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Revised SIX Rules on Ad Hoc Publicity and Corporate Governance to Enter into Force in July 2021

The Regulatory Board of SIX Swiss Exchange (SIX) announced that certain revised rules on ad hoc publicity and corporate governance will enter into force on July 1, 2021. As part of this revision, the Regulatory Board generally abolished the concept of per se ad-hoc-relevant facts with certain exceptions, introduced a flagging obligation for ad hoc announcements, and imposed additional disclosure and corporate governance obligations on issuer.

Published: 3 May 2021

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Background

The Regulatory Board of SIX revised certain provisions on ad hoc publicity and corporate governance, which will enter into force on July 1, 2021. The changes with respect to the ad hoc rules concern all issuers having their registered office in Switzerland and whose securities are listed on SIX Swiss Exchange as well as issuers whose registered offices are outside Switzerland but whose securities are exclusively listed on SIX Swiss Exchange (i.e., not in their home country). The SIX Directive on Corporate Governance (DCG), however, applies to all issuers whose equity securities have a primary listing on SIX Swiss Exchange.

This newsflash briefly summarizes these changes on ad hoc publicity and corporate governance.

Ad Hoc – No per se Facts

The Regulatory Board of SIX abolished the concept of *per se* ad-hoc-relevant facts. Under the revised SIX Directive on Ad Hoc Publicity (DAH), there are no longer facts whose disclosure is considered *per se* price-sensitive, except for annual and interim reports. Issuers subject to the DAH will have to continue to disclose such reports with an ad hoc announcement.

The abolishment of *per se* ad-hoc-relevant facts means, *inter alia*, that changes in the composition of the board of directors or the senior management of the issuer do not *per se* trigger an ad hoc disclosure duty. Instead, the issuer will have to determine on a case-by-case basis if an ad hoc disclosure duty is triggered.

Obligation to Flag Ad Hoc Announcements

Issuers will have to flag ad hoc announcements with a tag "ad hoc announcement pursuant to Art. 53 LR" in a clearly visible manner. Conversely, it is not permitted to flag pure marketing notices that do obviously not include price-sensitive facts. Misuse of such flagging is subject to sanctions, and SIX Exchange Regulation will take legal action in case of violations, thereby giving due consideration to the discretion and judgment that the issuer has in its *ex ante* assessment of the price-sensitive fact.

Each published ad hoc announcement must be made available for a period of three years after publication in chronological order on the issuer's website in an easy-to-find directory that indicates the distribution date and an appropriate reference to the classification.

Issuers of primary-listed equity securities will have to use the online platform Connexor Reporting for transmission of their ad hoc announcements, whereas issuers of derivatives, bonds, conversion rights, collective investment schemes and secondary-listed equity securities may continue to transmit ad hoc announcements by e-mail.

Ad Hoc – Confidentiality of Price-Sensitive Facts

Under the LR and the DAH, the issuer has the right, under certain limited circumstances, to postpone the disclosure of an ad-hoc-relevant fact. When postponing disclosure, an issuer must henceforth use adequate and transparent internal rules or processes to ensure that the price-sensitive fact remains confidential during the entire period of the postponement. In addition, the issuer must take organisational measures to ensure that confidential facts are only disclosed to persons who need to know such facts to perform the tasks assigned to them.

The issuer is free to choose the organisational methods and instruments, but must keep its internal rules, processes and measures in line with the latest developments, best practice and the relevant standard of a listed company. Such methods and instruments may include (i) implementing the need-to-know principle, (ii) limiting and safeguarding access to information, (iii) obtaining confidentiality undertakings from all persons who are aware of the information, and (iv) maintaining an insider list.

Ad Hoc – Clarifications of Certain Terms

The Regulatory Board of SIX changed the term "*potentially* price-sensitive fact" to "price-sensitive fact" due to the redundancy of the term "*potentially*". This clarification does not lead to any modification of its legal meaning.

The rule according to which a fact is considered price-sensitive if its disclosure is capable of triggering a significant change in market prices is transferred from the DAH to the SIX Listing Rules (LR). This does not lead to any change in legal practice. In particular, whether or not the disclosure of a fact is capable of triggering such change must be decided on a case-by-case basis prior to disclosure or announcement (i.e., there are no generally binding thresholds or fixed definitions).

Lastly, in order to align with international standards, the Regulatory Board of SIX replaced the previous term "*average* market participant" by the term "*reasonable* market participant".

Corporate Governance – Quiet Periods

Subject to the comply-or-explain principle, pursuant to the revised DCG, the annual report will have to include information on general quiet periods (so-called "blackout periods") such as deadlines, addressees, scope, and exceptions.

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

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