

# Update

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## Revised Rules of SIX Swiss Exchange regarding Disclosure of Management Transactions

On April 1, 2011 the revised rules of SIX Swiss Exchange (**SIX**) regarding the disclosure of management transactions entered into effect. In the context of the completed revision process, the Regulatory Board of SIX has amended article 56 Listing Rules (**LR**) as well as the Directive on Disclosure of Management Transactions (**DMT**).

The revision's main objective was on the one hand to simplify the rules regarding the disclosure of management transactions which have been in effect since July 1, 2005 and on the other hand to increase transparency for the market participants.

The basic concept of the issuer's reporting duty in the event of transactions by members of its board of directors and executive committee in equity securities of the issuer or related financial instruments has in principle been maintained. Unlike the previous rules, the revised rules only apply to issuers whose equity securities have their primary listing on SIX, irrespective of whether the issuer is a Swiss company and whether the issuer's equity securities are listed also in the issuer's home country.

The revisions of the rules regarding the disclosure of management transactions cover in particular the following:

- > Abolishment of the minimum threshold of CHF 100,000 for the publication of transaction notifications;
- > Extension of the issuer's publication deadline from two to three trading days;
- > Extension of SIX's publication period for transaction notifications from one to three years.

### 1. Reporting of Transactions to Issuer

#### 1.1 Persons Subject to Reporting Obligations

It is the issuer who is formally subject to the disclosure obligation. The issuer must ensure that the members of its board of directors and executive committee report all transactions covered by article 56 LR to the issuer.

The members of the board of directors and the executive committee of the issuer are subject to the reporting obligation. Thus, congruent with the corporate governance directive, the reporting obligation remains limited to the members of the two top management levels. Former members of the board of directors or the executive committee are not subject to the reporting obligation. The members of any advisory board are still not subject to the reporting obligation.

A member of the board of directors or executive committee is subject to the reporting obligation if the transaction has a direct or indirect effect on his/her assets. In particular, transactions executed within the framework of an asset management agreement are subject to the reporting obligation.

Furthermore, transactions of related parties which are executed under the significant influence of a person subject to the reporting obligation are also subject to the reporting obligation. According to the DMT, related persons may include, for example:

- > Domestic partners of a person subject to the reporting obligation;
- > Individuals living in the same household as the person subject to the reporting obligation;
- > Legal entities, partnerships and fiduciary institutions if the person subject to the reporting obligation holds a management position within such entity, controls the company directly or indirectly, or is a beneficiary of such company or institution.

## 1.2 Reportable Transactions

The reporting obligation covers the acquisition, disposal and grant (writing) of:

- > Equities and similar shares of an issuer;
- > Conversion, purchase and sale rights that provide for or permit actual delivery of equities or similar shares, or conversion, purchase or sale rights from the issuer;
- > Financial instruments that provide for or permit a cash settlement and other contracts for difference whose performance depends to at least one third on equities or similar shares, conversion, purchase or sale rights of the issuer.

In its communiqué no. 7/2010 of November 24, 2010, the Regulatory Board of SIX commented that in case of so-called "pre-trading plans" (i.e., participation programs in which the person subject to the reporting obligation agrees in advance on specific dates on, or time periods during, which transactions will be executed and such transactions are subsequently executed without such person having further influence on the execution of such transactions), only the conclusion of the pre-trading plan constitutes a reportable transaction. The subsequent individual transactions do not need to be reported.

## 1.3 Non-Reportable Transactions

Congruent with the previous rules, pledges, usufruct, securities lending, inheritances, gifts and disputes invol-

ving marital property are not subject to the reporting obligation.

A transaction which is executed without the person subject to the reporting obligation being able to influence such transaction is not subject to the reporting obligation. In practice, the question whether a person subject to the reporting obligation had the ability to influence a transaction or not is often difficult to assess. It is recommended that such questions are analysed timely in advance and in detail taking into account the specific facts.

Further, no reporting obligation exists if the transaction takes place on the basis of an employment contract or is part of a compensation scheme and the person subject to the reporting obligation cannot cause such transaction to take place by his/her conscious decision. Thus, the firm allocation of equities, similar shares or other rights pursuant to section 1.2 above is not subject to the reporting obligation. Unlike under the previous rules, the subsequent exercise or sale of such rights must always be reported.

Finally, transactions of an issuer in its own equity securities or related financial instruments are not subject to the reporting obligation.

## 1.4 Commencement of Reporting Obligation, Reporting Deadline and Content of Notification

As is the case for the disclosure obligation according to article 20 SESTA, the reporting obligation arises when the corresponding reportable transaction is concluded, irrespective of whether such transaction is subject to conditions or not. As regards transactions which are settled over an exchange, the reporting obligation arises when the transaction is executed.

The person subject to the reporting obligation must notify the issuer no later than on the second trading day after the reportable transaction has been concluded.

The LR set out in detail which information the persons subject to the reporting obligation must include in their notifications to the issuer (among others, information on the total value of the transaction). As regards reportable transactions carried out by related parties, the notification must state whether such transactions were concluded by a natural person or a legal entity.

## 1.5 Sanctions

Considering that the issuer is formally subject to the reporting obligations, sanctions are imposed exclusively on the issuer. The general sanction scheme of the LR applies (reprimand, fine, publication of sanction etc.).

## 2. Notification of Issuer to SIX and Publication of Transactions

### 2.1 Notification of Issuer to SIX

The issuer passes on to SIX the notifications which it has received from persons subject to the notification obligation within three (previously two) trading days after receipt of such notifications.

Unlike under the previous rules, the issuer must no longer distinguish whether or not the transactions exceed a certain threshold (previously CHF 100,000). Rather, all transactions which have been reported to the issuer must be notified to SIX, which results in a simplification of the issuer's duties.

The issuer's notifications are made using the electronic reporting platform made available by SIX.

### 2.2 Publication of Transactions by SIX

SIX operates a database of the notifications it receives. SIX publishes all received notifications (publishing the function, but not the name of the person subject to the reporting obligation). The published notifications can be accessed by the public for a period of three years.

## 3. Internal Rules

As already mentioned, the rules do not have a direct legal effect on the persons subject to the reporting obligation. The disclosure obligations regarding management transactions must therefore be implemented by way of an internal regulation at the level of the issuer.

Based on the previously published decisions in connection with the violation of the disclosure obligation, issuers have been blamed for, among others, having inadequately instructed their members of the board of directors and executive committee with regard to their disclosure obligations or having maintained an inadequate internal reporting system. It is therefore recommended that the existing internal regulations are reviewed and adopted to

the revised rules regarding the disclosure of management transactions.

## 4. Transitional Provisions

The revised rules do not contain any transitional provisions. Considering that the purchase, sale or grant (writing) of equities, similar shares or other rights pursuant to section 1.2 above trigger the reporting obligation, we are of the view that transactions which have already been concluded at the time when the revised rules entered into effect or which in the case of a settlement through a stock exchange have already been executed at such time are subject to the previous rules regarding disclosure obligations.

Further, in our view no reporting obligation arises, as a result of the entering into effect of the revised rules, for transactions which according to the previous rules were not subject to the reporting obligation.

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