

25 October 2011

SIX Exchange Regulation

SIX Swiss Exchange Ltd.
Selnaustrasse 30
P.O. Box 1758
8021 Zurich

Comment Letter on Consultation on the proposed Directive on Management Commentary (DMC)

Dear Sir / Madam,

SwissHoldings, the Federation of Industrial and Services Groups in Switzerland, represents 53 Swiss groups, including most of the country's major industrial and commercial enterprises. We very much welcome the opportunity to comment on the above-mentioned draft Directive and our response below has been prepared in conjunction with our member companies.

GENERAL COMMENTS

According to its Directive on Financial Reporting, SIX Exchange Regulation (SIX) requires issuers of the main market to apply an international standard, be it either IFRS or US GAAP. Since IFRS are defined as being all the standards and interpretations issued by the IASB (see footnote 1 to art. 6 of said Directive) and since Management Commentary is part of the defined IFRS set of documents albeit a non-binding Practice Statement, the Regulatory Board should not pick up isolated elements to this practice statement and make them a specific, mandatory part of the financial reporting obligations under SIX listing rules. The SIX should issue broad principles and may want to issue illustrative examples but it should not make prescriptive requirements and instead should permit issuers under its supervision to issue their management commentary in the way that would enhance their communication with the users of their financial statements and annual reports.

In fact, with the proposed Directive on Management Commentary, SIX would start issuing SIX-specific reporting obligations. SIX would deviate from the clear and well-established principle of referring to IFRS or US-GAAP. Unfortunately, the Issuers' Committee of the Regulatory Board has failed to explain to what extent such a "Swiss-finish" could enhance reporting by Swiss listed companies. We, therefore, question the need for this Directive. Additionally, the draft Directive does not at all address the situation where a listed company has a dual or secondary listing and is, in addition, subject to financial reporting obligations by that other stock exchange, which affects in particular Swiss entities listed in the US which must follow the SEC rules and regulations.

Furthermore, we consider that the principal purpose of a Management Commentary is generally understood to be to assist investors in understanding an entity's financial statements. However, in a number of areas the proposed Directive would go beyond this, and could require an entity to disclose competitively sensitive information.

Finally, the Swiss Parliament is currently debating an amendment to the law which states that, in future, the Federal Council will define which accounting standards are deemed to be recognized accounting standards according to the law and must therefore be complied with by Swiss listed companies. If adopted this would relieve the SIX of its current competence to define which financial reporting standards must be applied. Considering this, it seems to be inappropriate for SIX, at this stage, to go beyond existing IFRS requirements, when it is not clear whether SIX will eventually lose regulatory power in this field.

Therefore, the following comments are made for completeness' sake only, in case the Regulatory Board decides to pursue the issuance of a Directive on Management Commentary.

Specific comments

As to the draft DMC, we are concerned that there are a number of items particularly in the Appendix which, if written in such a condensed manner, appear to exceed the highest standards that we know of at present namely those of the US Securities and Exchange Commission (SEC).

Article 1:

The objective as currently expressed seems to focus on the discussion of financial results in the context of an entity's strategy and objectives. In our view the requirements regarding the content to be provided in the management commentary as expressed in Article 5 and in particular the appendix, far exceed this objective. This is due to the fact that a lot of emphasis is put on non-financial items, e.g. resources, relationships and even non-financial performance and outlook. While we appreciate that the previously mentioned qualitative characteristics are an important factor of an entity's strategy and should therefore be analyzed in the management commentary, we consider that such analyses should focus on the linkage between qualitative characteristics and financial performance. The emphasis on this linkage is not always clear in Article 5 and the related appendix. For example, why does a general description of the way the relationship with stakeholders is managed (appendix 3.3) convey useful information to understand an entity's financial performance from the perspective of that individual stakeholder. Therefore, we propose to align the requirements in Article 5 and the appendix more closely to the objective in Article 1. Such alignment should clearly state that the information required can be part of the Annual Report (Jahresbericht) and must not necessarily form an isolated section of that Report or even be a separate report.

Furthermore, we believe the terms "strategy" and "objectives" are at least to some extent overlapping as an entity usually expresses its long term objectives through its strategy.

Reference to the IFRS Practice Statement Management Commentary is confusing in this context (see General Comments) and should, therefore, be deleted.

Article 2

The current draft does not reflect the situation where an issuer has a dual or secondary listing at another stock exchange and, therefore, has to comply with requirements of that other exchange.

Articles 3 to 5

As currently written, Articles 3, 4 and 5 are difficult to understand and open, in our view, to different interpretations. One of the reasons for the difficulty to understand the articles is the current structure because they are not based on clear principles and do not include illustrative examples. Furthermore, we consider that the Directive could be improved by reordering or re-grouping the content of these Articles in a more logical way.

In the following we explain these issues in more detail and provide input for possible improvements.

Article 3:

This Article appears to us to make little sense. The first sentence assumes that there will be something called "Management Commentary", but this has not been required in the preceding articles. It is only Article. 4, that seems to mandate a Management Commentary. Again, we consider that it should not be mandatory to have a specific section or even a specific report, but that the information required to be disclosed can be part of the unaudited Annual Report ("Jahresbericht"; see General Comments).

Furthermore, we have concerns that the statement that "qualitative characteristics are expected to increase the usefulness of the information" is not clear as it seems to mandate qualitative characteristics of the IASB Conceptual Framework and should be phrased in the form of a reference to it, such as "when preparing a Management Commentary entities should refer to the qualitative characteristics of the IASB Framework". We consider that there is sufficient guidance in the Framework to avoid repeating and redefining qualitative characteristics in the Directive.

Article 4:

This Article is entitled "Placement of Disclosure" and it states that the Management Commentary "should complement the financial statements and be presented as a separate section....". We are of the opinion that it is important to provide for more flexibility for the issuer to integrate the Management Commentary information in the unaudited Annual Report ("Jahresbericht"). This will enable the management to better adapt the presentation of its Management Commentary to the nature of its business, the strategies adopted and the regulatory environment in which the issuer operates.

Article 5:

We assume that this is supposed to be the Article that was to state what the Management Commentary was supposed to contain although it does not say this. Rather, it just says that this information "must be addressed in the annual report". We suggest that it needs to say that "The Management Commentary should contain the following information:" The term "the following structure and section headings" seems to indicate that the sequence of the elements is given. We suggest adding a sentence which states that however, the issuer should have the flexibility to select the topics, the sub topics and the order of the information, provided that the required substance is covered.

We have the following concerns about the specific Article 5 section headings as described in the appendix:

Appendix 1.1:

We are not clear what kind of disclosure is expected with respect to the major products and services. Are major products those products which currently contribute the most to an entity's performance? Should information on future products be disclosed, if so what kind of information? We believe both current and future products are referred to and that the information provided should help an investor to understand their impact on the current and future financial performance of the entity. We believe such general guidance could be added, but agree that no detailed requirements should be listed as each entity has to balance on its own, what information it provides to help investors, but not competitors.

Appendix 2:

We are concerned about the requirements to disclose a "description of the objectives established by the entity" and the "strategies to achieve the entity's objectives". Such a requirement needs to be in very general terms otherwise it would require issuers to disclose any sort of detail. If it is the latter, then we have a concern about this guidance, as it would require issuers to disclose strategic options to their competitors.

Appendix 3.1:

We are not sure what would count as a "critical non-financial resource". The term needs to be defined and it should be clarified how disclosures about such resources are linked to the objective of the standard as expressed in Article 1. Furthermore disclosing the "...availability and allocation" of "financial and non-financial resources" is concerning to us as it would implicitly provide detailed information about the entity's strategic options and choices to the competition. The intention of a disclosure of the availability of resources is also not clear to us. This is due to the fact, that the availability of resources is a pre-condition for the definition of a strategic objective, i.e. if an entity did not have the resources required to meet this objective, it could not define it. The more important factor is the risks to which the availability of resources is exposed, but this disclosure is captured in Appendix 3.2. In conclusion, we propose to revise appendix 3.1, so that it only asks to summarize the most important financial and non-financial resources.

Appendix 3.2:

We have concerns that the financial risk section would overlap with the disclosure of IFRS 7 and the SIX should make explicit reference to that standard to avoid redundancies.

Appendix 3.3:

We are unsure what sort of "relationships to stakeholders" are being asked about here, or what we would say if "how these relationships are managed" had to be disclosed. It is not clear which "stakeholders" relationships are material to the company. Shareholders? Regulators? Customers? Suppliers? Therefore and as already mentioned in the comment to article 1, if this requirement was to be kept it must have a clear link to the objective of the Directive. Even if a clear linkage to the objective was provided, it would still be difficult for us to understand, why stakeholders are captured in a separate point at all. To us stakeholders can (1) be crucial resources of an entity (e.g. suppliers, employees, shareholders in their function as providing capital to the entity), this group would be captured in the description of resources (appendix 3.1). (2) Shareholders in their function as receivers of the incremental benefits are also stakeholders, but they are the addressees of the annual report, so it is not clear, which benefit is generated if the entity describes its relation to the shareholders. And finally (3) customers are the most important stakeholders for the output generated by an entity. However, crucial aspects related to that group would be captured in the description of the external environment. This is also true for "indirect stakeholders" of the entity, e.g. community etc., if they are highly relevant for the financial performance of an entity.

Appendix 4:

There is much that concerns us here:

- App. 4.1.1 asks for the entity's performance against the stated objectives and strategies as described in Article. 2. Again, for competitive reasons an entity would not want to give this level of detail (performance against numerical targets), and it is not required by the SEC.
 - App. 4.1.2 asks for financial results and "the development of these measures throughout the financial year". But while there may be occasional times when an entity might want to give information regarding the timing of financial events, there is no reason why it is relevant in the context of an annual report or why it should be required.
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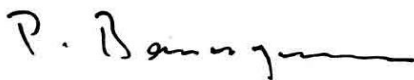
App. 4.2 asks for an outlook. While our member companies do give an outlook to investors when they are able, they should not be required to do so. There is significant judgment and risk attached with doing so and our members only give the level of detail that they consider comfortable giving.

We understand that many of the requirements above are taken over from the IFRS Practice Statement "Management Commentary". However, if summarized in such a short directive it is too much open for interpretation.

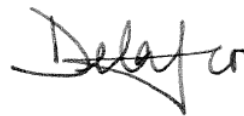
Yours sincerely

SwissHoldings

Federation of Industrial and Service Groups in Switzerland



Dr. Peter Baumgartner
Chair Executive Committee



Denise Laufer
Policy Manager

cc SH Board

11-10-25-CL-Management Commentary
