

Disclosure Office Notice

III/99

Calculation of Positions requiring Notification

Date of 26 February 1999

Version Amended version of 20 September 2018

Summary:

For companies with their registered office in Switzerland, the calculation is based on the total number of voting rights according to the entry in the commercial register on the day the notification obligation arises.

For companies with their registered office abroad, the publication required under Art. 115, para. 3 FMIO¹ on the day the notification obligation arises is decisive for calculating the positions requiring a notification.

1. Companies with their registered office in Switzerland

For companies with their registered office in Switzerland, the positions requiring notification are to be calculated based on the total number of voting rights according to the entry in the commercial register (see Art. 14, para. 2 FMIO-FINMA²) on the day the notification obligation arises.

For the definitive total number of voting rights this means, in particular, that:

- all listed and unlisted shares entered in the commercial register must be included;
- shares issued from contingent capital will not be included in the calculation of the total number of voting rights until they are entered in the commercial register;
- shares newly issued when convertible bonds or warrant bonds are exercised will only be included in the calculation of the total number of voting rights after those are registered in the commercial register;
- the acquisition and sale of participation and dividend rights certificates – since these equity securities do not confer any voting rights – are not subject to a notification obligation;³
- shares for which the voting rights have been suspended (e.g. on the basis of Art. 659a, para. 1 of the Swiss Code of Obligations⁴) must not be deducted from the total number of voting rights entered in the commercial register; and
- it is irrelevant, how many voting shares are actually traded on the stock exchange, due to only being partially listed or being held long-term by shareholders, (no reliance on the free float as the basis for the calculation).⁵

For companies with their registered office in Switzerland, the entries in the commercial register which are authoritative for the calculation can be viewed under: www.zefix.ch.

2. Companies with their registered office abroad

For companies with their registered office abroad, the publication required under Art. 115, para. 3 FMIO on the day the notification obligation arises is decisive for calculating the positions requiring notification.

¹ Ordinance on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Ordinance, FMIO) of 25 November 2015 (CC 958.11).

² Ordinance of the Swiss Financial Market Supervisory Authority on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FINMA Financial Market Infrastructure Ordinance, FMIO-FINMA) of 3 December 2015 (CC 958.111).

³ However, the notification obligation in Art. 120 et seq. FMIA also applies to shareholdings in companies for which only participation or dividend certificates are listed.

⁴ Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations) of 30 March 1911 (CC 220).

⁵ However, all equity securities must be disclosed, regardless of any transfer restrictions or of the entry in the share register.

For companies with their registered office abroad, the publications required under Art. 115, para. 3 FMIO which are authoritative for the calculation can be viewed under:

<https://www.six-exchange-regulation.com/en/home/investor/obligations/disclosure-of-shareholdings/capital-foreign-companies.html>.

For further information, see also Disclosure Office Notice dated 30 April 2013, I/13 – Amended Version of 20 September 2018.



This notice has been brought to the attention of the Swiss Financial Market Supervisory Authority FINMA prior to publication