

# Media Release

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## Amendments in the practical application of disclosure rules

The Disclosure Office of SIX Exchange Regulation AG publishes its practice, inter alia, in the form of Notices.

Upon the entry into force of the Financial Market Infrastructure Act (FMIA), a new and separate reporting obligation was introduced: Aside from the beneficial owner, third parties are now also subject to the reporting obligation if they have discretionary power to exercise voting rights (Art. 120 para. 3 FMIA). The new Notice I/18 sets out the details of the scope of application of this provision and the specifics of how the reporting obligation is structured.

The entry into force of FMIA and the adoption or partial revision of the FINMA Financial Market Infrastructure Ordinance (FMIO-FINMA) have further resulted in selected substantive amendments to the Notices; given the circumstances, this opportunity was taken to also revise the existing Notices on a formal basis.

### Reporting obligation pursuant to Art. 120 para. 3 FMIA (Notice I/18)

The new Notice I/18 "Reporting obligation of the person with discretionary power to exercise voting rights pursuant to Art. 120 para. 3 FMIA" outlines the conditions of this new reporting obligation. It applies to persons who have discretionary power to exercise voting rights and who are outside of the chain of control of the beneficial owners of the equity securities. Referring to Art. 10 para. 2 FMIO-FINMA, it is specified that, in case of direct or indirect control, the reporting obligation may alternatively be fulfilled by the controlling person ("the last link in the chain") on a consolidated basis.

### Disclosure of equity derivatives (Notice II/13)

In Notice II/13, the previous term "financial instrument" was amended to reflect the terminology of the partially revised FMIO-FINMA and replaced with the term "equity derivative". The wording "economically enable an acquisition or sale" was deleted from the Notice given that this terminology was not included in the FMIO-FINMA. Furthermore, the remarks regarding financial instruments in relation to a public takeover offer were deleted given that the corresponding remarks did not make it into the FMIO-FINMA either. In regard to the calculation in case of derivatives, which are made up of a number of inextricably linked components that are mutually exclusive, the already existing practice of the Disclosure Office has now been laid down in writing. Lastly, the calculation of the part in percentage of voting rights regarding derivatives, where the

maximum number of shares to be supplied is uncertain at the time the reporting obligation arises, was amended.

#### **The fulfilment of disclosure obligations of groups (Notice III/13)**

As a result of the potential proximity of the subject matter, a reference to Notice I/09 was included in Notice III/13 regarding the eased disclosure for lock-up groups.

#### **Companies not domiciled in Switzerland that have their main listing on SIX Swiss Exchange (Notice I/13)**

Formal amendments were made to Notice I/13.

#### **Prospectus and lock-up group (Notice I/09)**

In Notice I/09, the reporting obligation in relation to subscription rights was specified. Furthermore, the remarks on obligations in connection with over-allotment options was deleted, because such options do not meet the requirements of the new Art. 15 para. 1 FMIO-FINMA. Another new provision states that, upon expiry of the lock-up term, a reporting obligation arises in every case. On the one hand, this is intended to standardise the provisions regarding the reporting obligation for groups and, on the other hand, it shall ensure that the details provided on the electronic publication platform are more transparent. In addition, a new provision explicitly states that the eased disclosure for lock-up groups also applies if the group does not meet its disclosure obligation in the prospectus. It does not seem appropriate to have different reporting requirements depending on whether reports are made in a prospectus or via a notification to the company and the Disclosure Office.

#### **Publication obligations (Notice II/08)**

Pursuant to Notice II/08, in case of notifications that are no longer current, issuers no longer need to disclose any details that had previously been included on their website.

#### **Exemptions for banks and securities dealers (Notice I/08)**

Formal amendments were made to Notice I/08.

#### **Indirect acquisition and indirect disposal (Notice III/00)**

Notice III/00 now includes remarks regarding control in general under the title "Indirect acquisition and indirect sale – control of legal entities". Not only do these remarks therefore apply to groups, but generally to the question of control of legal entities.

#### **Calculation of shareholdings (Notice III/99)**

Notice III/99 now contains the additional clarification widely used in practice, that the calculation of shareholdings must not be based solely on the listed shares but on all voting rights including non-listed shares. In order to illustrate the current legal provisions, the details regarding companies with their registered office outside of Switzerland were added.

### Repealed Notices

The Notices I/00 “Extent of reporting obligation for a group / group of companies” and II/99 “Asset management and custody account business / nominees” are obsolete and repealed without substitution.

The Notices are published on the website of the Disclosure Office of SIX Exchange Regulation AG under [SIX Exchange Regulation Publications](#).

If you have any questions, please do not hesitate to contact Jürg Schneider, Media Relations.

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The **Disclosure Office** is a separate department within SIX Exchange Regulation AG. 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.

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