



Media Release

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Experiences with disclosure law pursuant to FMIA and FMIO-FINMA

The Disclosure Office of SIX Swiss Exchange publishes its 2016 Annual Report

- **With the entry into force of the Financial Market Infrastructure Act (FMIA) as at 1 January 2016, new provisions took effect concerning the duty to report voting rights. These provisions were fleshed out over the course of 2016 as a result of the Disclosure Office's practice.**
- **Because certain affected parties stated that they had difficulties with the specific implementation of these duties, FINMA amended the relevant ordinance provision in the spring of 2017.**
- **The number of disclosure notifications increased significantly compared with the previous year, while the number of potential breaches only increased to a lesser extent.**

Discretionary exercise of voting rights

The introduction of the duty to report voting rights (Art. 120 para. 3 FMIA) gave rise to various questions. For example, within the context of a recommendation the Disclosure Office had to determine whether certain contractual provisions result in a duty to report voting rights. The Disclosure Office concluded that, under certain circumstances, this is the case only after other conditions are met. Under other circumstances, however, the contract empowered the entitled party to exercise voting rights at its discretion directly upon its conclusion and the relevant duty to report in this case arises at the time of the conclusion of the contract.

Partial revision of FMIO-FINMA

The FINMA Financial Market Infrastructure Ordinance (FMIO-FINMA) contains detailed provisions about the duties with regard to reporting voting rights. Pursuant to the original version of the provision, with regard to legal entities the individual who controlled the relevant legal entity was considered to be entitled to exercise voting rights. This rule caused practical difficulties in the implementation for various affected parties. FINMA therefore proposed an amendment of the rule: The person who is actually able to make a discretionary decision concerning the exercise of voting rights is subject to the notification duty.

At the consultation hearing for FINMA's amendment proposal, a vast majority of participants welcomed the change. Moreover, some participants felt it made sense to offer an alternative option for fulfilling the



notification duty. The amended version of the provision has been in effect since 1 March 2017. The notification duty primarily applies to the person who can actually decide on the exercise of voting rights. The provision also allows for a choice: If the person who can decide on the voting rights on a discretionary basis is controlled, it is also permissible for the controlling person to meet the notification duty on a consolidated basis.

Significant increase in the number of disclosure notifications

Compared with the previous year, the number of disclosure notifications increased by approximately 25% to 1,587 (2016: 1,267). However, the number of potential breaches also increased, albeit not to the same degree as the number of disclosure notifications, i.e. by only around 17% from 70 to 82.

You will find the 2016 Annual Report of the Disclosure Office of SIX Swiss Exchange at the following link: <https://www.six-exchange-regulation.com/en/shared/component/redirected/disclosure-annual-reports.html>

Further information can also be found at: <https://www.six-exchange-regulation.com/en/home/investor/obligations/disclosure-of-shareholdings.html>

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

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Disclosure Office

The Disclosure Office is a separate department within SIX Exchange Regulation. SIX Exchange Regulation is independent of the Exchange's operating business and reports directly to the Chairman of the Board of Directors of SIX Group Ltd. The fulfillment of the statutory tasks of the Disclosure Office is subject in legal terms to direct supervision by the Swiss Financial Market Supervisory Authority FINMA. The Disclosure Office does not hold any state authority of its own, however.

The Disclosure Office, which has a basis in federal law, 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, or a company not domiciled in Switzerland whose equity securities are mainly listed in whole or in part in Switzerland, if they reach, exceed or fall below certain thresholds (3, 5, 10, 15, 20, 25, 33 1/3, 50 and 66 2/3 percent of voting rights). The disclosure of significant shareholders creates transparency about ownership structures and financial interests in listed companies, and functions as an early warning system for possible takeovers. The task of the Disclosure Office is to receive notifications of shareholdings, to monitor compliance with reporting and disclosure obligations, to report possible breaches of reporting obligations to FINMA, to grant exemptions or relief from reporting obligations, and to render preliminary decisions on whether an obligation to notify exists or not.

SIX

SIX operates the infrastructure underpinning the Swiss financial sector and offers a comprehensive range of services around the world in the fields of securities trading and settlement, financial information and payment transactions. The company is owned by its users (approximately 130 banks of various orientation and size). Its workforce of over 4,000 employees and presence in 25 countries throughout the world generated operating income of CHF 1.8 billion and a Group net profit of CHF 221,1 million in 2016.

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