# Contents

1. **Introduction** 4

2. **Norms in respect of stock exchange law compliance** 4
   2.1 Federal acts 4
   2.2 SIX Swiss Exchange Bodies and Rules 4
   2.3 Acts of the Swiss Takeover Board 4
   2.4 Recommendations of economiesuisse 4

3. **Contents of stock exchange law compliance** 5
   3.1 Admission of securities to the stock exchange 5
      3.1.1 Definition of securities 5
      3.1.2 Listing Rules 5
      3.1.3 Listing prerequisites 5
      3.1.4 Disclosure requirements in respect of the listing 6
      3.1.5 Listing procedure 6
   3.2 Maintaining the listing 6
      3.2.1 Corporate calendar 6
      3.2.2 Periodic reporting 6
      3.2.3 Regular reporting obligations 6
      3.2.4 Financial reporting requirements 7
      3.2.5 Corporate Governance 7
      3.2.6 Ad Hoc Publicity 8
      3.2.7 Disclosure of management transactions 9
   3.3 Additional key publication requirements 10
      3.3.1 Disclosure of remuneration and credits 10
      3.3.2 Disclosure of shareholdings / obligation to report 10
   3.4 Public purchase offers 11

4. **Risks in respect of inadequate stock exchange law compliance** 12
   4.1 SESTA sanctions 12
      4.1.1 Preliminary remarks: SESTA revision as at 1.5.2013 12
      4.1.2 Use of insider information (“insider trading”) 12
      4.1.3 Price/market manipulation 14
      4.1.4 Violation of disclosure, reporting and offer obligations 14
   4.2 Sanctions set out in PC (Swiss Penal Code) 15
   4.3 Excursus: Sanctions pursuant to “Minder Initiative” 15
   4.4 SIX Swiss Exchange sanctions 15
      4.4.1 Reasons for sanctions 15
      4.4.2 Type of sanctions 15
      4.4.3 Proceedings 16
   4.5 Additional risks 16

5. **Recommendations** 16
   5.1 Instructions on “hot topics” 16
   5.2 Creating a compliance department 17
   5.3 Supplementary measures 17

Abbreviations 17
An Overview of Stock Exchange Law Compliance
Requirements, risks and recommendations

1. Introduction

In Switzerland, stock exchanges and securities trading are subject to various legal norms to be adhered to by market participants. In this sense, "Stock Exchange Law Compliance" is to be construed as conduct and a concept that ensure that the board of directors, management and employees of listed companies adhere to the statutory, regulatory and internal corporate requirements, including standards and professional standards that are customary in the market.

The following comments are aimed at providing companies that are listed on the main Swiss stock exchange, SIX Swiss Exchange (SIX), or are planning to become listed with an overview of the key stock exchange requirements (sections 2 and 3). This incorporates the SIX Stock Exchange Rules completely overhauled as of 1.7.2009. Consideration is given to both the Main Standard (formerly "Main Segment") and the Domestic Standard (formerly "Subsidiary Segment" or "SWX Local Caps"). The risks and sanctions that apply in the event of non-adherence to the requirements are also set out as part of this overview (section 4) and recommendations are given as to how the stock exchange law compliance can be arranged (section 5).

This overview does not cover other stock exchanges or similar institutions in Switzerland, including the Bernese stock exchange (BX Berne xChange).

2. Norms in respect of stock exchange law compliance

The stock exchange law requirements that apply in Switzerland are not set out in a single act, but are rather spread over various federal acts and orders, rules and directives of various institutions.

2.1 Federal acts

The following federal acts contain provisions on stock exchange law (published at www.admin.ch/ch/e/rs/rs.html):

- Federal Act on Stock Exchanges and Securities Trading (SESTA, revised as at 1.5.2013);
- Stock Exchange Ordinance (SESTO, revised as at 1.5.2013);
- Stock Exchange Ordinance of the Swiss Financial Market Supervisory Authority (SESTO-FINMA).

The stated acts emanate from the federal legislature or the Swiss Financial Market Supervisory Authority (FINMA), the government supervisory authority for banks, insurance companies, stock exchanges and securities dealers and for additional financial intermediaries (www.finma.ch). FINMA regularly publishes circulars with oversight regulations and guidance concerning current issues and its corresponding practice.

2.2 SIX Swiss Exchange Bodies and Rules

In application of the principle of separation of powers, SIX has the following regulatory bodies at its disposal:

- the Regulatory Board, formerly called "Zulasungsstelle", i.e. "Admission Office" (rules);
- the SIX Exchange Regulation division (implementation of rules);
- the Sanction Commission, the Appeals Board and the Board of Arbitration (legal review).

On the basis of the Federal Stock Exchange Act and the Stock Exchange Ordinance, the Regulatory Board has issued Listing Rules, Additional Rules as well as various Directives [comprehensively revised as per 1.7.2009 and since then partially adapted to some extent (www.six-exchange-regulation.com/regulation_en.html)].

These rules of SIX apply as part of the so-called "Self-Regulation" of the stock exchange (Art. 4 SESTA) and are subject to authorisation by FINMA. The rules do not constitute statutory legal norms but rather private law norms. Nevertheless, all stock exchange participants are required to adhere to them.

Furthermore, the Regulatory Board issues numerous circulars and notices on a regular basis, explaining the relevant provisions and the current practice adopted by SIX (e.g. Communiqué no. 3/2012 of 28.9.2012 regarding areas of focus for the 2012 and 2013 annual financial statements). In addition, the website contains application and reporting forms in order to fulfil various stock exchange law obligations.

2.3 Acts of the Swiss Takeover Board

A separate government authority is responsible for the takeover of listed shareholdings: the so-called "Swiss Takeover Board" is entrusted with the task of defining principles and holds responsibility for adherence to provisions on public tender offers. It is comprised of expert representatives of securities dealers, listed companies and investors.

The Swiss Takeover Board issued the Takeover Ordinance (TOO) and Regulations (R-TB) based on SESTA, and published explanatory circulars and notices (www.takeover.ch).

2.4 Recommendations of economiesuisse

Furthermore, economiesuisse, the umbrella organisation representing the Swiss economy, has issued non-binding
recommendations on Corporate Governance of Swiss public companies, the so-called "Swiss Code of Best Practice for Corporate Governance" (SCBP). The SCBP can be downloaded from the economiesuisse website by using the search function (www.economiesuisse.ch/web/en).

3. Contents of stock exchange law compliance

In terms of content, the stock exchange law lays down (1) authorisation obligations for the activities of securities dealers, (2) the prerequisites of admitting securities and securities dealers to the stock exchange and (3) rules of conduct for the individual market participants, in particular the securities dealers and the listed companies.

The following comments are aimed at providing an overview of the key requirements of stock exchange law compliance. In this respect, prime importance is attached to the point of view of the issuers, i.e. the listed companies. By contrast, obligations that apply to the securities dealers are not set out in greater detail.

3.1 Admission of securities to the stock exchange

3.1.1 Definition of securities

Securities within the meaning of SESTA are, on the one hand, standardised securities suitable for mass trading (e.g. certificated bearer and registered shares) and book-entry securities that are not certificated but have the same function as shares, and derivatives on the other hand (Art. 2 lit. a SESTA).

The following overview focuses primarily on equity securities, such as shares, participation and profit-sharing certificates, shares in cooperatives and fund units.

Reference is also made at this point to the Intermediated Securities Act, which came into force on 1.1.2010 and, which is relevant first and foremost to listed securities.

3.1.2 Listing Rules

SIX has issued Listing Rules (LR) based on Art. 8 SESTA. The Listing Rules contain requirements on the fungibility of securities and specify the information that investors require to assess the characteristics of securities and quality of the issuer (Art. 8 para. 2 SESTA).

(I) Scope and subject matter

The Listing Rules apply merely to the admission of securities to stock exchange trading ("Secondary Market") and, by contrast, not to the issue and bringing into circulation of new securities ("Primary Market").

The Listing Rules provide mainly for the prerequisites of admitting equity rights to stock exchange trading ("listing") and the conditions for maintaining the listing (reporting obligations and other obligations in respect of furnishing information).

On the one hand, the Listing Rules provide for the admission to the Main Standard (formerly: "Main Segment"). On the other hand, they also contain special provisions for areas that are subject to other regulatory standards. These include investment and real estate companies, global depositary receipts and collective investment schemes and companies of the so-called "Domestic Standard".

(II) Domestic Standard

The Domestic Standard in accordance with the new Listing Rules - called "SWX Local Caps" prior to 1.7.2009 - is geared towards the listing of equity securities of companies which do not (yet) qualify for a listing in accordance with another standard due to their investor basis, company history, capitalisation or diversification. This applies, in particular, to companies of local significance or those with a close group of investors.

The stock exchange law requirements in accordance with the Domestic Standard are less stringent in some aspects compared with the Main Standard, for example in respect of the applicable accounting standards (Swiss GAAP FER instead of the more complex IFRS or US GAAP; see paragraph 3.2.4 I). This has created a situation in which some companies have effected a change from the Main Standard to the Domestic Standard or are considering such a change, or only have shares listed under the Domestic Standard from the outset.

The special features for the admission to the Domestic Standard are provided for in Art. 85 et seq. LR.

(III) Additional listing rules

The Listing Rules form the basis for the Additional Rules, the Other Rules and further regulations of SIX (in particular Directives):

The Directives are aimed at providing a supplementary and detailed explanation of the regulatory provisions. The Additional Rules contain specific requirements for listing bonds, derivatives, and so-called exchange traded products. The further regulations provide for the admission to trading in the "Sponsored Segment" and the admission to trading of international and delisted bonds. These areas are not addressed below.

In accordance with the statutory requirements (Art. 8 para. 3 SESTA), SIX’s Listing Rules take into consideration internationally recognised standards. The Listing Rules are geared towards the corresponding directives of the European Union, among others. These include:

- the Directive 2001/34/EC on the admission of securities to official stock exchange listing and on information to be published on those securities;
- the so-called Prospectus Directive (2003/71/EC);

3.1.3 Listing prerequisites

Art. 9 - 26 LR and the various Directives specify the demands placed on issuers and the securities that need to be
met for listing in the **Main Standard**. These include, for example, adherence to pertinent company law requirements, the existence of the company and the accounting in accordance with a standard accepted by the stock exchange (see section 3.2.4) for at least three years prior to the listing application, a government-supervised auditing company as auditing body, reported equity capital of at least CHF 25 million on the first trading day and adherence to the requirements on marketability and denomination of securities and their public distribution (so-called "Free Float", see Directive on the Distribution of Equity Securities; DDES).

In the **Domestic Standard**, it is sufficient if the company has existed for at least two years and if the annual financial statements have been prepared in respect of two full financial years prior to the listing application in accordance with the corresponding accounting standard (Swiss GAAP FER) (Art. 85 and 86 LR). The reported equity capital must only be at least CHF 2.5 million on the first day of trading, i.e. a tenth of the **Main Standard** requirement (Art. 87 LR). The requirements regarding security diversification among the public (Free Float) are also less demanding (Art. 88 LR).

**Exemptions** from the minimum age requirement for the company that is to be listed are permitted both in the **Main Standard** and the **Domestic Standard** in accordance with the **Directive Track Record** (DTR). In addition, the Regulatory Board may also authorize, subject to certain conditions, exceptions from other provisions of the Listing Rules and make such authorized exceptions subject to terms and conditions (Art. 7 LR).

### 3.1.4 Disclosure requirements in respect of the listing

The Listing Rules contain disclosure requirements in respect of the listing. A **listing prospectus** (Art. 27 - 36 LR) and a **listing notice** (Art. 37 - 40 LR) are specified. Other disclosure requirements also apply (Art. 41 LR).

The stated provisions set out in detail the corresponding content and formal requirements, the exemption options and exceptions. The listing prospectus is to state details by way of a comprehensive scheme. In the case of a complex financial history, additional details are to be provided (see Directive on Complex Financial History; DCFH).

### 3.1.5 Listing procedure

Art. 42 - 48 LR provide for the listing procedure that is set in motion when the application is submitted by a recognised representative. The application is to be submitted with SIX Exchange Regulation, the implementation and monitoring body of SIX. Thereupon, the Regulatory Board reviews the application including all the submitted documents (the listing prospectus and notice, among others). If the listing prerequisites are met, the application is approved - subject to conditions where applicable.

The Regulatory Board may reject an application in spite of the fact that it fulfills the listing requirements where this would be in the interest of the general public (Art. 9 para. 2 LR). It is recommended that possible problematic issues be discussed with SIX prior to filing the application.

### 3.2 Maintaining the listing

The prerequisites for a listing in accordance with section 3.1.3 must largely be met during the entire listing period (Art. 26 LR). Furthermore, the Listing Rules provide for specific conditions for maintaining the listing (Art. 49 - 56 LR and special additional provisions for certain issuers in Art. 64 et seq. LR): Prime importance is given to periodic reporting, which is closely associated with the requirements regarding accounting and corporate governance. Additional obligations to furnish information apply, in particular the so-called "Ad Hoc Publicity" and the disclosure of management transactions.

The so-called obligations for maintaining listing are predominantly aimed at guaranteeing the proper functioning of the capital market, and intend to provide reasonable information to (potential) investors. The corresponding requirements of the Listing Rules are addressed in the following sections. Under certain conditions, the issuers may, if a corresponding request is made, be temporarily exempt from individual obligations for maintaining listing provided the purpose of the relevant provisions is otherwise met (Art. 7 LR).

#### 3.2.1 Corporate calendar

The issuer must draw up a corporate calendar containing the key dates (e.g. annual general meeting, publication of the annual financial statements) in respect of the listing and on an ongoing basis at the start of each financial year, and submit it to SIX Exchange Regulation (Art. 52 LR). This is the only new condition for maintaining listing since 1.7.2009.

#### 3.2.2 Periodic reporting

Each year, the issuer must publish its annual report, including the auditor's report (Art. 49 LR). The issuers of listed equity securities have to publish a six-monthly statement, which, however, need not be audited (Art. 50 LR). The annual and interim reports are to be prepared in accordance with an accounting standard accepted by the Regulatory Board (Art. 51 LR).

#### 3.2.3 Regular reporting obligations

There is a series of regularly recurring reporting obligations which issuers must fulfil as part of their obligations for maintaining listing pursuant to regulations and implementation rules. The purpose of this is to ensure that the stock exchange and the market participants have available to them at the proper time and in an appropriate form current technical and administrative information on the listed securities.

The basis of these so-called regular reporting obligations is Art. 55 LR (“Notification of changes in the rights attached to securities”). The details are governed by Circular No. 1 - Reporting Obligations Regarding the Maintenance of Listing
(Circ. 1), in particular in Annex 1. Examples of what must be reported accordingly include changes in the company name, balance sheet date, business activity, investment policy or capital structure, the date and resolutions of the general meetings of shareholders, including a detailed dividend report). An electronic reporting platform (Connexor Reporting) is available for the reporting.

Circ. 1 is to be replaced in the course of 2013 by a directive concerning regular reporting obligations although apparently no substantive material changes will arise.

3.2.4 Financial reporting requirements

The Directive on Financial Reporting (DFR) contains the accounting standards accepted by the Regulatory Board of SIX (I). The DFR also provides for the demands placed on interim reporting (II) and the publication and submission of annual and interim reports (III).

(I) Accepted accounting standards

Issuers of equity securities with registered offices in Switzerland that are listed in the Main Standard of SIX must either apply the "International Financial Reporting Standards" (IFRS) or the "United States Generally Accepted Accounting Principles" (US GAAP) as the accounting standard (Art. 6 para. 1 DFR).

By contrast, companies subject to the Domestic Standard are free to apply the less stringent Swiss GAAP FER. The same applies to:

- issuers that are subject to the Standard for Real Estate Transactions (Art. 6 para. 2 DFR);
- issuers with registered offices in Switzerland that have only debt securities listed in the Main Standard, namely bonds and derivatives (Art. 7 DFR).

Issuers without a registered office in Switzerland may apply the accounting standard of their country of origin if such a standard is accepted by the Regulatory Board (Art. 8 and Annex 1 DFR).

Banks, securities dealers, central mortgage bond institutions with registered offices in Switzerland and collective investment schemes are subject to the respective special laws applying to them. With regard to the regulation and oversight of audit bodies, it is moreover, not SIX, but rather solely the Federal Audit Oversight Authority (FAOA) who has jurisdiction.

(II) Interim reporting

As regards interim financial statements, the same accounting standard is to be applied as the one that applies to the annual financial statements (Art. 9 para. 1 DFR).

Depending on the applicable standard, interim financial statements are to be prepared according to the following rules (Art. 9 para. 2 - 5 DFR):

- Swiss GAAP FER: interim financial statements in accordance with Swiss GAAP FER 12. In addition, issuers with registered offices abroad must at least adhere to the requirements of this standard as regards stating details and disclosure.
- IFRS: interim reporting according to IAS 34.
- US GAAP: interim reporting according to APB Opinion No. 28, additional disclosure of abridged balance sheets and cash flow statement and the abridged statements of changes in equity capital (in each case including the previous year).

(III) Publication and submission

According to Art. 5 DFR, the publishing of the annual and interim report is understood to mean the announcement to all shareholders and market participants, whereby the announcement must be in line with the requirements on Ad Hoc Publicity (see section 3.2.6).

The published annual and interim financial statements are to be made available for a period of five years on the issuers' websites in electronic form (Art. 13 DFR).

Submission is understood to mean the provision of the annual and interim report in paper form to the SIX Exchange Regulation (Art. 5 and 12 DFR). The respective statement must either be submitted as printed matter, i.e. as a "glossy prospectus" of the company for the public, or, if this is not available, in the form of regular documents. The latter must contain a legally valid signature.

The annual report containing the annual financial statements must be published within four months of the appointed date for the annual financial statements, and submitted to the SIX Exchange Regulation upon publication at the latest. Issuers, who have only issued debt securities, must only publish their annual report on a website, starting from the 2011 financial year (Art. 10 DFR).

As regards the interim report, a corresponding publication and submission period of three months applies following the appointed date of the interim financial statements, unless an order of the Regulatory Board stipulates a shorter period (Art. 11 DFR).

3.2.5 Corporate Governance

(I) Definition and subject matter

"Corporate Governance" is understood to mean the principles and rules for governing and controlling companies. The established definition is as follows: "Corporate governance encompasses the full range of principles directed towards shareholders' interest seeking a good balance between direction and control and transparency at the top company level while maintaining decision-making capacity and efficiency" (see SCBP; section III below).

Based on the Listing Rules, the Regulatory Board has issued the Directive on Corporate Governance (DCG), which specifies the additional information that must be incorporated in the annual reporting. This includes details on the "structure and function of corporate management and governance" (Art. 49 para. 2 LR).
(II) Details required in the annual report

According to DCG (including the Annex), the following detailed information on the following areas of Corporate Governance is to be published in the annual report:

- *Group structure and shareholders*: including significant shareholders, cross-shareholdings;
- *Capital structure*: including the changes in capital over the last three years, details of convertible bonds and options;
- *Board of directors (BoD) / executive committee (ExCo)*: including internal organisational structure, vested interests, definition of the areas of responsibility between BoD and ExCo, information and oversight instruments (e.g. internal audit, risk management as well as management information systems), management contracts;
- *Compensation, shareholdings and loans* regarding BoD and ExCo; in addition to analogous application of disclosure obligations pursuant to Art. 663bis Swiss Code of Obligations (CO) for issuers having their registered office abroad and who are not listed there (see sections 3.2.7 and 3.3);
- *Shareholders’ participation rights*: including voting rights and representation restrictions, quorums;
- *Changes of control and defence measures*: duty to make an offer and clauses on changes of control;
- *Auditing body*: including duration of the mandate, fees;
- *Information policy*: frequency with which and form in which information is given to the shareholders.

The Annex to the DCG contains a comprehensive list of the necessary details. The principle of “comply or explain” applies in accordance with Art. 7 DCG. If the issuer decides not to disclose certain information, such action is to be justified in the annual report on a case by case basis and in detail.

SIX has published a comprehensive commentary on the DCG (status: 20.9.2007) and additional information in this respect.

(III) Swiss Code of Best Practice (SCBP)

For the sake of completeness, reference is made to the SCBP of economiesuisse that sets out the prerequisites and guiding principles of Corporate Governance in the form of recommendations. The SCBP addresses the Swiss public companies and key non-listed companies. Individual points concern institutional investors and intermediaries. In essence, the SCBP contains 30 recommendations concerning shareholders, board of directors, management, audit, as well as disclosure. However, as part of the stock exchange law compliance, prime importance is given to DCG because, as opposed to SCBP, the DCG is binding for the issuers of listed securities (see section 2.4 above).

### 3.2.6 Ad Hoc Publicity

This term is understood to mean the obligation to disclose potentially price-sensitive facts in accordance with Art. 53 LR: The issuer must inform the market of new, i.e. not publicly known facts of relevance to prices that have occurred in its sphere of activity. In this respect, SIX has issued the Directive on Ad Hoc Publicity (DAH), which describes this obligation in concrete terms. In stock exchange law practice relating to ad hoc publicity, difficult questions of interpretation and demarcation regularly arise. On 1.11.2011 SIX published an extensive updated Commentary on DAH.

Price-sensitive facts are understood to mean those events which are capable of triggering a significant change in market prices. An assessment is to be made within the meaning of a forecast regarding whether or not the event exerts an influence on the average market participant in respect of its investment decisions (purchase, sell or hold). That is to be assumed in individual cases if a price change is to be expected that is considerably greater than the usual price fluctuations (Art. 3 and 4 DAH). Both company-specific and market-related elements are to be included in these considerations.

The assessment of the relevance to prices in a specific case is a complex undertaking. One important case where ad hoc publicity applies is profit warning, which means the correction of an earlier forecast by the issuer in relation to the business result, to the extent that the forecast has aroused expectancy in the market and the actual result deviates significantly from the result forecast. A profit decrease or profit jump which is subject to disclosure occurs when the issuer has not made a forecast but the (probable) business result deviates significantly, up or down, from the previous year’s figures. According to the Commentary of the SIX Exchange Regulation on the DAH, the difference must be greater than for the profit warning. Other examples of circumstances which are subject to disclosure include substantial acquisitions or M&A transactions, reorganisation cases, comprehensive liability cases, changes regarding the main business activity, the organisational or capital structure and personnel changes (board of directors, management and auditors). For example, acquisitions of insignificant proportions are not subject to disclosure.

Any potentially price-sensitive fact must be published without delay. The obligation to disclose applies from the time when the issuer gained knowledge of the key aspects of such a fact (Art. 5 DAH). An obligation to publish does not (as yet) apply as long as the issue consists of rumours, ideas or planning versions and the likelihood of realisation is low. However, the practice of SIX concerning M&A transactions is rather restrictive, and under certain circumstances assesses the initiation of discussions in view of a possible transaction as a fact that is subject to the obligation to disclose - not only at the time at which specific contractual negotiations are held or during due diligence.

The information provided for the public is aimed at guaranteeing equal treatment of the market participants (Art. 6 et seq. DAH). The notification is therefore to be made such that all parties have the same opportunity to become
aware of it. Selective information violates the principle of equal treatment. The burden of proof regarding equal treatment of and correct information for all market participants lies with the issuer.

Disclosure to the public is to be made, where possible, at the latest 90 minutes prior to the start of trading, or after closing (Art. 11 DAH). Ad hoc announcements are to be provided to the SIX Exchange Regulation at the same time they are made available to the public. Where, in special circumstances, e.g. during a press conference or after an "information leak", it becomes unavoidably to disclose such information to the public during trading hours or less than 90 minutes prior to the start of trading, then the announcement must be provided to SIX at the latest 90 minutes prior to the planned disclosure, to the SIX Exchange Regulation (Art. 12 DAH).

In addition to the SIX Exchange Regulation, ad hoc announcements must also be made to two information suppliers (e.g. Bloomberg and Reuters), as well as to two Swiss newspapers of national importance and any interested party upon request. Simultaneously, all ad hoc announcements must be made available on the issuer's website, where they must remain retrievable for a period of two years.

The content of the notifications must enable an average market participant to assess the relevance to prices. The information must be factual, clear and complete, and must otherwise be corrected without delay (Art. 15 DAH).

Under certain circumstances, the issuer may make use of a so-called postponement of disclosure, i.e. justifiably postpone the notification of potentially price-sensitive facts. However, this is only permissible if the fact that is subject to disclosure is based solely on a plan or a decision by the issuer. In the event of an M&A transaction, for example, this applies only until the involved parties have definitively reached an agreement by way of a contract, because after such an agreement the issuer can no longer decide alone whether or not the transaction is to be carried out. Furthermore, the dissemination of the fact must be capable of prejudicing the issuer's legitimate interests, and the issuer must ensure that the price-relevant fact remains confidential throughout the period of the postponement of disclosure. In the event of an "information leak" against the issuer's will, the market must be informed of the fact immediately, since otherwise the equal treatment of all market participants will no longer be guaranteed (Art. 54 LR).

3.2.7 Disclosure of management transactions

According to Art. 56 LR as per its amendment on 1.4.2011, each primary listed company (issuer) is required to ensure that the members of the board of directors and the management report to it without delay all transactions with participatory rights (e.g. shares), of the issuer or with associated financial instruments (e.g. options, convertible bonds) at the latest on the second trading day following conclusion of the action that imposes a legal obligation, or in the case of stock market activities following completion of the transaction. The disclosure of such "management transactions" is aimed at promoting the supply of information to investors, as well as preventing and tracking market abuse. Details are provided for in the Directive on Management Transactions (DMT) part of which was minimally revised as per 1.4.2013 (see the corresponding commentary of SIX, most recently updated per 4.5.2011).

The issuer is required to make available to the SIX Exchange Regulation certain details subject to reporting obligations (inter alia, the function of the person subject to reporting obligations, the type and total number of traded rights and the price of the transactions, among others) within three trading days of receipt of the notification via the electronic reporting platform. SIX shall make information thus notified available to the public for a period of three years.

Contrary to previous rules, the reporting obligation exists for each transaction regardless of its value (until 30.3.2011: reporting obligation only where the threshold of CHF 100,000 is exceeded). The members of the BoD and the ExCo shall be subject to reporting obligations if the transaction has a direct or indirect impact on their wealth and the person subject to reporting obligations is able to influence the transaction. This also applies to transactions within the framework of an asset management agreement of a person subject to reporting obligations and transactions of closely related persons that have been performed under significant influence of the person subject to the reporting obligation. The term "closely related" also includes e.g. companies at which the person subject to the reporting obligation holds a leading position or control (Art. 3 DMT).

Subject to reporting obligations are the acquisition, sale and the granting (subscription) of participatory rights and financial instruments. Not subject to reporting obligations on the other hand, are pledging, usufruct, securities lending, inheritance, donations or liquidation of marital property (Art. 5 DMT). There is likewise no reporting obligation if a person, for example, has been granted shares or options on a fixed basis as a salary element on the basis of the employment relationship. By contrast, the sale of such rights would be subject to the reporting obligations (Art. 7 DMT). Finally, not subject to reporting obligations are transactions of the company itself.

The issuer forwards the transactions reported by its management to the SIX Exchange Regulation using an electronic reporting and publication platform. Details in this respect are set out in the Directive on Electronic Reporting and Publication Platforms (DERP) (Art. 8 DMT).

In respect of the so-called "insider trading" see section 4.2.1.
3.3 Additional key publication requirements

The conditions for maintaining listing addressed in section 3.2 contain various "listing law" requirements in respect of disclosure. In addition, stock exchange participants are required to adhere to statutory disclosure requirements. The key statutory publication requirements of CO and SESTA are set out below.

3.3.1 Disclosure of remuneration and credits

Among other things, the company law financial reporting requirements specify the details that are to be stated in the notes to the annual financial statements (Art. 663b CO). Listed companies are required to provide additional details.

Art. 663bis CO. para. 1 CO specifies that listed public limited companies must disclose all remuneration in the notes that they have paid directly or indirectly to the following persons:

- current members of the board of directors, the management and, where applicable, the advisory board of the company that is subject to disclosure requirements;
- former members of the stated bodies (insofar as the remuneration is associated with the former activity as executive body of the company or are not customary in the market);
- persons who are close to the persons stated above (insofar as the remuneration is not customary in the market).

As a general rule, the term remuneration is to be construed in a broad sense and applies, in particular, to fees, wages, bonuses, employer's contributions to statutory and occupational pension schemes ("AHV", pension fund), severance payments, allowances in the form of shares and options, benefits in kind, the provision of securities and false incentives. The stated publication requirements are aimed at informing the capital market of corresponding risks, strengthening controls by shareholders and disciplining the executive bodies.

In this context, reference is made to the new Art. 95 para. 3 of the Federal Constitution (FC) which was introduced with the popular "Against fat-cat salaries" initiative approved by the electorate in early March 2013 (the so-called "Minder" initiative). Art. 95 para. 3 FC has as its main purpose the strengthening of shareholder rights within publicly listed companies and it provides, for example, that the annual general meeting shall vote each year on the aggregate amount of all remuneration of the board of directors and the board of management. The articles of association are in future also to govern the amount of loans granted by the company to corporate officers. The implementing legislation setting forth the "principles" contained in the new Art. 95 para. 3 FC will come into effect no earlier than 1.1.2014; see in this regard the Ernst & Young publication "Legal News", special March 2013 issue: Questions and Answers on the Minder Initiative: www2.eycom.ch/publications/items/jus/news_201303s/201303s_EY_legalnews_e.pdf.

3.3.2 Disclosure of shareholdings / obligation to report

Company law states that the major shareholders of listed companies as well as the shareholdings and other book-entry securities regarding the companies held by their own management are to be stated in the notes to the annual financial statements. Stock exchange law specifies an obligation to report in the event that certain threshold values (in % of voting rights) are reached. These legal norms are aimed at informing the (potential) investors and minority shareholders of the controlling status of a company.

(I) Company law obligation to disclose

In accordance with Art. 663c CO, the identity of key shareholders and their respective participations in the company are to be stated in the notes "insofar as these..."
are known or should be known". Therefore, on the one hand, shareholders who are known on the basis of the stock exchange law report (see the following section II) must be stated. On the other hand, shareholders are to be stated who should be known within the company, which, on the basis of the shareholder register, applies in particular in the case of registered shares.

**Major shareholders** are understood to be shareholders and shareholders’ groups with restricted voting rights whose shareholdings exceed 5% of all voting rights (Art. 663c para. 2 CO). Possible lower percentage limits in the articles of association regarding the keeping of registered shares also apply to the obligation to disclose (Art. 685d para. 1 CO). Holders of participation or profit-sharing certificates and owners of convertible bonds and option rights are not subject to the obligation to disclose.

The **ownership structure of the current members of the board of directors, the management and, where applicable, the advisory board**, including the holdings of persons close to them are also to be stated (Art. 663c para. 3 CO, see sections 3.2.5 II and 3.2.7). All types of holdings (shares, participation and profit-sharing certificates) in the respective company and the appertaining convertible bonds and option rights held by the stated persons are subject to the obligation to disclose. The name and function of the respective member and details of the held shareholdings and rights must be stated. The associated persons need not be stated; their positions should be allocated to the respective member.

In this context, see also the provision in criminal law on "insider trading" (section 4.2.1).

(II) Stock exchange law obligation to report

In practice, the stock exchange law obligation to report is of greater significance than the stated company law obligation to disclose:

The recently amended Art. 20 para. 1 SESTA specifies a **public law obligation to disclose** for any person who acquires or sells shares or acquisition or sales rights regarding shares (e.g. options, convertible bonds) of a company with its registered office in Switzerland, all or some of whose equity securities are listed in Switzerland, or of a company with its registered office abroad, all or some of whose equity securities are primarily listed in Switzerland, and therefore reaches, exceeds or falls below the limit of 3, 5, 10, 15, 20, 25, 33\(^{1}/_3\), 50 or 66\(^{2}/_3\)% of the voting rights. The scope of application was extended to foreign companies under the most recent SESTA amendment (see section 4.1.1).

Merely temporarily "touching" the limit during a trading day need not be disclosed.

**Acquisition** is also understood to mean the conversion of participation certificates or profit-sharing certificates into shares and exercising convertible bonds/acquisition rights. The sale is equated with exercising sales rights (Art. 20 para. 2 SESTA).

It is irrelevant whether or not the acquisition or the sale is carried out **directly, indirectly or following joint consultation with third parties or as an organised group**. At all times the resulting economic entitlement, and not the formal legal structuring of the transaction (e.g. via intermediate legal persons) is authoritative.

The **obligation to disclose on the part of the buyer/seller** applies in relation to the company and SIX. It arises at the time of the action that imposes a legal obligation, i.e. the creation of the legal claim to acquisition/sale, and not only when the transaction is completed. Notification by the respective person must be received in writing by the company and SIX within four trading days after the obligation to disclose arose (Art. 22 para. 1 SESTO-FINMA).

For its part, the **company** must publish the notification within two trading days of receipt of the notification (Art. 22 para 1 SESTO-FINMA). To this end, the **electronic reporting and publication platform** of SIX must be used (see Directive on Electronic Reporting and Publication Platforms; DERP). Where the disclosure communication is potentially relevant to the share price, the provisions on ad-hoc publicity must also be complied with (section 3.2.6).

The **supervision and implementation** of the obligation to disclose are incumbent upon FINMA. FINMA has provided specific information on the obligation to disclose in its Stock Exchange Ordinance (Art. 2 et seq. SESTO-FINMA). The Ordinance regulates important matters such as scope and content of the obligation to disclose, special facts that are subject to disclosure, calculating limits and details on disclosure and publication.

In the event of important reasons FINMA may, following a request, grant **exceptions and alleviation** in respect of the obligation to disclose and publish, in particular if the transactions are of a short duration or subject to conditions, or if there is no intention to exercise the voting rights (Art. 24 SESTO-FINMA).

### 3.4 Public purchase offers

This term includes all offers for purchase or for the exchange of listed equity securities - in particular shares - of Swiss companies that are geared publicly towards the owners of such equity securities (Art. 2 lit. e SESTA). Since the most recent amendment (see section 4.1.1) the SESTA regulations in this regard have covered not only Swiss companies but also public purchase offers for target companies with their registered offices abroad, all or some of whose equity securities are principally listed in Switzerland.

Both the seller and the respective "target company" whose equity securities are involved are subject to statutory obligations, which are provided for in detail in Art. 22 et seq. SESTA and Art. 28 et seq. SESTO-FINMA (so-called "takeover law"). These are mainly content-related and formal requirements regarding offer submission (e.g. obligation to publish the offer in a prospectus, principle of
equal treatment) and regarding the conduct of the target company (among other things the obligation to make a statement in accordance with Art. 29 SESTA, and the restriction of defence measures).

The obligations in conjunction with public purchase offers apply irrespective of whether or not the takeover offer is voluntary or specified by law. In addition to the voluntary takeover offer - which is "friendly" or "unfriendly" depending on the assessment by the target company - a statutory obligation to make an offer applies: If a party acquires equity securities of a company directly, indirectly or following joint consultation with third parties, and 33⅓% of the voting rights is thus exceeded in conjunction with the securities that this party already holds, an offer must be made for all listed equity securities of the company (Art. 32 SESTA).

In the context of a public takeover offer, it should be noted that pursuant to the amended Art. 32 para. 4 SESTA, the payment of a so-called control premium or a so-called package premium to major or majority shareholders is no longer permitted: the price of the purchase offer to the (minority) shareholders must now not be lower than the highest price paid in the last twelve months by the offerer for shares of the company in question.

By way of a clause set out in the articles of association, each (target) company may exclude the applicability of the provisions on the obligation to make an offer (so-called opting out) or render the obligation to make an offer conditional on a higher limit (up to 49% of the voting rights at most; so-called opting up).

During a public offer a heightened and extended obligation to disclose applies compared with Art. 20 SESTA (see section 3.3.2 II): The offerer or party that disposes directly or indirectly or by way of joint consultation with third parties, and 33⅓% of the voting rights of the target company or of the company whose equity securities are being offered for exchange, must disclose to the Swiss Takeover Board and the Stock Exchange each transaction with equity securities of this company from the publication of the offer until expiry of the offer period (Art. 31 para. 1 SESTA).

The general supervision is incumbent upon FINMA. However, the Swiss Takeover Board (TOB) created for this specific purpose is responsible for the actual monitoring of adherence to the provisions regarding the public purchase offers. It reviews adherence to the provisions regarding public purchase offers in individual cases (Art. 23 para. 3 SESTA) and may also grant exceptions from the obligation to make an offer (Art. 32 para. 2 SESTA). Detailed rules on public takeovers are stated in the Takeover Ordinance issued by TOB (TOO) and in the appertaining Regulations (R·TB).

4. Risks in respect of inadequate stock exchange law compliance

4.1 SESTA sanctions

4.1.1 Preliminary remarks: SESTA revision as at 1.5.2013

In September 2012 the Swiss parliament passed a bill to amend SESTA. The purpose of the legislative amendment is to tighten up the legal situation regarding stock market offences and market abuses and is based on recommendations of the OECD organisation “Groupe d’action financière” (GAFI) / “Financial Action Task Force on Money Laundering” (FATF) combating money laundering and terrorism financing. More efficient sanctions against market abuses should strengthen the integrity and competitiveness of the Swiss financial market with reference to international regulations.

As part of the revision of SESTA, the criminal offences of insider trading and price manipulation were shifted from the Penal Code (PC) to SESTA and were substantively expanded, and the jurisdiction to prosecute and judge these offences was transferred from the cantonal authorities to the Federal Public Prosecutor or the Federal Criminal Court. New rules regarding sanctions in the case of a breach of the reporting obligations and the obligation to make an offer were also introduced.

Further the prohibition under supervisory law against market abuse (insider trading and market manipulation) was expanded from market participants subject to oversight (such as banks and securities traders) to all market participants including investors. The result is that with regard to insider trading and price/market manipulation there is now a dual approach by criminal law and supervisory law: supervisory law proceedings and criminal proceedings may be taken in parallel. It is to be expected that supervisory law proceedings will be preferred since presumably, the outcome will be available faster than in the case of criminal proceedings.

The supervisory law instruments and sanctions pursuant to Art. 29 et seq. Financial Market Supervisory Act [FINMA] (particularly the duty to provide information and to edit, declaratory ruling, publication of the supervisory ruling, confiscation of profit) are now also applicable to market abuse and to infringements of the disclosure obligation and can be used by the sanctioning authority FINMA against all market participants.

The amended SESTA has come into force on 1.5.2013. The most important new rules are explained below; further references to the SESTA revision can be found in sections 3.3.2 and 3.4.

4.1.2 Use of insider information ("insider trading")

The use of insider information is prohibited in the revised Stock Exchange Act under criminal law (Art. 40 SESTA;
Insider information means confidential information knowledge of which is likely to significantly influence the price of securities which are admitted to trading on a stock exchange or an institution similar to a stock exchange in Switzerland (new Art. 2 lit. f SESTA). By way of analogy to the ad hoc publicity pursuant to Art. 53 LR (see section 3.2.6), the term “insider information” does encompass knowledge of structural changes and other important circumstances, such as public purchase offers, exceptional profits or losses, unusual business developments, reorganizations, the launch or recall of key products, new distribution partners or changes in key corporate management personnel as well as unexpected and significant events.

Perpetrators as defined in criminal law on the use of insider information, now governed in Art. 40 SESTA (previously: Art. 161 PC), are deemed according to the revised law to include executive bodies and members of a management or supervisory body of a listed company as well as any person who due to his or her participation in the company or due to his or her activity has access to insider information in accordance with the regulations, e.g. shareholders, employees at any level or advisers (all so-called “primary insiders”). “Secondary insiders” are deemed - as before - to be persons who are given insider information from a primary insider (tippees) and now also include those who procure insider information through a crime or offence (e.g. computer hackers, blackmailers). Now also so-called “third party insiders” or “accidental insiders” who receive knowledge of insider information in other ways (e.g. cleaning lady, eavesdropping train passenger) are considered to be liable to criminal prosecution.

The actions of primary insiders liable to criminal prosecution consist in the fact that they procure for themselves or for another party a financial advantage by using insider information in order to purchase or sell listed securities or to use financial instruments derived therefrom (including OTC products). The passing of insider information to other persons (tippees/secondary insiders) or the mere issuing of recommendations based on insider information (without disclosing the insider information as such) to purchase or sell securities or to use financial instruments is also liable to prosecution. The action of secondary and accidental insiders consists in obtaining a financial advantage through the purchase or sale of securities or the use of financial instruments.

Example: Manager A learns as a result of his activity for the listed company X about the planned merger with company Y. Before the expected significant price surge (+ 10% or more) he therefore buys shares in company X and makes a profit after the public announcement of the merger. A has rendered himself liable to criminal prosecution as a primary insider. If employee B who is not involved in the merger is made privy to that information by A in the canteen and based on that also buys shares in company X he is criminally liable as a secondary insider. If person C who is eating at the next table accidentally overhears the conversation between A and B regarding the merger and therefore buys shares in X, he is criminally liable as a third party insider.

The prevailing view is that the company itself - as was the case even before the legislative revision - cannot be its “own insider” (see also the new Art. 55f lit. a SESTO). If, in the above example, company X buys back its own shares in light of the merger, this does not constitute criminal insider trading.

The criminal penalties are a fine or imprisonment of up to three years (primary insider) or one year (secondary insider). Accidental insiders are punished with fines. If a primary insider obtains a financial advantage of more than CHF 1 million he must expect imprisonment of up to five years or a fine (so-called qualified insider trading). In this case the offence by the primary insider constitutes a preparatory act of money laundering (Art. 305th PC); this is another innovation in the context of the SESTA revision.

Supervisory law

In addition to the criminal law consequences referred to, insider trading is now also prohibited under supervisory law (Art. 33e SESTA). The supervisory law provision largely accords with the criminal rule in Art. 40 SESTA. Unlike the criminal offence, however, it is irrelevant whether the insider procures a financial advantage for himself and whether he is personally culpable; insider trading is prohibited under supervisory law regardless of these considerations. In addition, supervisory law, unlike criminal law, also covers insider trading by legal entities.

According to the Federal Council’s message, prohibited practices include so-called front, parallel and after running (use or knowledge of customer orders to make one’s own prior, simultaneous or subsequent transactions) and so-called scalping (public buy/sell recommendation without disclosing one’s own holding of corresponding securities or financial instruments or own short positions). Permitted practices are exhaustively listed in the revised version of the Stock Exchange Ordinance (SESTO) as at 1.5.2013, for example, under certain preconditions, the purchase of own shares in connection with a buyback program (Art. 55a SESTO) and share purchases for the purpose of price stabilisation after a public placement of securities (Art. 55e SESTO, so-called stabilization). Further information and examples can be found in the FINMA Circular on market conduct rules, although the 2008/38 version will be comprehensively revised in 2013.

The supervisory law instruments or sanctions in the case of insider trading are mentioned in section 4.1.1.
4.1.3 Price/market manipulation

The revised Stock Exchange Act now contains the criminal offence of price manipulation (Art. 40a SESTA; previously: Art. 161bis PC) as well as a supervisory law prohibition against market manipulation (Art. 33f SESTA). The two provisions not only have different names but also differ from each other in terms of content.

(I) Criminal law

It was mainly editorial adaptations that were made to the criminal offence of price manipulation (Art. 40 SESTA) and the offence largely corresponds in substantive terms to the previous provision in Art. 161bis PC. The new crime of price manipulation applies to all persons who against their better judgment disseminate false or misleading information or execute bogus transactions, i.e. transactions for the account of the same person (so-called wash sales) or between persons associated for this purpose (so-called matched orders). Criminal liability is also predicated upon the intent of the perpetrator to significantly influence the price of securities which are admitted to trading in Switzerland on a stock exchange or an institution similar to a stock exchange, for the purpose of obtaining a financial advantage for himself or for third parties.

The criminal penalty is imprisonment of up to three years or a fine, in the case of qualified price manipulation (obtaining a financial advantage of more than CHF 1 million) the penalty is imprisonment of up to five years or a fine. As with insider trading (section 4.1.2), the qualified crime therefore now constitutes a preparatory act of money laundering (Art. 305bis PC).

“Genuine” transactions with a manipulative character continue not to be subject to criminal prosecution. These are, however, covered by the new supervisory law prohibition against market manipulation.

(II) Supervisory law

Pursuant to the new provision of Art. 33f SESTA regarding market manipulation, anyone who publicly disseminates information or executes transactions or buy or sell orders which he knows or must know give false or misleading signals for the offer, demand or price of securities which are admitted to trading in Switzerland on a stock exchange or an institution similar to a stock exchange is acting illegally.

The main substantive differences with the crime of price manipulation consist, as already indicated, in the fact that market manipulation covers not only bogus transactions but also genuine transactions, to the extent that these have a manipulative character. In addition, supervisory law prohibition against market manipulation does not require an intention to obtain a financial advantage, and any subjective culpability on the part of the person carrying out the acts is irrelevant.

According to the Federal Council’s message, the following are prohibited under supervisory law: so-called ramping, capping or pegging (liquidity and price tightening by causing a surplus of buy or sell orders), so-called cornering or squeezing (deliberate market squeezing by building up large positions) and so-called spoofing (placing of bogus orders for large trading blocks with the intention of immediately cancelling these again). Permitted practices are those with an economic background which correspond to genuine market behaviour. The Stock Exchange Ordinance (SESTO), revised as at 1.5.2013, contains an exhaustive list of permitted actions; see also generally the FINMA Circular “Market conduct rules” (see end of section 4.1.2 above).

The supervisory law instruments and/or sanctions in the case of breaches of the prohibition against market manipulation are mentioned in section 4.1.1.

4.1.4 Violation of disclosure, reporting and offer obligations

For intentional violation of the disclosure obligations in accordance with Art. 20 and 31 SESTA (see sections 3.3.2 II and 3.4), under the previous law a penalty was inflicted, amounting, at most, to double the purchase or sales price of the shareholding that is not disclosed. In the wake of various cases which were the focus of considerable media attention (“Sulzer”: suspension of proceedings against compensation payment of CHF 10 million; “OC Oerlikon”: record fine of CHF 40 million imposed by the lower court) and the criticism raised by experts, the framework for fines which had been felt to be draconian was made less stringent. Pursuant to the new Art. 41 SESTA, the maximum fine for an intentional violation of the obligation to disclose equity interests and of the reporting obligation under takeover law is now CHF 10 million. In the case of negligence the fine continues to be up to CHF 1 million. The Federal Department of Finance (FDF) remains the competent authority for imposing fines.

Art. 34b SESTA has new provisions relating to the specific sanction options in the case of a violation of the disclosure obligation pursuant to Art. 20 SESTA:

- If there are sufficient indications that a person is not meeting its reporting obligations (even justified suspicion is sufficient now), FINMA (previously: civil court) can temporarily suspend the voting right and the associated rights of the relevant shareholder, including the invitation, application, information and inspection right at the general meeting (so-called suspension of voting rights).

- In addition, FINMA can also now impose a purchase ban to ensure that the affected party may not acquire any further shares in the same company or purchase and sale rights to this effect (e.g. options), thus preventing any circumvention of the voting right suspension by purchasing shares with voting rights.

Both sanctions are configured under the revised law as precautionary supervisory instruments until the reporting
By accepting the Minder initiative in March 2013 (see end of section 3.3.1 above) the legislator has an associated duty to ensure there are criminal penalties for violations of the principles of the Minder initiative: Art. 95 para. 3 lit. d FC provides that contraventions will be punished with imprisonment of up to three years and a fine of up to six years’ compensation. In the implementation legislation concerning this constitutional provision there will have to be concrete provisions relating to the acts and other constituent elements (namely the respective group of perpetrators, e.g. board or management members of the company in question, executive members of pension funds, recipients of compensation). Which law(s) will ultimately be home to the various new criminal offences (e.g. PC, SESTA) is unclear.

### 4.4 SIX Swiss Exchange sanctions

In addition to the stated statutory provisions, SIX imposes various sanctions as part of the self-regulation of the stock exchange.

#### 4.4.1 Reasons for sanctions

A sanction may be imposed if the issuer violates regulations issued by SIX, i.e. the Listing Rules, the Additional Rules or the Implementation Rules (including the Directives). In particular a violation of the obligations stated therein to furnish information, collaborate or provide details - or if the issuer does not ensure adherence to these (Art. 60 LR).

The stock market bodies can, however, in principle, not impose sanctions for violations of State laws such as SESTA, CO or PC (except in the case of contraventions of art. 663bis CO by foreign issuers; see section 3.3.1). Pursuant to Section 9.5 of the trading rules of SIX which came into force per 1.7.2011, it is the independent oversight body Surveillance & Enforcement which must inform FINMA or, where necessary, the law enforcement agencies in case of any suspicion of a breach of the law.

In practice, sanctions are precipitated in respect of Financial Reporting (21), Ad Hoc Publicity (18), Management Transactions (14), Corporate Governance (7) and Regular Reporting Obligations (7). The figures in parenthesis correspond with the number of published sanctions since 1.1.2007, when a new sanctions policy came into force (total: 67, as at end of April 2013; source: [www.six-exchange-regulation.com/enforcement; “Decisions”](http://www.six-exchange-regulation.com/enforcement/)).

#### 4.4.2 Type of sanctions

Art. 61 para. 1 LR provides for the following sanctions against issuers, guarantors and recognised representatives:

- reprimand;
- fine of up to CHF 1 million (in cases of negligence) or CHF 10 million (in cases of wrongful intent);
- suspension of trading (discontinuation of trading);
- delisting (deletion of listing);
- reallocation to a different regulatory standard;
- exclusion from further listings;
- withdrawal of recognition.

The stated sanctions may also be precipitated on a cumulative basis. Legally binding decisions can be published, albeit as a general rule this is done anonymously.
SIX’s sanction policy has only distinguished between negligence and intent since 1.7.2009. The maximum fine was increased sharply (previously CHF 200,000). Henceforth, it also takes into account the impact of the sanctions on the respective issuer (Art. 61 para. 2 LR). In addition, the audit bodies of the listed companies are not subject to the sanction regulations and the executive bodies of SIX, but rather are solely subject to the Federal Audit Oversight Authority.

In practice, since 1.1.2007, it is almost exclusively reprimands and (much less often) fines that have been issued; in few cases were securities traders suspended. The fines were at most CHF 100,000, half the maximum amount prior to 1.7.2009. The other, severe sanction options have - according to the information available - never been imposed since the beginning of 2007. The last sanction-related delisting took place in 2003.

4.4.3 Proceedings

The sanction proceedings are based on the Rules of Procedure dated 1.10.2010. The two investigative bodies of SIX Exchange Regulation are responsible for different areas. The Surveillance & Enforcement department deals with breaches of the trading regulations and implementing acts of SIX Swiss Exchange Ltd and Scoach Switzerland Ltd, while the Listing & Enforcement department investigates violations of the listing rules, the additional rules and the implementation acts. Since this prospectus is intended primarily for issuers and since for them the listing rules and directives are of most significance, only Listing & Enforcement will be discussed below.

If the preliminary investigations show that there are sufficient indications that an investigation should be formally opened, Listing & Enforcement shall clarify the facts in the course of the investigation, to the extent necessary to justify a penalty ruling or an application to the Sanction Commission, and shall afford the parties concerned the opportunity to put their case. The investigation ends with suspension of the proceedings, an agreement, the issue of a ruling imposing a sanction, or the transfer of an application for a sanction to the Sanction Commission.

Listing & Enforcement may punish breaches of the listing rules or the additional rules with a decision imposing a sanction, if a warning, reprimand or fine is a possible sanction (which is often the case; see end of section 4.4.2). Otherwise the case must be transferred to the Sanction Commission with an application for a sanction.

Where a sanction application by the Listing & Enforcement investigative body is transferred (or where an appeal against its decision imposing a sanction is filed within 10 trading days) the Sanction Commission is responsible for imposing and setting a sanction, where applicable. Decisions of the Sanction Commission, e.g. about the delisting or suspension of securities, can be forwarded to the independent Appeals Board within 20 trading days in accordance with Art. 9 SESTA. The other decisions can be disputed by way of an action brought before the Board of Arbitration of SIX.

Final and non-appealable sanction decisions by Listing & Enforcement or sanction decisions by the Sanction Commission shall be published on the website of SIX Exchange Regulation.

4.5 Additional risks

In addition to the stated sanctions, the violation of stock exchange law norms may have other negative consequences for the company, in particular the additional cost of solving the caused problems (binding internal resources for the subsequent correction of failings, the cost of proceedings, fees of external consultants, etc.) or the loss of trust and reputation in the market and among the public.

5. Recommendations

Observing and the adherence to stock exchange law requirements, - compliance - is a mandatory element of “good corporate governance” of listed companies. On the basis of the obligation to provide ultimate supervision set out in Art. 716a para. 1 subpara. 5 CO, it is the concern of the board of directors to ensure that a compliance organisation is implemented which is reasonable for the respective company.

Fundamental elements of properly functional compliance include superiors setting a good example, clear internal company instructions, and standardised processes, communication channels and control mechanisms.

The following information is aimed at providing an overview of preventive compliance measures.

5.1 Instructions on “hot topics”

Dealing with central risks should be provided for in a systematic manner. This applies, in particular, to Reporting, Ad Hoc Publicity and Management Transactions, which frequently give reasons for sanctions by SIX (see sections 3.2.2/3.2.6/3.2.7 and the end of section 4.4.1 herein above).

Ideally, internal written instructions should be drawn up for each area and a process sequence should be defined as a guide for the employees. The instructions should contain the key provisions and rules of conduct and the authorities and responsibilities in each area.

The precautions that can be taken can be illustrated in conjunction with the insider trading provision (see section 4.1.2.). In addition to the promulgation of special rules (“Insider Policy”), the following measures are, for example, conceivable:

- general employee training;
- explicit reference to the criminal norm prior to instituting an insider-relevant project;
- keeping an up-to-date “insider list”;
• ban limited in time on trading in securities of the company (“close period”) for persons with “insider knowledge”;
• setting up an internal company notification channel in respect of the acquisition, keeping and sale of securities of the company (form, electronic platform).

Due to the tightening up on insider trading and the sanction options under supervisory law as part of the recently completed revision of SESTA (see section 4.1.1 and 4.1.2), it is recommended to check existing internal insider rules, Codes of Conduct, instructions and employment contracts to see if they need to be adapted. Due to the expanded list of potential perpetrators, heightened confidentiality measures should also be considered in the case of insider-related projects and occurrences, as well as expanding the groups of individuals subject to trading prohibitions.

Particular attention should be paid to the obligations in respect of Financial Reporting – not least on the basis of the sanction statistics (see end of section 4.4.1). In this respect, actively exchanging ideas with the auditors may be advisable.

5.2 Creating a compliance department

Comprehensive stock exchange law compliance entails setting up an “independent”, separate compliance department, which is separated from the operating business in terms of organisation, and which is, depending on the requirements, managed by one or more individuals (e.g. position within the legal team or the finance department). Such a department acts as a contact point for compliance questions. The compliance department should have access to all key information, and have at its disposal appropriate resources and support within the company. Ultimately, the compliance department supports the company management and the board of directors with the continual adherence to stock exchange law requirements – and possibly other requirements.

5.3 Supplementary measures

General rules of conduct can be set out in a Code of Conduct applying to the board of directors, the Management and all other employees. This also includes standards for appropriate conduct in respect of honouring special obligations of listed companies (e.g. adherence to stock exchange laws and other regulations, avoiding conflicts of interest, notifying the compliance department of illegal conduct or conduct in breach of the requirements).

In the case of uncertainty as regards stock exchange law compliance in a specific case, it may also be useful to obtain comments or a preliminary decision from the pertinent authority or instance, or seek legal advice.

Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>FAOA</td>
<td>Federal Audit Oversight Authority</td>
</tr>
<tr>
<td>BoD</td>
<td>Board of Directors</td>
</tr>
<tr>
<td>ExCo</td>
<td>Executive Committee</td>
</tr>
<tr>
<td>CHF</td>
<td>Swiss Francs</td>
</tr>
<tr>
<td>Circ. 1</td>
<td>Circular No. 1 – Reporting Obligations Regarding the Maintenance of Listing (expected to be superseded in 2013 by a directive on regular reporting obligations)</td>
</tr>
<tr>
<td>CO</td>
<td>Swiss Code of Obligations</td>
</tr>
<tr>
<td>DAH</td>
<td>Directive Ad Hoc Publicity</td>
</tr>
<tr>
<td>DCFH</td>
<td>Directive Complex Financial History</td>
</tr>
<tr>
<td>DCG</td>
<td>Directive Corporate Governance</td>
</tr>
<tr>
<td>DDES</td>
<td>Directive Distribution Equity Securities</td>
</tr>
<tr>
<td>DERP</td>
<td>Directive Electronic Reporting and Publication Platforms</td>
</tr>
<tr>
<td>DFR</td>
<td>Directive Financial Reporting</td>
</tr>
<tr>
<td>DMT</td>
<td>Directive Management Transactions</td>
</tr>
<tr>
<td>DTR</td>
<td>Directive Track Record</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>FC</td>
<td>Federal Constitution</td>
</tr>
<tr>
<td>FDF</td>
<td>Federal Department of Finance</td>
</tr>
<tr>
<td>FER</td>
<td>Swiss professional recommendations for accounting (in German: “Fachempfehlungen der Rechnungslegung”)</td>
</tr>
<tr>
<td>FINMA</td>
<td>Swiss Financial Market Supervisory Authority</td>
</tr>
<tr>
<td>FINMASA</td>
<td>Financial Market Supervisory Act</td>
</tr>
<tr>
<td>GAAP</td>
<td>Generally Accepted Accounting Principles</td>
</tr>
<tr>
<td>IAS</td>
<td>International Accounting Standards</td>
</tr>
<tr>
<td>IFRS</td>
<td>International Financial Reporting Standards</td>
</tr>
<tr>
<td>LR</td>
<td>Listing Rules</td>
</tr>
<tr>
<td>M&amp;A</td>
<td>Mergers &amp; Acquisitions</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
</tr>
<tr>
<td>PC</td>
<td>Swiss Penal Code</td>
</tr>
<tr>
<td>R-TB</td>
<td>Regulations of the Swiss Takeover Board</td>
</tr>
<tr>
<td>SCBP</td>
<td>Swiss Code of Best Practice for Corporate Governance</td>
</tr>
<tr>
<td>SESTA</td>
<td>Federal Act on Stock Exchanges and Securities Trading</td>
</tr>
<tr>
<td>SESTO</td>
<td>Stock Exchange Ordinance</td>
</tr>
<tr>
<td>SIX/SWX</td>
<td>Swiss stock exchange</td>
</tr>
<tr>
<td>TOO</td>
<td>Takeover Ordinance of Swiss Takeover Board</td>
</tr>
</tbody>
</table>
Ernst & Young is a leading provider of audit, tax, transaction and advisory services. Our 167,000 employees around the world provide quality services by combining our common values with consistent commitment. We stand out as a company because we help our employees, clients and stakeholders to realize their full potential.

In Switzerland, Ernst & Young is a leading audit and advisory company consultancy firm offering services in the area of tax and legal issues, as well as in transactions and accounting.

Ernst & Young refers to the global organization of member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, UK, does not provide services for clients.

Further information can be found on our website at www.ey.com/ch.

© 2013
Ernst & Young AG
All Rights Reserved

This publication is merely intended to provide general, non-binding information and cannot replace detailed research or expert advice. Despite the fact that it has been prepared with the greatest possible care, we make no claim to the comprehensive nature of this information. The information provided herein may in particular not be suited to the circumstances of a specific case. The use hereof is solely a matter for the reader's responsibility. Ernst & Young Inc. and/or any other companies of the international Ernst & Young Group decline any liability. For specific concerns, consult a specialist advisor.

Authors:

Daniel Bachmann
Partner, Attorney-at-law
Phone +41 58 286 64 31
Mobile +41 58 289 64 31
daniel.bachmann@ch.ey.com

Dominik Matter
Attorney-at-law
Phone +41 58 286 83 32
Mobile +41 58 289 83 32
dominik.matter@ch.ey.com

www.ey.com/ch/legal

This publication is also available in German.