

Management transactions and ad hoc publicity: SIX Swiss Exchange publishes amended rules

On November 1, 2023, the SIX Swiss Exchange published amendments to its rules on disclosure of management transactions and ad hoc publicity. While the principal amendments focus on the scope and modalities for management transactions, the amended ad hoc publicity rules are also relevant for companies that have only debt securities listed on SIX. The new rules will come into effect on February 1, 2024, leaving issuers with a short period of time to update their internal regulations and to provide a refresher training to their board members and senior management.

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Key changes to the rules on disclosure of management transactions

Key changes to the rules governing the disclosure of management transactions include:

- **Transactions with related parties:** Under the amended rules, transactions between members of the board of directors or the executive committee, respectively, and related parties (e.g. spouses, children living in the same household, controlled legal entities) are now explicitly subject to a disclosure obligation. The respective disclosure will have to include a description of the related-party nature of the relevant transaction.
- **Follow-on transactions by related parties:** Where a transfer of reportable securities to a related party was exempt from the reporting obligations (e.g. in case of gift or inheritance), any further transfer of these securities from such related person to a third party will have to be disclosed under the new rules. Such disclosure will be required irrespective of whether the follow-on transaction affects the assets or was made under the significant influence of a person subject to reporting obligations.

- **Disclosure of unlisted classes of shares:** Where a company has both listed and unlisted classes of shares (e.g. listed common shares and unlisted voting right shares), management transactions in such unlisted classes of shares will now also have to be reported.
- **Terms of conditions of unlisted conversion and option rights:** The amended directive on management transactions now requires that the principal terms and conditions of unlisted conversion and option rights will have to be disclosed in the management transaction report. The reportable terms and conditions are similar to what already today has to be reported in the context of the disclosure of significant shareholdings.
- **Obligation to correct reports:** The amended directive on management transactions now provides for an explicit obligation to file corrected reports. Accordingly, if a company discovers that a previously submitted report on the electronic reporting platform contains errors, the company must submit a corrected report immediately.

In addition to the above key changes, the amended set of rules also clarify certain other aspects of the reporting obligation, such as calculation of transaction value or timing of reporting obligations in the context of takeover offers.

In parallel to the amendments of the listing rules and the directive on management transactions, SIX Swiss Exchange has also **revised and updated its commentary on management transactions**. The updated commentary provides further guidance on the reporting obligations, the content of the management transaction reports, and the enforcement practice of SIX's sanction bodies.

Changes to rules on ad hoc publicity

In the area of ad hoc publicity, the key change relates to so-called **per se ad hoc relevant facts**. Pursuant to current regulations, annual and interim reports always have to be published by way of ad hoc publicity, irrespective of the type of securities listed on SIX Swiss Exchange.

While financial reports are of a high relevance for issuers of equity securities, these type of reports are generally of less importance for issuers that only have debt securities listed on SIX Swiss Exchange. For debt securities, other factors, such as illiquidity or threatened insolvency, are significantly more relevant than ordinary course financial reports. Recognizing the difference between equity and other type of securities, SIX has amended the listing rules and the directive on ad hoc publicity to specify that annual and interim reports are only considered *per se ad hoc relevant* for those issuers that have a primary listing of equity securities on SIX Swiss Exchange.

Actions required by SIX-listed companies and issuers of SIX-listed bonds

In its announcement, the SIX Regulatory Board already outlined key actions to be taken by Swiss listed companies, namely **updating internal regulations** and, more importantly, **training of the persons subject to management transactions reporting obligations**, i.e. the members of the board of directors and the executive management.

The training of the affected persons is an important element to ensure a listed company's compliance with the SIX Swiss Exchange rules on the disclosure of management transactions. Failure to provide such training to affected persons would likely be considered as an aggravating factor by SIX in a future sanction proceeding.

Issuers that have only listed debt securities on SIX Swiss Exchange will in the future have to assess



on a case by case basis if their financial reports are of a price sensitive nature for the SIX-listed bonds, which will – outside of near insolvency or similar situations – not often be the case.

Please do not hesitate to contact us in case of any questions.

Legal Note: The information contained in this Smart Insight newsletter is of general nature and does not constitute legal advice.

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