

Update

Newsflash April 2013

Changes to the Swiss Rules on Disclosure of Shareholdings

- Scope of the disclosure rules extended to foreign issuers having a main listing in Switzerland
- Pre-existing interests in foreign issuers to be notified by 1 May 2014

In September 2012, the Swiss Parliament amended the Federal Act on Stock Exchanges and Securities Trading (SESTA), in particular regarding the duty to disclose significant interests in listed companies. On 10 April 2013, the Federal Council adopted the regulations implementing the new regime, which will enter into force on 1 May 2013.

The main changes introduced by the revised SESTA in respect of the disclosure duty are summarised below.

Extension of the scope of the disclosure rules to significant interests in foreign issuers having a main listing in Switzerland

SESTA requires any person who, directly, indirectly or acting in concert with third parties, reaches, exceeds or falls below certain ownership thresholds (3%, 5%, 10%, 15%, 20%, 25%, 33⅓%, 50% or 66⅔% of the voting rights) to notify the issuer and the Swiss stock exchange where the securities are listed within four trading days.

To date, the duty to notify only exists where the relevant interests are held in companies having their registered office in Switzerland and their equity securities listed on a Swiss stock exchange.

Under the revised SESTA, the duty to notify significant interests will be extended to issuers having their registered office outside of Switzerland (and which are consequently not organized under Swiss law), if these issuers have a main listing (*Hauptkotierung / cotation à titre principal*) for their equity securities on a Swiss stock exchange. A main listing is deemed to exist where the relevant foreign issuer is subject to the same listing and ongoing reporting obligations as Swiss issuers. Swiss stock exchanges are required

to publish a list of the foreign issuers that fall into this category. These issuers must publish the number of equity securities that they have issued and the corresponding number of voting rights.

The revised SESTA requires significant interests in foreign issuers existing on 30 April 2013 (pre-existing interests) to be notified within one year, i.e. until 1 May 2014. Where an interest reaches or exceeds a disclosure threshold on or after 1 May 2013 (the date on which the new rules enter into effect), the disclosure will have to be made within four trading days.

Changes to the enforcement regime

Currently, SESTA allows civil courts to suspend the voting rights of any person who fails to notify a significant interest in a Swiss listed company for up to five years.

The revised SESTA transfers the power to suspend voting rights from the civil courts to the Swiss Financial Market Supervisory Authority (FINMA). In addition, it gives FINMA the power to enjoin investors from acquiring further equity securities or financial instruments having equity securities of the relevant issuer as an underlying asset. However, the

suspension can no longer be imposed for a period of up to five years as this is currently the case. It can only be imposed until the situation has been clarified and, if required, the relevant disclosure obligations have been complied with. Under the new regime, the suspension of voting rights and the prohibition of further acquisitions are only means for ensuring compliance with the disclosure obligations of the relevant holders. They no longer have the character of an independent penalty.

Cap on the maximum amount of fines

The revised SESTA sets a cap of CHF 10 million on the amount of the fines that can be imposed in the event of intentional violations of the duty to notify significant share-

holdings. By contrast, the current regime contemplates the imposition of fines of up to twice the value of the undisclosed interest, which could in theory represent billions of Swiss Francs.

Contrary to what the case is with respect to insider trading and market manipulation, the revised SESTA does not transfer the power to prosecute violations of the disclosure rules to the Federal Attorney General. This power remains with the Federal Department of Finance.

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

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