Practice Notice of the Prospectus Review Office of BX Swiss AG 01/2025

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1. Purpose

Art. 41, Art. 51, Art. 53, Art. 54, Art. 56, Art. 64 FinSA
Art. 46, Art. 48, Art. 51 FinSO

The statutory mandate of the review body of BX Swiss AG (Prospectus Review Office) includes reviewing prospectuses for completeness, consistency and comprehensibility in accordance with Art. 51 para. 1 FinSA. In addition, the Prospectus Review Office processes applications for exemptions (Art. 41 FinSA) and advance rulings (Art. 37 para. 1 lit. d & e FinSA in conjunction with Art. 46 para. 2 FinSO) and publishes lists (Art. 48 para. 3, Art. 51 para. 2 FinSO, Art. 54 para. 3, Art. 56 para. 4, Art. 64 para. 5 FinSA). Pursuant to Art. 53 para. 1 FinSA, the procedure of the Prospectus Office is governed by the Administrative Procedure Act of 20 December 1968 (**APA**).

This Practice Notice is intended to inform the public about the current practice of the Prospectus Review Office in applying FinSA and FinSO to prospectus reviews.

2. Formal and organisational matters

A Commencement of the time limit

Art. 53 para. 2, 3 and 5 FinSA in conjunction with Art. 68 FinSO

The time limit for the review of the prospectus of 10 respectively 20 calendar days commences upon receipt of the complete application for review of the prospectus. The prospectus also includes all documents incorporated by reference. If an application is submitted and it is determined during the review that one or more documents incorporated by reference are missing, the review period shall not commence until such documents have been submitted or the application is complete. Insignificant information and information or documents that are announced in the relevant application *but* are not yet available at that time do not generally prevent the start of the deadline. This applies in particular to the latest version of articles of association and financial reports that are not expected to be available until a later date and are not subject to change.

B Information provided by the Prospectus Review Office

Art. 35 ff., Art. 51 FinSA

Pursuant to Art. 51 FinSA, the Prospectus Review Office reviews prospectuses for completeness, consistency and comprehensibility. Questions regarding these three criteria may be submitted to the Prospectus Review Office.

Questions in connection with the duty to make a prospectus (Art. 35 ff. FinSA) do not fall within the legal mandate of the Prospectus Review Office. Questions relating to this duty can therefore not be dealt with by the Prospectus Review Office.

Clarification of equivalence within the meaning of Art. 37 para. 1 lit. d and e FinSA can only be provided in the context of a preliminary ruling (Art. 46 para. 2 FinSO).

C Review scope of the Prospectus Review Office

Art. 51 FinSA

The prospectus review pursuant to Art. 51 FinSA, which focuses on completeness, consistency and comprehensibility, is designed as a purely formal review. A material review of the prospectus would mean that the information provided in the prospectus would be checked for accuracy. In other words, a material review would verify the accuracy of the prospectus content. A material review by the Prospectus Review Office is not permitted due to the lack of a legal basis.

D Procedure in the event of missing prospectus content

If the prospectus does not contain information required by the applicable FinSO Annex, the Prospectus Review Office shall, on the basis of a formal review and exercising its discretion, assess whether the prospectus needs to be amended in this respect or can still be approved.

In making this assessment, the Prospectus Review Office shall follow the following principles:

- if certain information is not available because the review scheme according to the applicable FinSO Annex does not fit the specific case, but there is equivalent information, this must be supplemented (equivalent substitute information).
- If information is not available because it does not actually exist (i.e. does not materially exist), it does not have to be supplemented and the prospectus must be approved in principle.

Mandatory legal provisions remain reserved when applying these principles. These principles are also applied on a case-by-case basis without any entitlement of application. Furthermore, reference is made to the possibility of an exception, which requires a formal request (Art. 41 FinSA).

A negative confirmation in the prospectus is only required for information where such confirmation is explicitly required under the applicable FinSO Annex. A reference to non-applicability in a rule check (see section 2 F) generally avoids queries from the Prospectus Review Office.

E Prior prospectus approval

i Prospectuses for equity securities

The Prospectus Review Office may, in principle and upon prior notification (e.g. by email) to the Prospectus Review Office, approve a prospectus for equity securities with a date in the future.

The basic requirements for the approval of a pre-dated prospectus are:

- The prospectus date is a working day;
- The prospectus is published on the same working day; and
- The prospectus approval is granted on the preceding working day.

The necessary steps and further requirements are outlined below:

- Submission of the final prospectus: The final version of the prospectus must be submitted to the Prospectus Review Office by 12:00 noon (CEST/CET) on the working day prior to approval at the latest. Placeholders are only permitted for price information (information that constitutes, relates to or is directly linked to the price range and/or the scope of the offer).
- Clear highlighting in the prospectus: The prospectus must clearly state at the beginning (title page) that it has been approved by the Prospectus Review Office without price information. The Prospectus Review Office suggests the following wording (for example, if the prospectus is submitted on a Friday and published on Monday morning): "[*This Prospectus dated (T +3), excluding information constituting, related to or derived from the price range and/or the offer size, has been approved on (T) by BX Swiss AG in its capacity as a reviewing body pursuant to article 52 of the Swiss Financial Services Act"].*
- Granting of approval: On the working day prior to the publication of the prospectus, the Prospectus Review Office will grant approval for the publication of the prospectus dated the following working day, provided that the price information is complete on the morning of the prospectus publication (assuming that the rest of the prospectus complies with all requirements under FinSA/FinSO).
- Supplementing the price information: The final prospectus to be published on the morning of the prospectus publication must contain all price information and be submitted to the Prospectus Review Office together with a corresponding comparative version ('mark-up'). No additional editing, including additions, changes or deletions, is permitted.

If a new version of the prospectus is uploaded on the morning of the prospectus publication date and contains changes other than price information, a new approval is required. Section 2.18 of the List of Fees of the Prospectus Review Office applies in this regard.

ii Base prospectuses

The Prospectus Review Office takes into account the fact that, in the case of base prospectuses for structured products, the ISIN list can often only be drawn up after the close of trading on the evening before the approval date. This is because structured products are issued up to and including the last day of the validity period of a base prospectus and it is necessary that these products can continue to be offered to the public under the updated base prospectus.

Accordingly, the ISIN list may be submitted to the Prospectus Review Office as a supplement to the final pre-approved version of the pre-dated base prospectus on the approval date before the start of trading. At the issuer's request, the Prospectus Review Office will issue a formal approval of the base prospectus for the following day on the previous day.

The pre-reviewed and approved base prospectus may then only be supplemented by the final version of the ISIN list on the date of approval.

F Rule check

The submission of a rule check by the applicant or its representative is voluntary. The submission of a rule check is recommended and may speed up the review process of the Prospectus Review Office. In addition, comments can be added to individual points in the rule check, which may anticipate queries from the Prospectus Review Office and thus further speed up the review process.

G Decisions on a specific date

Unless otherwise notified, the Prospectus Review Office will issue its decision on the approval of the prospectus after a review has been carried out without objections. If a different date is desired, this must be communicated to the Prospectus Review Office in good time (e.g. by means of a comment in the application). If a date of approval communicated to the Prospectus Review Office changes, the Prospectus Review Office must be notified of this in good time. A decision that has already been issued is generally final. If a different date is subsequently requested, the decision already issued must be revoked and a new one issued. The time required for this will be invoiced in addition to the regular fees.

H Pending prospectuses and deadline for amendments

Unless otherwise agreed with the Prospectus Review Office, the Prospectus Review Office expects amendments to be made within 10 working days. The prospectus will be approved once the prospectus is formally correct.

If, at the request of the applicant or its representative or due to a failure to make corrections, the prospectus is not approved within a total of three months of its submission, the Prospectus Review Office will set a further deadline of one month. In justified cases, this deadline may be extended (reasons to be provided by email to the review body). If the prospectus has not been approved by the end of the approved deadline, because of the requested corrections have not been made, the application may be rejected at the applicant's expense.

I Exchange Traded Products

The FinSO does not have a separate review schedule or Annex for exchange-traded products (ETPs). The Prospectus Review Office applies the review scheme for derivatives (Annex 3 FinSO) to ETPs and supplements point 3.7, with the exception of point 3.7.2 lit. c, of the review scheme for bonds (Annex 2 FinSO) accordingly.

3. Prospectus content

3.1 Summary

A General

Art. 43 FinSA

Points 1.1-1.11 Annex 1, Points 1.1.1-1.1.12 Annex 2, Points 1.1.1-1.1.12 Annex 3, Points 1.1-1.10 Annex 4, Points 1.1-1.10 Annex 5 FinSO

The minimum content required by the FinSO Annexes must be explicitly disclosed in the prospectus. It is not sufficient to mention information only in the summary. The summary must always be understood as a 'separate' part of the prospectus and, as its name suggests, must be a summary of the prospectus (i.e. all information contained in the summary must also be included in the prospectus).

B Information on the offer

Section 1.1.10 Annex 2, Section 1.1.10 Annex 3, Section 1.1.8 Annex 4, Section 1.1.8 Annex 5 FinSO

The 'key information about the offer' must generally include the following minimum information, where applicable:

- Interest rate
- Issue price
- Issue volume
- Issue date
- Maturity date

3.2 Information about the issuer and any guarantors and collateral providers

A Date of incorporation/date of registration

Points 2.2.6 and 2.2.9 Annex 1, Points 2.2.6 and 2.2.9 Annex 2, Points 2.2.6 and 2.2.9 Annex 3, Points 2.2.6 and 2.2.9 Annex 4, Points 2.2.7 and 2.2.10 Annex 5 FinSO

The applicable FinSO Annex requires issuers and any guarantors and collateral providers to provide a date of incorporation and the date of registration in the relevant commercial register. As clearly stated in the FinSO, a specific date is required. A year alone is sufficient only in exceptional cases.

For issuers or guarantors and collateral providers based in Switzerland, the date of entry in the commercial register is also recognised as the date of incorporation due to its constitutive effect (Art. 52 Swiss Civil Code). If the date of entry in the commercial register is available, the date of incorporation does not need to be specified for Swiss companies.

For foreign companies, the date of incorporation and the date of entry in the commercial register must be stated separately, provided that a commercial register or equivalent register exists. In this regard, a note in the Rule Check could anticipate queries from the Prospectus Review Office (see section 2 F).

Nevertheless, the Prospectus Review Office accepts a single year as the date of incorporation for foreign and Swiss companies if the date of incorporation is very long ago and cannot be determined exactly.

If no date relating to the registration entry exists or no corresponding date is available, this date does not need to be stated. However, the Prospectus Review Office may request written confirmation (e.g. by email) of this fact.

B Purpose

Point 2.2.7 Annex 1, Point 2.2.7 Annex 2, Point 2.2.7 Annex 3, Point 2.2.7 Annex 4, Point 2.2.8 Annex 5 FinSO

The applicable FinSO Annex requires the purpose to be stated, where applicable with reference to the relevant provision of the articles of association or the partnership agreement or by reproducing the full wording of the article of the articles of association relating to the purpose.

If there are no articles of association or partnership agreement, a general description of the purpose may be provided instead. In the case of municipalities, provinces or similar public-law entities, a description of the purpose may be derived from a law or from the legal nature of the structure itself. In any case, the relevant bases serving as a 'substitute' for articles of association must be described.

If the issuer in question does not have a purpose, this must be stated in the prospectus.

C Date of articles of incorporation

Point 2.2.8 Annex 1, Point 2.2.8 Annex 2, Point 2.2.8 Annex 3, Point 2.2.8 Annex 4, Point 2.2.9 Annex 5 FinSO

A date of incorporation must be specified for all issuers and guarantors and collateral providers. For partnerships and foundations, the date of the partnership agreement or the foundation deed in its most recent version may be specified. For domestic and foreign public-law entities established by law, the relevant date of the applicable law in its most recent version may be specified. For local authorities, the date of the organisational act in its most recent version may be specified. If there are no articles of incorporation in the strict sense, the date of a document equivalent in the respective jurisdiction (in each case with the date of the most recent version) shall be used.

D Information about the board of directors, management, auditors and other governing bodies of the issuer

Sections 2.3.1-2.3.3 Annex 2, Sections 2.3.1-2.3.2 Annex 3

For public-law entities and similar structures, information on the executive authority is sufficient. It is not necessary to list and provide detailed information on the legislative authority. Information on the judicial authority is not necessary.

E Material business prospects

Point 2.4.9 Annex 1, Point 2.4.4(c) Annex 2, Point 2.4.0(c) Annex 3, Point 2.4.0(c) Annex 4, Point 2.4.0(c) Annex 5 FinSO

The prospectus must contain information specific to the securities about the material business prospects and a statement that these are subject to uncertainty.

With reference to Art. 961c para. 2 no. 6 CO, the Prospectus Review Office expects a statement that allows conclusions to be drawn about the issuer's expected future economic development.

Such a statement may be qualitative (examples in the following two paragraphs) or quantitative in nature.

Industry-related and macroeconomic developments or expectations that are not related to the business performance of the issuer, guarantor or collateral provider do not satisfy the requirements. The same applies to statements regarding expected (economic, social, etc.) trends. In such cases, it must at least be clear what influence a specific trend or economic development could have in qualitative terms on the future business prospects of the issuer, guarantor and collateral provider, or how the future business prospects are assessed against this background. For example, an assessment could state that a specific trend or macroeconomic development will 'improve' or 'worsen' the business prospects of the issuer, guarantor and collateral provider compared with the previous year.

An alternative option is to make a qualitative, forward-looking economic assessment with reference to the last financial statements of the issuer, guarantor and collateral provider. Such an assessment could, for example, state that the expectations are that the issuer's material business prospects will remain the same, improve or deteriorate compared with the results of the last annual financial statements.

However, a general reference to the section on forward-looking statements is not sufficient to meet these requirements.

The text passage concerning the material business prospects within the overall structure of the prospectus must also be assessed. The benchmark here is that a third party (investor) should be able to find the relevant information when searching for it. In this sense, business prospects are not acceptable in the risk factors.

Similarly, scattered information on the material business prospects in various documents or passages scattered throughout the prospectus are generally not compatible with the criterion of comprehensibility.

Depending on the specific circumstances, the Prospectus Review Office considers the following statements to be fulfilled in terms of material business prospects:

- Local authorities: information on expected tax revenues (budget).
- SPV: in the absence of operational activities, a reference to the purpose of the company is sufficient.
- Start-ups without material turnover: information on the current state of research and its prospects.
- Companies without profit objectives: information on expected production figures

F Share capital as of the date of the annual financial statements

Point 2.6.1(a) Annex 1, Point 2.5.1(a) Annex 2, Point 2.5.1(a) Annex 3, Point 2.6.1(a) Annex 4, Point 2.7.1(a) Annex 5 FinSO

The Prospectus Review Office refers to the applicable FinSO Annex and points out that the Regulation requires information on the capital structure, the amount of ordinary and contingent capital and the capital band *as of the balance sheet date* (lit. a), while the information required in lit. b may be provided without specifying a specific date.

Due to the clear wording, the applicable FinSO Annex regarding information on the amount of ordinary, authorised and contingent capital or the capital range as of the balance sheet date of the annual financial statements is not fulfilled if reference is made to the prospectus date as the balance sheet date. If the capital structure is not additionally disclosed in the annual report, the prospectus must be amended.

G SPV

Points 2.5.4 and 2.6.7 Annex 2 FinSO

With regard to the minimum content in accordance with the applicable FinSO Annex, the information on the guarantor and collateral provider is sufficient for a special purpose vehicle (SPV).

This provision also applies in the reverse case, i.e. if the guarantor and collateral provider is an SPV. In this case, information about the issuer is sufficient.

3.3 Annual and interim financial statements

A Audit of annual financial statements

Section 2.8.1, Annex 1, Section 2.6.1, Annex 2, Section 2.6.1, Annex 3, Section 2.8.1, Annex 4, Section 2.10.1, Annex 5 FinSO

Annual financial statements and opening balance sheets (for newly established companies) must be audited in all cases. A limited audit is permissible where required by law.

B Financial reports for groups

Point 2.8.1 Annex 1, Point 2.6.1 Annex 2, Point 2.6.1 Annex 3, Point 2.8.1 Annex 4, Point 2.10.1 Annex 5 FinSO

If the issuer or guarantor and collateral provider is a group company and is consolidated in the financial report used in the prospectus, this financial report is sufficient, provided that either the issuer or the guarantor and collateral provider is the parent company of the group.

C Public-law entities domiciled in Switzerland

Art. 40 FinSA
Art. 50, point 2.8.5 Annex 1, point 2.6.5 Annex 2, point 2.6.5 Annex 3, point 2.8.5 Annex 4, point 2.10.5 Annex 5 FinSO

Pursuant to Art. 40 para. 1 lit. a no. 2 FinSA, the prospectus must contain the information about the issuer and the guarantor and collateral provider that is essential for the investor's decision, namely the most recent half-yearly or annual financial statements or, if these are not yet available, information about assets and liabilities.

Art. 50 para. 1 FinSO in conjunction with point 2.6.5 of Annex 2 FinSO stipulates that prospectuses for debt securities (excluding derivatives) must contain additional interim financial statements prepared in accordance with the same accounting standards as the annual financial statements for at least the first six months of the financial year if the reporting date of the last audited annual financial statements is more than nine months prior to the date of publication of the prospectus.

Public-law entities domiciled in Switzerland regularly apply the harmonised accounting standard (*Harmonisierte Rechnungsmodell*). The preparation of interim financial statements is not provided for under this accounting standard.

Point 2.6.5 *Annex* 2 FinSO specifies that public-sector entities domiciled in Switzerland that apply the harmonised accounting standard are not required to include interim financial statements in the prospectus for debt securities (excluding derivatives) if the reporting date of the last annual financial statements is more than nine months prior to the date of publication of the prospectus. This practice, based on this practice Notice, must be clearly stated in the prospectus.

For the sake of completeness, it should be noted that these simplifications only apply to public-law entities domiciled in Switzerland that apply the harmonised accounting standard. For foreign structures, an application for exemption must be submitted to the Prospectus Review Office.

D Exceptions regarding interim financial statements

Point 2.8.5 Annex 1, Point 2.6.5 Annex 2, Point 2.6.5 Annex 3, Point 2.8.5 Annex 4, Point 2.10.5 Annex 5 FinSO

The applicable FinSO Annex requires additional interim financial statements prepared in accordance with the same accounting standards as the annual financial statements for at least the first six months of the financial year if the reporting date of the last audited annual financial statements is more than nine months prior to the date of publication of the prospectus.

Exceptions are provided for in one or two cases, depending on the applicable FinSO Annex, and are marked accordingly with an (x) and (*) (except in Annex 5 FinSO). These are:

- Relief for issuers pursuant to Art. 47 FinSA; or
- Relief for public offerings **without admission to trading**.

If one of these conditions is met, no interim financial statements need to be submitted in accordance with Art. 57 para. 1 FinSO. Interim financial statements are therefore required for every admission to trading (within the meaning of Art. 36 FinSA), unless an exception under Art. 47 para. 1 FinSA applies.

If no interim financial statements are available, a list of assets and liabilities in accordance with Art. 40 FinSA may be included in the prospectus. This list must be audited.

3.4 Information about the securities

A State guarantees

Section 3.4.11.4 Annex 2, Section 3.8.4 Annex 3 FinSO

The information required under the applicable FinSO Annex is deemed to have been provided if the relevant wording of the law on state guarantees is reproduced or incorporated by reference.

B Trust structure

Section 3.4.15 Annex 2 FinSO

In accordance with Section 3.4.15 *Annex* 2 FinSO, the following information must be provided if a trustee is appointed between the issuer and the bondholders (trust structures):

a. Brief profile of the trustee;
b. Powers of the trustee;
c. Conditions for changing the trustee; and
d. Applicable law and place of jurisdiction of the trust agreement and indication of where the relevant agreements are available for inspection.

A brief profile is necessary if assets are transferred to the trustee (transfer of ownership). In other cases, the Prospectus Review Office assumes that although the term 'trust' is identical, it has a different semantic meaning and therefore a brief profile is not necessary.

Simply stating the address of the trustee in the sense of a brief profile is not sufficient.

C Highlighted note regarding delivery of certificates

Point 3.8.9(d) Annex 1, Point 3.4.16(d) Annex 2, Point 3.2.11(c) Annex 3, Point 3.7.9(d) Annex 4, Point 3.7.9(c) Annex 5 FinSO

In the case of securities that are permanently securitised in the form of one or more global certificates or issued as value rights, a correspondingly highlighted note must be made to the effect that the investor cannot demand the delivery of individual certificates.

The Prospectus Review Office accepts, among others, the following forms for the required highlighted note (not exhaustive):

- Visual highlighting in the terms and conditions: e.g. in bold type, italics, bordered with a bar, etc.;
- Additional inclusion on the cover page; or
- Additional inclusion in the summary.

The highlighting is also necessary for prospectuses for equity securities. The Prospectus Review Office points out that prospectuses for equity securities only refer to global securities, but not to rights certificates. The Prospectus Review Office assumes that this is a legislative oversight and that the highlighted notice is also necessary for rights certificates.

3.5 Other

A Publication regarding the issuer or guarantor and securities

Point 3.6 Annex 1, Point 3.8 Annex 2, Point 3.4 Annex 3, Point 3.5 Annex 4, Point 3.5 Annex 5 FinSA

The Prospectus Review Office notes that prospectuses are often submitted that only contain a reference to where notices concerning the securities are published. The Prospectus Review Office points out that, in accordance with the applicable FinSO Annex, prospectuses must contain a reference to where notices concerning both the securities and the issuer or guarantor and collateral provider are published.