

## SWITZERLAND

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## Cornerstone investment in CEVA IPO

CEVA Logistics (CEVA), one of the world's leading third-party logistics companies, successfully completed its initial public offering on the SIX Swiss Exchange, where trading commenced on May 4 2018. With a market capitalisation of approximately CHF1.6 billion (\$1.6 billion) and generating gross proceeds of CHF821 million, the transaction is the largest IPO on the SIX Swiss Exchange to date in 2018. In a parallel private placement, CMA CGM, the third-largest container shipping group in the world, made a strategic cornerstone investment of CHF379 million in CEVA which corresponds to approximately one-third of the entire deal volume of CHF1.2 billion. A cornerstone investment of this magnitude is, as far as we are aware, unprecedented for an IPO and requires careful structuring to address antitrust, rating and governance concerns. Additional complexity was created by the simultaneous migration of the former ultimate holding company of the CEVA group from the Marshall Islands to Switzerland. This was effected by way of a cross-border merger which should only be consummated following a successful pricing of the IPO.

### Structuring as mandatory convertible securities

The structuring of the cornerstone investment had to address two main objectives. On the one hand, CMA CGM intended to make a substantial investment in CEVA's equity. However, CMA CGM purchasing the envisaged number of shares in the IPO (which could have been effected through a guaranteed allocation in the IPO) would have required prior antitrust approval in several jurisdictions. Due to timing constraints, these prior approvals could not be obtained in time. On the other hand, an

investment in a typical convertible bond might have had negative implications from a rating perspective if the bond was to be qualified as debt. To avoid the need for upfront antitrust filings while mirroring the characteristics of ordinary shares as closely as possible and also ensure an equity treatment from a ratings' perspective, CMA CGM's investment was structured as mandatory convertible securities (Convertible Securities) which are equipped with the following features:

**Mandatory conversion:** Each Convertible Security mandatorily converts into shares of CEVA at a price per Convertible Security equal to the offer price in the IPO (that is, on a 1:1 basis) upon the earlier of (i) the receipt of the relevant regulatory approvals; or, (ii) 18 months after the IPO. Since, in the latter case, the regulatory approvals would not have been obtained in time, the Convertible Securities are converted for a forced sale on behalf of CMA CGM.

**Subordination:** The Convertible Securities are unsecured and contractually subordinated to most other liabilities of CEVA.

**Floating coupon:** The Convertible Securities do not bear interest on their principal amount, but entitle their holders to receive a floating coupon equal to any dividend or similar distribution made to CEVA's shareholders.

**Conditionality:** The obligation of CMA CGM to purchase the Convertible Securities were conditional upon, *inter alia*, the successful completion of the IPO and the offer price not exceeding the upper end of the offer price range. In addition, the closing of the IPO was conditional upon the closing of the CMA CGM investment and vice versa.

### Governance rights and obligations

The second challenge when structuring CMA CGM's investment in CEVA was to strike a balance between the interests of the cornerstone investor as a (future) large shareholder of the issuer and the interests of CEVA to protect the rights of other (smaller) shareholders. In the case at hand, CEVA and CMA CGM agreed on a set of governance rights and obligations:

**Lock-up and standstill:** To ensure a certain stability in the shareholder structure during the months following the IPO, CMA

CGM, apart from agreeing to a customary lock-up for 12 months, undertook not to increase its shareholding in CEVA during the first six months after the IPO other than to preserve its stake in the case of an exercising of the over-allotment option (greenshoe) granted to the managers.

**Board representation and voting:** CMA CGM was granted the right to nominate one or two candidates (depending on its shareholding) for CEVA's board of directors. This right required the implementation of certain precautionary measures to prevent conflicts of interests and limit the flow of sensitive information to CMA CGM. In addition, CMA CGM agreed to vote all its shares to support the election of the other directors recommended for election by the board of directors. To safeguard this obligation, CMA CGM is obliged to make a public tender offer for CEVA within three months, if, at any time, more than half of CEVA's directors are nominees selected by CMA CGM.

**Third-party tender offers:** CMA CGM's cornerstone investment also required the addressing of any potential (future) tender offer by a third party. In the case of such an offer, CMA CGM can either submit a superior offer or, if it elects not to do so, has to tender its shares if the offer is recommended by the board of directors of CEVA. During the first 24 months after the IPO, this obligation only applies in cases where the third-party offer price is higher than the offer price in the IPO.

Bär & Karrer AG (Switzerland) acted as legal advisor to CEVA and Willkie Farr & Gallagher LLP (Paris) acted as legal advisor CMA CGM.

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