

## Media Release

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### **Enforcement of provisions regarding the disclosure of significant shareholders is vital for credibility of market regulation**

#### **Disclosure Office of SIX Swiss Exchange publishes its annual report for 2010**

**Again rise in reports of possible violations of disclosure obligations by the Disclosure Office of SIX Swiss Exchange to the Swiss Financial Market Supervisory Authority (FINMA). Announced changes in enforcement policy should improve compliance with disclosure obligations in the future. The reduction in the band widths for fines as proposed in the consultation draft on stock market crime and market abuse has, in part, been revised upward by the Federal Council – but not sufficiently in the opinion of the Disclosure Office. The Disclosure Office is calling for the present higher fines to be upheld.**

#### **About 10 percent of disclosure notifications are forwarded to FINMA**

The number of reports of possible violations of disclosure obligations to the FINMA rose further to 111 in 2010 (up from 107 in 2009). That is just over 10% of all reports received, despite a reduction in the total number of disclosure reports from 1,143 in 2009 to 1,024 in 2010 (see section 6 of annual report for 2010).

#### **Announcement to step up enforcement**

For many years, the Disclosure Office has noticed in its reports the inadequate enforcement of the provisions regarding the disclosure obligations set out in Art. 20 of the Federal Act on Stock Exchanges and Securities Trading (SESTA). The FINMA and the Federal Department of Finance (FDF) now seem to be amending their enforcing policy. In its annual report for 2010, FINMA announces that it will be stepping up its enforcement practice in the future. In this connection it intends to report all potential violations of disclosure requirements to the FDF, providing there are legitimate grounds to suspect violation. FINMA's announcement indicates that in future it will be taking a tougher line on violation

of disclosure obligations. For this reason, more administrative penalty proceedings by the FDF are to be expected. In the opinion of the Disclosure Office, proper functioning of the enforcement system, comprising disclosure offices, FINMA and FDF, plays a key role in ensuring the credibility of the regulation. It therefore welcomes all steps in this direction.

#### **Correction of the band widths for fines**

In the consultation procedure on amendment of legislation on stock market crime and market abuse, the Federal Council has upwardly revised the band widths for fines for violations of disclosure obligations compared with the proposed level on 17 December 2010. The original proposal of a maximum fine of CHF 500,000 for intentional and CHF 150,000 for negligent breach of disclosure obligations has been increased by the Federal Council to a maximum of CHF 10 million for intentional and CHF 1 million for negligent breach. Even so, this represents a considerable reduction compared with the maximum levels under the present law. The Disclosure Office considers that even a maximum fine of CHF 10 million is disproportionately low compared with amounts that are used in the context of covert takeovers. Such proportionate low fines would probably simply be priced into the transaction costs. The Disclosure Office therefore favors maintaining the present flexible, case-by-case application of the band widths for fines, with a maximum of double the purchase or selling price of an unreported shareholding for intentional breach and CHF 1 million for negligent breach of the disclosure obligations. Within these band widths, the fine could be adjusted without difficulty to reflect the circumstances of each case.

#### **Disclosure requirements for financial instruments**

In a key decision regarding the disclosure requirements for financial instruments taken in 2010 the Disclosure Office set out in detail its views on the question of disclosure of financial instruments (see section 3.2.2.1 in the annual report for 2010). Worth mentioning in this connection is the fact that in its contact with a variety of foreign regulators the Disclosure Office encountered lively interest in the new Swiss disclosure regulations for financial instruments. Internationally, Switzerland has taken a leading role in this field and created regulations that are viewed with great regard in many countries.

Click on the following link to view the annual report for 2010 of the Disclosure Office of SIX Swiss Exchange: [http://www.six-exchange-regulation.com/obligations/disclosure/annual\\_reports\\_en.html](http://www.six-exchange-regulation.com/obligations/disclosure/annual_reports_en.html)

Further information can be found at: [www.six-exchange-regulation.com/obligations/disclosure\\_en.html](http://www.six-exchange-regulation.com/obligations/disclosure_en.html)

Should you have any questions, please feel free to contact Stephan Meier, Media Relations.

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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. [www.six-exchange-regulation.com](http://www.six-exchange-regulation.com)

### **Disclosure Office**

The Disclosure Office is a separate department within SIX Exchange Regulation. With regard to the fulfillment of statutory requirements, the Disclosure Office legally comes under the direct supervision of FINMA but does not have any responsibilities of public administration.

The Disclosure Office is anchored in federal law and was created in connection with the coming into force of the obligation to disclose shareholdings in companies incorporated in Switzerland whose equity securities are listed, at least in part, in Switzerland if such shareholdings reach, exceed or fall below the following thresholds: 3, 5, 10, 15, 20, 25, 33⅓, 50 and 66⅔% of voting rights. Disclosure of significant shareholdings ensures transparency with regard to the ownership structure of listed companies and acts as an indicator of possible takeover activity. The role of the Disclosure Office is to receive notifications of shareholdings, monitor compliance with reporting and disclosure obligations, report possible violations of disclosure obligations to FINMA, grant exemptions and easier disclosures and to take preliminary decisions on whether or not a disclosure obligation exists.