

## Allocation Directives for the New Issues Market

Directives governing the allocation of equity-related securities offered by way of a public offering in Switzerland

(2.6.04, Translation)

### A. Purpose

1. Involved parties in public offerings and public placements (jointly referred to as "Public Offerings") in the capital market are typically:

- the issuer or the selling owner of the securities (jointly referred to as "the issuer"),
- the (potential) subscribers (institutional and private clients),
- the banks or securities dealers (as lead managers, syndicate banks and third-party banks, jointly referred to as "banks")
- the community of market participants.

2. By stating the requirements in terms of objectivity and lucidity, the purpose of these Directives is to ensure highest standards of fairness and transparency in the allocation process, while taking the interests of the above mentioned parties (Point 1 above) into account.

**Commentary:** Fair treatment of clients has to be warranted within the different groups of clients (see also Points 6.3 and 7).

3. These Directives represent a professional code of conduct and do not affect the relationship under civil law between banks and their clients.

### B. Scope of Application

4. These Directives govern all public offerings of shares, participation certificates and dividend-right certificates, as well as convertible bonds and bonds cum warrant offered in Switzerland.

5. These Directives are applicable to all banks domiciled in Switzerland, including branch offices and subsidiaries of foreign banks that engage in public offerings in Switzerland. The latter may not circumvent these Directives by resorting to the banking and financial services of their head-offices and parent companies, branch offices and subsidiaries outside Switzerland. These Directives are not effective on a global scale.

## C. Principles

### *General*

6.1 The bank must regulate and document the allocation procedure for IPOs in a manner which ensures that the procedure:

- is based on objective criteria,
- can be verified by the bank's competent bodies and employees,
- is transparent to the bank's licensed auditors and the supervisory authorities.

6.2 The details of the allocation procedure may take into account an abridged time frame (e.g. to accommodate the shorter time windows in the case of convertible bonds and bonds cum warrant), subject to the principles stipulated in Point 6.1.

6.3 Various clients or client groups may be treated in a different way within a set of reasonable interest parameters (see also Point 7).

6.4 There is no legal claim to an allocation.

6.5 Allocations against the promise of certain considerations are deemed prejudiced and are therefore prohibited; such considerations including in particular:

- the pledge to purchase more securities after the placement in the market ("laddering"),
- the payment of special commissions or commission premiums ("quid pro quo agreements"),
- the pledge or specific offer of business orders or propositions to the allocating bank ("spinning").

### *Allocations to Private Investors*

7. The bank has to provide fair and impartial treatment to private investors in the allocation process, any differing treatment of individual private investors vis-à-vis others may occur solely on the basis of objective reasons. Allocation procedures that warrant a fair and impartial treatment of private investors are based in particular on the objective criteria listed below, or combinations thereof:

- casting a lot, i.e. random allocations
- size of order
- proportion of subscriptions
- time of subscription order
- subscription rate offers (in the case of an auction)
- regional aspects
- long-term commitment to the issuer
- investors' portfolio structure
- the bank's improved quality, position and placement power in the private investors' medium and long-term interest
- the issuer's wishes with regard to investor profile
- length of client relationship
- other objective criteria.

### ***Option for Overallotment***

8. If the prospectus stipulates an overallotment option (“green shoe”), it must provide information about the parties to the agreement, the volume and the maturity of the overallotment.

### ***Allocation at the Issuer’s Request***

9. Separate allocations at the issuer’s request to groups of subscribers with a special relation to the issuer are permitted; such groups may comprise business partners (private individuals or legal entities), the issuer’s management or staff (“friends-and-family programmes”). The prospectus has to disclose the fact of any such exclusive allocation and specify the maximum allocation quota as well as the groups of parties entitled to such allocations.

### ***Allocation to Nostro Account***

10.1 Syndicate banks may allocate a reasonable stake of a public offering to their nostro account (own holdings or trading portfolio, notably for the purpose of market making, stabilisation or for other objective reasons). Such allocations are subject to a prior arrangement with the issuer.

**Commentary:** The definition of a reasonable stake in terms of allocation to the nostro account depends, for example, on the liquidity requirement during the initial trading days, the underwriting volume and its quality or the size of the transaction.

10.2 If a syndicate bank is unable to place its commitment in full due to a lack of investor demand, the bank may hold the securities in its nostro account or sell them in the market (subject to contrary arrangements with the issuer or selling security holders).

10.3 Third-party banks must not make unjustified preferential allocations to their nostro accounts vis-à-vis their clients. In any case, the allocation to nostro must be reasonable.

### ***Allocation Result***

11. After close of the transaction the lead manager has to disclose the volume of the public offering, and if applicable, the size of allocations to groups of subscribers with a special relation to the issuer (Point 9) as well as any exercise of the overallotment option (Point 8).

## **D. General Requirements and Supervision**

12. A bank that participates in public offerings has to be professionally organised, commensurate to the size of its operation.

13. The bank has to establish the necessary internal rules and take appropriate measures to ensure compliance with these Directives.

14. The Board of Directors of the Swiss Bankers Association passed these Directives on 29<sup>th</sup> March 2004 and the Federal Banking Commission approved them as a binding supervisory minimal standard on 27<sup>th</sup> May 2004. These Directives enter into force on 1<sup>st</sup> January 2005.