

Media Release

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SIX Exchange Regulation

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Enforcement of disclosure obligations still inadequate

SIX Swiss Exchange Disclosure Office publishes 2009 Annual Report

In 2009, the SIX Swiss Exchange Disclosure Office informed FINMA of 106 cases in which reporting obligations were breached. This accounts for around 10% of all disclosure notices received. In spite of this high number of cases and the fact that negligent failure to meet reporting obligations has been an offence since the start of 2009, it appears that the competent federal authorities are either not investigating and punishing these cases systematically or not doing so at all. In addition, the Federal Department of Finance is now proposing a reduction in the fines imposed for failing to comply with disclosure obligations, which would further exacerbate the problem.

Almost 10% of all disclosure notices forwarded to FINMA

While the overall number of disclosure notices fell slightly in 2009, the Disclosure Office informed the Swiss Financial Market Supervisory Authority FINMA of more suspected cases of reporting obligations not being met than in 2008. Specifically, there were 106 cases in 2009, compared with 101 in 2008. This means that almost 10% of all notices did not comply with the disclosure obligations (see 2009 Annual Report, point 6).

Enforcing the legislator's will

The legislator acknowledged weaknesses in the enforcement of disclosure provisions and therefore ruled, along with the possibility of suspending voting rights, that negligent failure to comply with disclosure obligations would be an offence as of 1 January 2009. Nevertheless, it seems that the competent federal authorities, namely FINMA and the Federal Department of Finance, are not investigating and punishing cases of negligent failure to comply with reporting

obligations in particular or are at least not doing so systematically. According to its 2009 Annual Report, FINMA had informed the Federal Department of Finance of only one case of failure to comply with disclosure obligations. As in previous years, the Disclosure Office is not aware of any sanctions being imposed by the Federal Department of Finance in 2009.

Against weakening the sanctioning apparatus

With regard to the Federal Department of Finance's now completed consultation on revising the rules on stock exchange offences and market abuse, it is surprising to see that, in spite of this inadequate enforcement of disclosure provisions, a proposal has been put forward to reduce the maximum fines for negligent and deliberate failure to comply with reporting obligations to CHF 150,000 and CHF 500,000 respectively. The Disclosure Office believes that these maximum fines are much too low and would consequently not be an effective deterrent. This view is not altered by the other measures proposed, in particular confiscating any unlawful profit, since a potential gain that may under certain circumstances be in the double or triple-digit millions would be set against an economic risk limited to just CHF 500,000 (confiscated unlawful profit does not constitute an economic loss). A potential risk/reward ratio such as this would be tantamount to an invitations to build up hidden stakes and would have a negative impact on the efforts to increase transparency regarding substantial shareholdings and takeover situations.

Number of disclosure notices down only slightly

Shareholders with more than 3% of the voting rights in a Swiss company qualify as significant and are thus subject to compulsory notification. Over 1,400 notifications of significant shareholders were made in 2008, but the figure fell to 1,143 in 2009. The high number recorded in 2008 was essentially attributable to the introduction of new threshold values, notably the 3% threshold. Averaged over several years, the 2009 figure of 1,143 means that the number of notifications of significant shareholders has more than doubled (see 2009 Annual Report, point 4.2).

Fewer applications received

The Disclosure Office received a total of 24 applications for preliminary decisions on disclosure obligations as well as for exemptions and easier disclosure from the obligations in 2009. This represents a fall from the exceptionally high number of 78 applications in 2008, a direct consequence of the extended disclosure obligations, albeit to a level that is still high. The applications mainly concerned group reporting obligations, investment

management and disclosure in connection with capital market transactions. A selection of the rulings can be found in the 2009 Annual Report under point 3.3.

The SIX Swiss Exchange Ltd Disclosure Office Annual Report for 2009 can be downloaded using the following link (German only):

www.six-exchange-regulation.com/obligations/disclosure/annual_reports_de.html

For more information, see:

http://www.six-exchange-regulation.com/obligations/disclosure_en.html.

SIX Swiss Exchange Disclosure Office

The Disclosure Office was created in connection with the introduction of the obligation to disclose holdings in companies incorporated in Switzerland whose equity securities are listed, in whole or in part, in Switzerland if the percentage of voting rights held reaches, exceeds or falls below the following thresholds: 3, 5, 10, 15, 20, 25, $33\frac{1}{3}$, 50 and $66\frac{2}{3}$. Disclosing significant shareholders creates transparency as regards the ownership structure of listed companies and fulfils an early-warning function in respect of potential company takeovers. The Disclosure Office's tasks are to receive notifications, monitor compliance with reporting and disclosure obligations, inform FINMA of potential failures to comply with reporting obligations, grant exemptions or relief from reporting obligations and render rulings in advance on whether or not a reporting obligation applies in specific cases. The Disclosure Office is a separate department within SIX Exchange Regulation. Its fulfilment of its legal duties is directly supervised by FINMA, but the Disclosure Office itself has no authority in its own right.

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SIX Exchange Regulation

SIX Exchange Regulation performs the functions assigned under Swiss federal law and enforces and monitors compliance with the rules laid down by the Regulatory Board. SIX Exchange Regulation imposes sanctions in so far as it is authorised to do so by the regulations, or submits sanction requests to SIX Swiss Exchange's Sanction Commission.

SIX Exchange Regulation's independence from SIX Swiss Exchange's operating business is guaranteed by its direct subordination to the Chairman of the Board of

Directors of SIX Group. SIX Exchange Regulation consists of the divisions Listing & Enforcement, responsible for regulating issuers, and Surveillance & Enforcement monitoring trading.