

Switzerland

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Switzerland: an introduction

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Switzerland is a relatively small country with a disproportionately large and well established international corporate base. Swiss multinationals, in particular major banks and insurance companies such as UBS, Credit Suisse, ZFS and Swiss Re, as well as food and pharmaceutical firms such as Nestlé, Novartis and Roche, contribute considerably to its economy.

Switzerland also remains an attractive base for international companies and organisations. Leading international companies that have relocated their global or regional headquarters to Switzerland include ACE, Amgen, Colgate, eBay, Google, IBM, JTI, Medtronic, Procter & Gamble and Transocean. When asked for the driving factors behind locating their headquarters in Switzerland, executives emphasise Switzerland's quality of life, stable political environment, central location in Europe, highly educated and multilingual workforce, favourable tax regime, liberal labour market and solid transportation and communication infrastructure. Switzerland also continues to host important international organisations such as the UN and non-governmental organisations such as the Red Cross, IOC, Fifa and Uefa.

Switzerland benefits from a broad set of international treaties, including treaties with the EU, which cover, among other things, the free movement of people, the reduction of border controls and removal of trade barriers.

Effects of the financial crisis

In 2010, the global financial crisis continued to impact the Swiss economy. While in 2008 primarily Swiss financial institutions were affected, in 2009 the crisis increasingly affected the manufacturing and construction industry causing a (comparably light) increase in

un-employment and government funded short-time work programs.

Mainly due to its federal budget surplus and comparably low cost for the bailout of the banking system, Switzerland has been affected by the financial crisis to a lesser extent than many other industrialised countries. This has allowed it to maintain a stable legal and tax environment, which has in turn notably increased the interest of international companies, in particular from the financial services industry, in relocating to Switzerland.

In view of the significant budget deficits of many foreign countries, various governments started to question the Swiss banking secrecy and data protection laws and asked for expanded information exchange rules in order to combat tax evasion and tax fraud by their citizens. As regards the good reputation and integrity of the Swiss financial market, the ongoing double tax treaty negotiations between Switzerland and various countries are of particular importance for Swiss wealth management service providers.

Weathering the storm - the Swiss legal market

During 2009 and the first half of 2010, the Swiss legal market remained relatively unaffected by the financial crisis. The main impact on the Swiss legal market was a significant decrease in inbound referral work from international firms that has, however, been offset by an increase in domestic work.

Another notable effect was the shift from standard, commodity-type of work to increasingly complex, urgent and critical matters. This favoured firms specialising in complex, high-end legal work in particular, but a traditionally conservative approach to leverage and expansion and focus on the domestic market helped many Swiss firms coping with the financial crisis and no significant redundancies occurred.

The transaction that probably attracted most attention in 2009 was the disposal by the Swiss Confederation of its equity stake in UBS at a total transaction value of SFr7.2 bil-

lion. Another high-profile case was the bankruptcy of a Swiss Lehman Brothers subsidiary through which a large part of the global Lehman OTC equity derivatives transactions had been managed.

Mergers and acquisitions

Switzerland experienced a lively public M&A year including a multibillion-franc exchange offer by Swiss Prime Site for all shares in Jelmolli; a tender offer of Cosmo for all shares in BioXcell; and a mandatory tender offer of MMA for all shares in Harwanne, to name a few examples. Several companies completed significant share buy-back offers.

Although the private M&A market in general has not yet regained its previous levels of activity, towards the end of 2009 there was some increased appetite for bigger transactions, culminating in the proposed multibillion merger of two of the three major Swiss telecom providers (Sunrise and Orange) which was eventually blocked by the Swiss Competition Commission, and the acquisition by Novartis of NYSE-listed Alcon from Nestlé announced in early 2010.

Notably affected by the global credit crunch, international private equity transactions were fewer in number, with a trend to small-to-medium and non- or low-leveraged transactions.

Capital markets - banking

In 2009 and the first half of 2010, Switzerland's situation differed from that of other parts of Europe, in particular regarding domestic transactions. Unaffected by the burst of the housing bubble in other jurisdictions, many financings in Switzerland continued to operate as they did before. Debt market activity remained strong, due to an increase in EMTN and convertible issues. Equity capital markets activity, for both primary and secondary offerings, on the other hand, decreased substantially due to decreasing stock markets and extreme market volatility. The transaction that attracted the most

attention in 2010 was the SFr1 billion rescue rights offering and debt restructuring by OC Oerlikon Corporation.

The cross-border banking market changed in 2009 due to the exposure of the international credit markets to the credit crunch, cross-border transactions therefore tended to focus on loan refinancings, the adjustment of covenants or the addition of new collateral. On the Swiss domestic market, however, the origination of large syndicated loans and Swiss club facilities granted by banks to investment grade corporate borrowers continued relatively unaffected.

In 2009, the Swiss private banking sector entered into a significant consolidation process, with several smaller private banks being sold to other banks. This trend is expected to continue.

On 1 January 2010 the Swiss Book-Entry Securities Act (Besa) became effective. By introducing book-entry security as a new legal concept, Besa provides for an up-to-date legal regime for indirectly held securities.

Litigation - regulatory

Pressure from international organisations and foreign governments for increased information sharing, and the problems arising from Swiss financial institutions to comply with Swiss banking secrecy and data protection laws, brought several smaller law firms mandates from foreign private clients to act against Swiss institutions and regulators to prevent the cross-border disclosure of client data.

Moreover, claims by clients against Swiss financial institutions and related litigation also increased because of the downturn of stock markets and losses in client portfolios.

Banking and finance

Recommended firms

Tier 1

Bär & Karrer
Homburger
Lenz & Staehelin
Niederer Kraft & Frey

Tier 2

Baker & McKenzie
Pestalozzi
Schellenberg Wittmer
Walder Wyss & Partners
Wenger & Vieli

Tier 3

Borel & Barbey
CMS von Erlach Henrici
Froriep Renggli
Nobel & Hug
Prager Dreifuss
Python & Peter
Vischer

Mergers and acquisitions

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Vischer
Walder Wyss & Partners
Wenger & Vieli

Tier 4

CMS von Erlach Henrici
Meyerlustenberger
Prager Dreifuss
Python & Peter

Tier 5

Borel & Barbey
Tavernier Tschanz
Wenger Plattner

Restructuring and insolvency

Recommended firms

Tier 1

Baker & McKenzie
Lenz & Staehelin
Wenger Plattner

Tier 2

Bär & Karrer
Homburger
Niederer Kraft & Frey
Schellenberg Wittmer
Walder Wyss & Partners
Vischer

Tier 3

Froriep Renggli
Python & Peter

Despite being independent of Europe and the single currency, Switzerland was by no means immune from the financial turmoil of 2009. Similar to the UK, the state needed to intervene to save the banking system before it collapsed and caused a state of economic emergency.

Both UBS and Credit Suisse were bailed out by the government and the crisis seems to have subsided as a result. "It is quite a stable market now," says one partner.

Firms have noticed that there has been a distinct decrease in the amount of international work coming through the country. "There has been a shift from referral work to domestic work," says one partner. "It certainly has become more difficult for foreign investments to be done." Since the beginning of 2009, clients have also become more price conscious, as one partner says: "In difficult times, the first question our clients ask is 'How much does it cost?'"

Following the crisis, the government introduced a series of new regulations to protect the system against any future economic problems. "Everyone is talking about the new regulatory financial trade agreements," says one partner. "Everyone is guessing what kind of impact these new agreements will have on business."

The regulations include a statutory level of equity for new money projects. "Projects now need between 25% and 35% equity investment down on the table before a deal is given the go-ahead," says one partner. "In 2007 we saw deals that were leveraged at close to 100%."

On the tax side, Switzerland has come under pressure from the Internal Revenue Service over tax secrecy following US President Barack Obama's crackdown on citizens avoiding paying their national tax. "It's

very difficult all of this at the moment with America,” says one partner. “One of the problems is they won’t define between tax fraud and tax evasion.”

The M&A market managed to battle through, with practitioners increasingly turning towards the domestic market to find mandates. However there was not the level of activity that some had hoped for. “We thought that we would see a lot more distressed asset buys from foreign investors,” says one partner. “But then we realised that anchor shareholders didn’t want to sell their assets at a low price.” The market was in stalemate. Companies didn’t want to invest while they didn’t need to sell either. “Despite popular belief the majority of companies were not close to bankruptcy,” says one partner. “Here they all have strong balance sheets.”

There were a series of mid-size deals on the market in the fashion, pharmaceutical and food sectors, so firms were never short of work. Nevertheless, M&A lawyers sense a return to the market of the mega-deals. “There is some good news on the horizon,” says one partner. “The upper end of the middle segment was never really affected by the crisis, so they have cash and there are deals on the market to invest in.”

Another trend being seen is law firms bolstering their restructuring and insolvency practices as many companies look to consolidate debt and save their businesses. One partner says: “We revamped our insolvency team quite a lot over the last few years.”

This increase in numbers has come at the right time as R&I lawyers have become inundated with work and have been, in some cases, daunted at the escalating costs of the transactions they are providing for their clients. “We have master agreements which can run into the billions and billions,” says one partner. “You have to have big nerves because if you get it wrong, it can be quite costly.”

One large source of work over the past 12 months has come from the Lehman Brothers who, after firm went bankrupt last year, are now dissolving its subsidiaries in Europe. “Lehman Brothers had one of its largest subsidiaries in Switzerland,” says one partner. “It will be a landmark insolvency transaction for Swiss law.”

Bär & Karrer

Bär & Karrer had another strong year across the field and is considered by the market to be one of the best law firms in the jurisdiction. Following the crisis, where law firms received a drop in their work from abroad, Bär & Karrer turned its attention towards the local market, demonstrating the vast number of clients it can turn to when the foreign market

drops. One client describes the firm as “value for money” saying that they are “gutsier and cheaper” than other firms.

In banking, the firm had a series of big deals with its stand-out mandate advising Credit Suisse and Morgan Stanley on the placement of the UBS stake held by the Swiss Confederation. The total gross proceeds were SFr5.5 billion (€4 billion) and drew a lot of public attention after the government had initially bailed out the bank.

On another cross-border banking deal the firm, led by Eric Stupp, advised an association of foreign banks in Switzerland. The transactions related to several off-shore private wealth banking hubs with 12 jurisdictions. The transaction, completed in October 2009, demonstrated the firm’s competence in dealing with a multi-jurisdiction deal and understanding the different laws involved.

The M&A team at Bär is a powerful set-up and is the first port of call for many of the world’s leading companies. “They are clearly one of the leading firms,” says one client. “We worked specifically with M&A lawyer Thomas Reutter who is extremely commercially minded.”

The firm advised Novartis on an acquisition in one of the biggest deals in Swiss history, valued at \$38.5 billion. Alcon, a global leader in eye care, was acquired by pharmaceutical company Novartis in a deal led by partner Rolf Watter. “They are the sole leaders in M&A,” says one partner. “They have about five dedicated M&A lawyers who are all excellent.”

Led by head of its restructuring and insolvency team, Thomas Rohde, the firm has been consistently busy in the market having sealed a significant number of mandates, many of which are still ongoing.

One stand-out deal last year, led by Ralph Malacrida and Till Spillmann, was the restructuring of OC Oerlikon Corporation. The firm advised the largest shareholder, Renova and the lenders on a restructuring of SFr2.5 billion of syndicated loan facilities of Oerlikon.

One client who worked with Malacrida and Spillmann says: “The two of them made an excellent team. It was clear from the start they wanted to dive straight into it. Throughout the whole transaction they were ready for possible emergencies and moved toward a constructive solution.”

Leading lawyers

Ralph Malacrida
Christoph Neeracher
Eric Stupp
Rolf Watter

Homburger

Homburger has been very much at the forefront of the action over the last year and subsequently received a high amount of praise for being a strong presence through the difficult period. The firm’s real asset is its wide knowledge of the equity and debt capital markets with Homburger acting on some substantial mandates with key international players including Deutsche Bank, Credit Suisse and Morgan Stanley. One peer says: “Homburger includes specialised financial services which are well respected in the market.”

Claude Lambert and Daniel Daeniker are two key partners in the banking and finance practice and led negotiations with UBS following the bank’s bailout by the Swiss government. In June 2009 the bank announced that it was offering 293 million newly-issued shares to a small number of institutional investors. The total amount raised from the IPO was SFr3.8 billion (€2.8 billion).

The pair later advised UBS on the issuance of covered bonds in September 2009. One client says: “Daniel Daeniker was excellent, very commercial, robust and technically excellent.”

The corporate M&A team has headed up some big mandates that impressed peers across the market. “That is an example of good line-up,” says one partner. “There are no individuals, they are just a good team.”

The firm, led by Daeniker, is in the second stage of advising the Nestlé-owned Alcon on its \$50 million sale of a 77% stake to Novartis. The deal involves a dual-acquisition purchase followed by an immediate share issue. Another client says of the M&A team: “In Switzerland, lawyers can be a little academic, and a little reactive. But Homburger is very proactive”.

The firm has also been heavily involved in the project finance sector, primarily focused on the renewable energy through partner Hansjürg Appenzeller.

Homburger’s restructuring and insolvency team was boosted with the arrival of three new associate lawyers who joined the practice under the leadership of Ueli Huber. One client says: “I thought they had the knowledge and the feeling to find solutions”.

The stand-out R&I deal of last year was advising Deutsche Bank, as an agent of secured lenders, in the insolvency proceedings, restructuring efforts and asset sales with regards to Nexis Fibers.

Leading lawyers

René Bösch
Daniel Daeniker
Claude Lambert
Benedikt Maurenbrecher
Flavio Romerio

Lenz & Staehelin

Lenz & Staehelin has remained a leading firm across the board and remains a first-choice law firm for many domestic and international clients in the jurisdiction.

Its knowledge and expertise have won a large amount of praise from peers, and its deal turnaround speed has really impressed its clients. "They worked at a frightening pace," says one client. "I would ask for something at midday and they would get back to me at 5pm."

The client adds: "We were doing a financing transaction throughout the whole of Europe and Scandinavia. There were many issues to deal with including labour, corporate and contract law, which they dealt with excellently."

On one banking deal, the firm advised various export credit agencies and lenders on the €3.9 billion financing of the Nord Stream gas pipeline project. Led by partner Patrick Hünerwadel, the complex transaction involved a series of debt financing from export credit agencies, Hermes, Sace and UFK, and a commercial bank syndicate of 26 banks. The pipeline will link Russia to Germany via the Baltic Sea, a total of 1,220km in length.

Specialist capital markets lawyer Patrick Schleiffer also led the firm on a series of transactions with Swiss banking group Julius Bär, MondoBiotech and BNP Paribas.

On the M&A side, partner Rudolph Tschäni, advised the NYSE-listed PartnerRe on its \$2 billion acquisition, structured as a triangular merger with ParisRe and Euronext. In this innovative deal, the firm had to negotiate several different transactions at once for the deal to go through.

The firm also advised Deutsche Börse in its €29 million acquisition of Stoxx as well as representing Euroknights, a private-equity fund advised by Argos Sodic, on its sale of its two portfolio companies.

The restructuring and insolvency team certainly had its fair share of the deals last year with the firm landing some impressive mandates which grabbed the attention of its counterparts. "I've been really impressed with Lenz in R&I recently," says one peer. "They've done some really good deals."

Under the guidance of head of department Tanja Luginbühl, the firm was involved with the insolvency of Lehman Brothers Finance (LBF). The team represented various key creditors and financial institutions involved in the proceedings. Subsequently Luginbühl has been appointed as a member of the creditors' committee of LBF in liquidation.

One client says: "When it comes to restructuring and insolvency, you want a law firm that knows what they are doing. With Lenz we found them concise and responsive

and always gave a bullet-point list of what our options were. They also had a good human side which we liked."

Leading lawyers

Rudolf Tschäni

Niederer Kraft & Frey

Niederer Kraft & Frey enjoyed an impressive deal flow last year with an array of deals across all practice areas that has seen the firm rejoin the top M&A tier. Its strong practice, led by a group of highly qualified individuals, has impressed peers and clients in a similar way. While one client questions the speed and flexibility of the team, another client says that, on quality, the firm is second to none. "In terms of their expertise and organisation they are comparable to a big law firm in the UK," says one international client. "You wouldn't believe they were a mid-size outfit in Switzerland".

The firm had an active year on the debt restructuring side with partner Thomas Frick advising a major international crude producer on the Swiss aspects of the law in a deal that will rise to over SFr100 billion (€72 billion).

Led by Philippe Weber, the firm also advised ING among others on a SFr1.2 billion refinancing transaction, demonstrating its superiority in this field.

"They are a well balanced team and don't overwhelm its clients with lots of legal jargon," says one client. "Sandro Abegglen has a real quality in banking secrecy. This is a huge decision for us when we choose law firms."

Under the watchful eye of the media, the firm advised France Telecom, the parent company of Orange, on its merger of with TDC, the parent company of Sunrise Communications. Led by Philippe Weber, the firm represented the French telecommunications company in what would have been one of the most significant M&A deals in the country, and was valued at SFr4 billion (€2.9 billion). The deal, however, fell through after the Swiss competition law deemed the move illegal.

"Philippe Weber was just outstanding. He's a very smart guy and co-ordinated all of his team very well," says one client. "He is very client-oriented and understands all of the clients wishes."

The firm has also been heavily involved on the restructuring and insolvency side, with a couple of large mandates that have maintained the firm as one of the market leaders in the practice area.

On one of its highlights, Urs Pulver led the team in advising Lehman Brothers Finance (LBF) in connection to the bankruptcy and insolvency of the Lehman Group. The deal included a complex structure with the firm

having to negotiate numerous derivative transactions, security lending and repurchase transactions under the several international regulatory groups. The firm has been involved with LBF since September 2008 after the group went bankrupt.

Leading lawyers

François Bianchi

Andreas Casutt

Philippe Weber

Pestalozzi

Pestalozzi has been steady over the past year and can be proud of its book of business, which has maintained the firm's status as a strong tier two firm.

On the banking side, the firm advised Reynolds Group Holdings on the financing for an acquisition of its subsidiary Reynolds Consumer Products. The banking team, led by Jakob Höhn, acted as Swiss counsel to the borrower in connection with the release of the existing credit and securities agreements. The deal also involved the issuance of \$1.1 billion and €450 million of senior-secured notes, as well as \$1 billion and €250 million of borrowings under a senior credit agreement. The total transaction was in the region of \$3.3 billion.

The firm's M&A department was widely seen to make big improvements in the market with the team representing some of the world's biggest clients. The firm was dubbed as "modern" and "dynamic" by one client with several lawyers receiving individual praise.

On one deal, the firm represented BMW in its sale of the Formula 1 team to Peter Sauber. Partners Christian Roos and Stephan Manfré represented the German automobile giant in a deal that was picked up half way through after the client changed firms.

"We were working under a severe time pressure, but the firm worked tirelessly to get the job done," says one client. "Roos was a very experienced lawyer with a gentle touch. He didn't have shouting matches with the other side when they got a bit emotional. He remained very calm."

The firm has also been on the M&A legal counsel to other international companies including Coca-Cola, Johnson & Johnson and Swiss Life.

Schellenberg Wittmer

Schellenberg Wittmer remains a strong presence in the banking and finance market as the firm demonstrated its expertise across many legal disciplines including restructuring, acquisition finance and equity and debt capital markets instruments.

On one banking deal, the firm advised Apen (formerly AIG Private Equity) on the restructuring and refinancing of its bank debt. This was achieved by raising \$225 million of new financing provided by Fortress Credit, an affiliate of Fortress Investment Group and Swiss Bank.

On the capital markets side, the firm acted as transaction counsel to BNP Paribas in the SFr290 million (€222 million) convertible bonds issue by Graubündner Kantonalbank. The latter acted as sole bookrunner and both banks acted as joint lead managers.

While the firm's M&A work is not as visible to its peers, one highlight saw Lorenzo Olgiati advise private-equity firm Earlybird in the merger between Swiss Exchange-listed Myriad Group and France's Purple Labs. The deal formed the largest mobile phone software company in the country.

In a cross-border deal the firm acted as Swiss counsel to Nasdaq-listed Life Technologies Corporation on its sale and transfer of its mass spectrometry business to the NYSE-listed Danaher Corporation. The deal, also led by Lorenzo Olgiati, was valued at \$450 million.

Schellenberg Wittmer is a strong firm in the R&I market with clients such as UBS, Ernst & Young and Finma on its books.

One highlight saw Vincent Jeanneret appointed by Finma, the independent body in charge of monitoring Swiss banks, brokers and insurance companies, to liquidate Kaupthing Bank Luxembourg and ACH Securities. The R&I team also represents various creditors of Armada Shipping, a freight import and export company that was declared bankrupt and subsequently insolvent in various countries including Switzerland.

"Vincent Jeanneret has been outstanding, known to me for many years," says one client. "All show efficiency, quick understanding. They would inspire in me nothing but complimentary words."

The firm has also been involved with various subsidiaries of the Lehman Brothers Group following its bankruptcy in September 2008.

Leading lawyers

Martin Lanz
Lorenzo Olgiati
Oliver Triebold
Martin Weber

Walder Wyss & Partners

Walder Wyss & Partners had a solid banking practice last year and was nominated for deal of the year at the *IFLR magazine's* 2010 European Awards in its role as counsel for the UBS covered bonds programme. Led by

Barbara Rühlmann and Daniel Morales, the Swiss bank issued covered bonds which were indirectly backed by a portfolio of mortgages from UBS's domestic mortgage pool in Switzerland. The total combined issuance value was over €3 billion.

On the R&I side the firm was appointed by the Federal Banking Commission as observer and liquidator to a non-registered securities dealer as well as advised a large European securities clearing institution on bankruptcy procedures.

Leading lawyers

Markus Pfenninger

Other ranked firms

CMS von Erlach Henrici, one of Switzerland's few international law firms, has been working its way into a competitive market, using its international network to attract some important clients. On one deal the firm, led by Kaspar Landolt, advised Lloyds TSB Commercial Finance on the Swiss aspects of a \$500 million asset-based lending transaction, including the securitisation of airplane parts and inter-creditor issues.

The firm also dealt with a debt capital markets issue by advising General Electric Capital Corporation in connection to a number of Swiss franc-denominated bond issues.

On the M&A side Oliver Blum and Stefan Brunnschweiler advised Flachglas Wernberg on the acquisition of Pilkington and several of its subsidiaries.

In another M&A deal the firm advised BC Partners on its €400 million acquisition of Future Lab Group.

Meyerlustenberger focused its team primarily on the corporate M&A side with a series of joint venture and acquisition deals. On one deal, corporate duo Christoph Heiz and Daniel Schoch advised Piraeus Bank on its joint venture with a major French bank on asset management in a deal valued at €100 million.

The firm advised Meyer Burger Technology on a couple of acquisitions buying 3S industries and Diamond Wire Technology for SFr330 million (€240 million) and SFr80 million respectively.

Out of all the law firms in Switzerland **Vischer** was the one seen to have raised its profile the most with new hirings, new clients and a strong deal flow. While Matthias Glatthaar and Ursina Brack joined the banking team as associates, Thomas Krizaj joined the team as senior associate to boost the team's credentials.

On one of the top banking deals, the firm advised Julius Bär regarding the outstanding SFr2.5 billion (€1.8 billion) preferred securi-

ties to the newly formed Julius Bär Group. The deal was a part of the separation of the Julius Bär Group into two independent units.

On the M&A side the firm won praise for its reliability. "They have a number of M&A lawyers that I would turn to in case of a conflict situation," says one peer. Led by Klaus Neff, the firm advised CTS Eventim in the purchase of Ticketcorner Holding for SFr65 million.

One client says: "There are two things that I appreciate in law firms and Vischer had them both. One is having a grasp of the law to begin with and the other is the practicality of dealing with problems and finding solutions. We found Matthias Staehelin very competent in both these issues."

The restructuring and insolvency team was heavily praised by the market, with one leading partner saying: "I don't know where they have come from, but they are doing some good things now." The firm advises the liquidators of the Lehman Brothers (LB) on a number of regulatory and legal issues regarding the bankruptcy procedures of its Swiss subsidiaries.

Wenger & Vieli has been a consistent law firm over the past year with a number of deals across all practice areas. One highlight saw the team advise a Swiss bank consortium on a complex restructuring of a syndicated loan valued at SFr280 million (€203 million). The deal was led by Andreas Hünerwadel and Eyal Tavor.

The firm is also representing a group of creditors in the Lehman Brothers insolvency process.

Other notable firms

Staiger Schwald & Partner, under the leadership of Mark-Oliver Baumgarten, has had some strong deals over the last 12 months. The highlight was advising Mizuho International on regulatory and capital market issues, including a restructuring of convertible bonds where the client acted as lead manager.