



Securities Law Newsletter Switzerland

Swiss Federal Council Proposes New Law for Dematerialized Securities Held through Intermediaries and to Incorporate PRIMA into the Swiss Private International Law Act

The Swiss Federal Council proposes to enact a new law for dematerialized securities held through intermediaries. In addition, the Swiss Federal Council proposes to amend the Swiss Private International Law Act such as to include the place of the relevant intermediary approach ("PRIMA") as set out in the Hague Convention of July 5, 2006 on the Law Applicable to Indirectly Held Securities.

The Swiss legal system is still based upon the traditional notion that securities must be certificated and that the transfer of the rights evidenced by the certificated security requires transfer of possession of the certificate. In the today's world, however, securities are only rarely held directly by the investor. Today, almost all securities which are traded are held through indirect holding patterns and to the extent these securities are certificated, the certificates are immobilised by depositing the certificates with a central depository.

The proposed law is intended to create a transparent and reliable legal basis for indirectly held securities and the book entry security ("Bucheffekte") is introduced as a new legal instrument, distinct from certificated securities as negotiable instruments and tangible goods.

The proposal also provides for a much welcomed clarification of the right to privately liquidate collateral consisting of book entry securities in an insolvency situation. Furthermore, the proposal will clarify that the substitution of collateral by equivalent collateral during the suspect period and the provision of additional collateral (in case the value of the collateral provided has decreased in value), provided such obligation is based upon a pre-existing agreement,

will generally not be subject to successful challenge as avoidable preference.

It is expected that the proposal of the Federal Council will be discussed in the Parliament in one of the next sessions.

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