaction structure;
- description of the guarantee commitment, as well as any other collateral and the relationship between them;
- the wording of the guarantee commitment or guarantees from the guarantors must be reproduced in full, or incorporated by reference;
- description of the risks.

Transaction documents and the relationships between them: 7

Description of the key transaction documents and the relationship between them, including (non-exhaustive list):

- structurally superior credit agreements;
- agreements between creditors and bondholders (intercreditor agreements).

Information on guarantors:

- Full information on the substitute guarantor, in accordance with Scheme E;
- Names of the other guarantors and a summary description, included in the presentation of the guarantee commitment;
- Information on the aggregate percentage of group EBIT or an alternative key financial indicator accounted for by all guarantors together.

Annual financial statements:

- Financial statements for the past two financial years for the group to which the issuer belongs.

Management discussion & analysis (MD&A):

- Explanation of significant changes to the figures from the group management's perspective.

Provided the above transparency requirements are fulfilled, the following relaxations of the procedural and listing maintenance obligations may be granted: 8

- Procedural obligations

The obligations marked with an "x" in the following table must be fulfilled. Those marked "-" are not applicable.

Article	Description	Issuer	Substitute
Art. 12 LR	Annual financial statements	-	X
Art. 45 LR	Issuer declaration/ declaration of consent	X	X
Art. 4 Directive Procedures Debt Securities	Duly signed listing prospectus	X	X

Article	Description	Issuer	Substitute
Art. 5 Directive Procedures Debt Securities	Extract from the Commercial Register, applicable articles of association	X	X

The obligations marked with an "x" in the following table must be fulfilled. Those marked "-" are not applicable. 9

– Obligations concerning the maintenance of listing

Obligation	Description	Issuer	Substitute
Regular reporting obligations	Reports in accordance with the Directive on Regular Reporting Obligations	X (excluding Point 1.05 Annex 2)	X
Ad hoc Publicity	Directive on Ad hoc Publicity	-	X

The Regulatory Board reserves the right to define conditions which extend beyond the aforementioned requirements, should a specific transaction structure so require. 10

2. Treatment of guarantors irrelevant under SIX Swiss Exchange rules and regulations

If an issuer fulfils all of the requirements set out in the Listing Rules, but also holds one or more guarantees from guarantors, the listing requirements are not deemed to have been fulfilled by a substitute within the meaning of Art. 9 Additional Rules Bonds. Rather, these guarantors often do not fulfil the requirements concerning the duration of existence (Art. 11 LR), capital resources (Art. 5 Additional Rules Bonds), the applicable financial reporting standard (Art. 12 LR), or those relating to the maintenance of listing (Arts. 49 et seq. LR). 11

Further to a decision made by the Regulatory Board's Issuers Committee, no application for an exemption needs to be made for guarantors which are irrelevant under SIX Swiss Exchange rules and regulations, providing it is established transparently that these guarantors are not subject to the listing rules and regulations and their implementing decrees. 12

The listing prospectus must state prominently which guarantors do not fulfil the obligations in respect of listing and the maintenance of listing, or that the provisions of the Listing Rules and its implementing provisions do not apply to these guarantors. 13

<i>3. Trading in defaulted bonds following the expiry of arrangements for admission to trading</i>	Under the Rules for Trading in Delisted Bonds on SIX Swiss Exchange of 29 October 2008 (in force since 1 July 2009, the "Rules"), bonds from issuers which are undergoing liquidation proceedings or similar procedures may continue to be traded on SIX Swiss Exchange after they have been delisted. According to the wording of Art. 3 of the Rules, their scope of application is nonetheless limited to those bonds which have been delisted upon request.	14
	The Regulatory Board has decided that defaulted bonds can continue to be traded on SIX Swiss Exchange after their term has expired and although they are no longer listed within the meaning of the Listing Rules.	15
	Trading in defaulted bonds post-maturity is subject by analogy to the Rules for Trading in Delisted Bonds.	16
	Any SIX Swiss Exchange participant may apply for continued trading in defaulted bonds after they have reached maturity. The participant must submit an application to this effect to SIX Exchange Regulation no later than three exchange days prior to the last day of trading.	17
	SIX Exchange Regulation may also decide on its own initiative that trading in a defaulted bond will be continued after it has reached maturity. Continued trading is not a right, however.	18
	In contrast to delisted bonds, defaulted bonds are admitted to trading for a limited twelve-month period after their term has expired. SIX Swiss Exchange may extend the duration of trading by a further twelve months in each case upon application by a participant. The participant must submit an application to this effect to SIX Exchange Regulation no later than three exchange days prior to the last day of trading. The extension of trading is not a right.	19
	The admission to trading of defaulted bonds after they have reached maturity will be published by means of an Official Notice.	20
	The admission to trading does not give rise to any obligations on the part of the issuer.	21
	Defaulted bonds are traded "flat" on SIX Swiss Exchange (SIX Swiss Exchange Communiqué No. 2/99 "Flat Trading of Bonds in Default", http://www.six-swiss-exchange.com/swx_messages/online/swx0299e.pdf).	22
<i>4. Asset-backed securities</i>	Asset-backed securities (ABS) may be listed on SIX Swiss Exchange subject to the conditions which are described	23

below. The requirements that the issuers and the securities must fulfil are determined primarily by the provisions of the LR and the ARB. The listing prospectus must contain a reference to Art. 27 LR, which states that it must be assured that a competent investor is able to reach an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer, as well as of the rights attached to the securities. In derogation of the rules which apply to bond issuers, and pursuant to Art. 16 para. 1 LR, in accordance with Art. 5 para. 3 Additional Rules Bonds issuers of ABS do not need to fulfil the requirements with regard to the duration of existence (Art. 11 LR) or capital resources.

As a general rule, ABS are subject to the same disclosure obligations with regard to listing as apply to bond issues. 24

Additionally, however, the listing prospectus must contain a transaction summary, as well as a brief overview of the transaction in question. 25

1. This summary serves as an introduction, and is intended to inform investors in an easily understandable way about the key characteristics and structure of the issue, which determine the risk attached to acquiring the securities, and the enforcement of the corresponding rights. The summary must also refer to the detailed information provided in the listing prospectus, and briefly explain the relationships between different documents.
2. The transaction overview should give a brief description of the main elements of the transaction and the parties to it, explain the structure of the transaction, and describe the rights of the investors and the risks that they must bear. The following aspects, in particular, must be covered:
 - a. the structure of the transaction, the parties involved and their function, background and financial interests in the specific structure, the flow of funds (liquidity), credit enhancement and a description of the procedure to end the transaction either in the regular way or early;
 - b. the sureties or assets that serve as collateral, as well as the associated risks; information on the performance of the assets, the degree of collateralisation/security margin in relation to the financial obligations, and the default rates for the portfolio as a whole and for the individual asset classes. Where available, data must be given for the previous three years, although reference may be made to em-

- pirical values for portfolios of the same type if the securitised portfolio itself has not yet existed for three years;
- c. the risks associated with the structure of the transaction, including third-party risk;
 - d. legal risks;
 - e. all other significant risks associated with the structure and with the assets serving as collateral.
3. Key information documents to which reference is made in the listing prospectus and which form a part of that prospectus must, as a rule, be available for inspection by the investing public for the entire duration of the issue.
 4. In connection with the maintenance of listing, issuers of ABS are obliged to publish an annual report within the meaning of Art. 49 LR.
 5. The existing rules for bonds apply to ad-hoc and reporting obligations.

Arts. 9 and 16 LR serve as the regulatory basis for the additional listing requirements set out in Points 3 and 4. 26

SIX Exchange Regulation reserves the right to review each transaction on a case-by-case basis. It is therefore worth contacting SIX Exchange Regulation at an early stage, especially with new structures, and where appropriate requesting a preliminary decision in accordance with Art. 48 LR. 27

5. Public-sector issuers and guarantors

The ARB contain special requirements for public-sector issuers. For example, Art. 20 Additional Rules Bonds determines that regional authorities and, where applicable, guarantors that are organised as public-sector regional authorities, may omit or abridge the information about the issuer described in Scheme E. The necessary information must be given *mutatis mutandis* in each case. 28

Where they fulfil the role of guarantor, public-sector regional authorities may decide not to submit an issuer declaration in accordance with Art. 45 LR or Art. 17 Additional Rules Bonds. Furthermore, they are not obliged to sign the listing prospectus. 29