

## REGULATORY BOARD COMMUNIQUÉ NO. 3/2009 OF 29 MAY 2009

### **Revision of the regulations governing listing on SIX Swiss Exchange – entry into force of the new rules**

*Decision of the Regulatory Board of 29 October 2008*

*Entry into force: 1 July 2009*

#### I. BACKGROUND

The presently valid version of the SIX Swiss Exchange Listing Rules ("LR") **entered into force in January 1996**. The last partial revision of the LR took place on 29 March 2006. Although the LR and their implementing provisions have been adapted continually to the changing needs of the market and to new legislation over the past ten years (issue of new Additional Rules, Schemes, Directives, Circulars, etc. and amendment of existing regulations), the various changes to individual parts of this body of rules and regulations meant that it no longer offered the necessary degree of clarity and coherence. Hence, in addition to making **amendments in line with new legislation**, the primary objective of the recently completed revision was to **streamline and simplify the structure of these regulations and thereby make them easier to apply**.

Owing to the decision of the SIX Group Ltd Board of Directors, communicated at the beginning of the year, to **repatriate trading in the shares of SMI® and SLI® companies** to SIX Swiss Exchange's Swiss trading platform, the entry into force of the revised regulations governing listing was postponed from the original scheduled date of 1 January 2009 to 1 July 2009.

#### II. IMPROVED STRUCTURE OF THE "ADMISSION OF SECURITIES" MANUAL

In the interests of streamlining the structure of the rules and regulations, the provisions of the **former Additional Rules** for the listing of equity securities (e.g. for investment companies, real estate companies, local caps, global depository receipts, and collective investment schemes) have been included in a **new "Special additional provisions" chapter** in the Listing Rules. To assist users, a **concordance table** (comparison of the old and new Listing Rules) is now available on the SIX Swiss Exchange website:

[http://www.six-swiss-exchange.com/admission/news\\_en.html](http://www.six-swiss-exchange.com/admission/news_en.html)

The listing provisions for debt securities (bonds and derivatives) are now contained in two sets of Additional Rules: the **Additional Rules for the Listing of Bonds** and the **Additional Rules for the Listing of Derivatives**.

The **number of directives has also been reduced**, and they are now grouped according to subject. Some new directives have been issued, such as the Directive on the Distribution of Equity Securities, the Directive on the Procedures for Debt Securities, and the Directive on Debt Securities with Specific Structures.

Given the **new structure, with the Regulatory Board as the admission authority**, the revised "Admission of Securities" manual now also contains the **SIX Group Ltd Rules of Organisation for the Regulatory Bodies of the Group's Exchanges**.

### III. NEW NAMES FOR THE EQUITY MARKET

The names given to different sections of the equity market were also reviewed in connection with the revision of the rules and regulations. The term "regulatory segments" has always been used in this context in the past. This often led to confusion with the trading segments, the structure of which is not identical to that of the regulatory segments. From now on, the term used will be **regulatory standards** rather than segments.

The following table shows the new names to be used for the equity market:

Old	New
Main Segment	Main Standard
SWX Local Caps	Domestic Standard
Investment Companies	Standard for Investment Companies
Real Estate Companies	Standard for Real Estate Companies

### IV. SUMMARY OF THE MOST IMPORTANT CHANGES

#### A. Languages (Art. 8 LR)

In the interests of harmonisation and simplification, all documents that must be submitted to the Regulatory Board (formerly the "Admission Board") or SIX Exchange Regulation may be written **in a choice of German, French, Italian or English**.

#### B. Auditors (Art. 13 LR)

To comply with the provisions of the Audit Oversight Act ("AOA"), issuers may appoint only auditors that are recognised by the Federal Audit Oversight Authority ("FAOA") as an audit firm that is subject to state oversight. Given the **legal powers that the AOA grants to the FAOA**, auditors are no longer required expressly, in a declaration of consent, to acknowledge the obligations imposed on them by SIX Swiss Exchange rules and regulations and agree to be bound by the SIX Swiss Exchange Rules of Procedure and sanction regulations. Auditors that are under FAOA oversight **thus cease to be subject to the SIX Swiss Exchange Rules of Procedure and sanction regulations**. The FAOA alone will be responsible for overseeing auditors (i.e. enforcement and imposition of sanctions). Issuers will, however, still have to report any **change in their auditors** to SIX Exchange Regulation. As is the case with the listing procedure, when reporting any such change issuers will also be required to provide **proof of recognition as an audit firm under state oversight, in the form of a copy of the relevant entry on the FAOA website**.

### *C. Form of the listing prospectus (Art. 29 LR)*

In the past, **listing prospectuses for equity securities** could be produced only as a single document. From now on, subject to certain conditions **it will also be possible to produce a two-part prospectus** where the issue price and volume are not yet known when the listing prospectus is submitted for review. In such cases, a supplement to the first part of the listing prospectus will be published once the missing information is known. These two parts then constitute the final prospectus. This option now reflects the regulations that apply within the EU.

The provisions concerning the form of the listing prospectus have also been amended for **bonds and derivatives** (Art. 14 Additional Rules Bonds and Art. 21 Additional Rules Derivatives). The relatively complicated prospectus regime of the past, with its various options, has been reduced to **two possible types of prospectus format**: from now on, the listing prospectus may be produced either as a stand-alone prospectus, or as a SIX Swiss Exchange-registered issuance programme. The procedures for registering issuance programmes for bonds and derivatives have also been standardised.

### *D. Publication of the listing prospectus (Art. 30 LR)*

According to the revised Listing Rules, it is still possible to publish the listing prospectus either by reproducing it in at least two newspapers with national distributions, or by making it available free of charge in printed form. However, the listing prospectus may now also be **published electronically on the issuer's website**, in which case investors must still be sent a printed version free of charge on request. Furthermore, the revised Listing Rules state that SIX Swiss Exchange and/or SIX Exchange Regulation may now publish approved listing prospectuses on its/their own website for the information of investors.

### *E. Incorporation by reference (Art. 35 LR)*

From now on, **all options under applicable EU law for incorporation by reference in the listing prospectus** will also be available in connection with the listing of equity securities and derivatives.

### *F. Schemes*

The changes to the Schemes are intended primarily to make them more congruent with applicable EU law. For example, in the listing of equity securities, it is now required that **significant risk factors be presented in full in a prominent place** in the listing prospectus, that the prospectus also **state certain legal proceedings and convictions against members of the administrative, management or supervisory bodies under company law**, and that the provisions concerning **required information on investments** be amended appropriately.

### *G. Listing notice (Art. 38 LR)*

From now on, listing notices in connection with the listing of equity securities may also be published only **by electronic means at a central location** (i.e. on the SIX Swiss Exchange and/or SIX Exchange Regulation website). Issuers are, of course, free to decide whether or

not they wish to publish their listing notices additionally in the conventional manner in national newspapers.

*H. Listing procedure (Art. 42 ff. LR)*

The **principles of the listing procedure**, which **have not been modified significantly**, are described in Art. 42 ff. LR.

Depending on the security to be listed, these provisions must nonetheless be applied with either the **Directive on the Procedures for Equity Securities** or the **Directive on the Procedures for Debt Securities**, which apply to the listing of bonds and derivatives.

*I. Issuer declaration (Art. 45 LR)*

An issuer declaration must still be signed as part of the listing procedure. However, from now on, issuers must sign a **separate declaration of consent** (Art. 45 Point 4 LR; Art. 16 Point 3 Additional Rules Bonds; Art. 23 Point 3 Additional Rules Derivatives) in which they acknowledge SIX Swiss Exchange's legal foundations and, specifically, its arbitration clause. The wording of this declaration of consent will also be made available on the SIX Swiss Exchange and/or SIX Exchange Regulation website.

*J. Corporate calendar (Art. 52 LR)*

One of the new regulations is that a corporate calendar must be produced **when trading begins and at the start of each financial year from that date onward**. The calendar should contain information on the important dates concerning the issuer of equity securities, specifically the date of the annual general meeting.

*K. Sanctions (Art. 59 ff. LR)*

Where sanctions are concerned, **the maximum fine that can be imposed will increase** from the current figure of CHF 200,000 to CHF 10 million. When the fine is set, a **distinction** will now be made **between intent and negligence** (up to CHF 1 million in cases of negligence and up to CHF 10 million in cases of intent), and the **impact of sanctions** on the party concerned will also be taken into account.

*L. Provisional admission to trading (Art. 25 ff. of the Additional Rules Bonds and Art. 31 ff. of the Additional Rules Derivatives)*

From now on, derivatives cannot be admitted provisionally to trading until a new issuer has been approved by the Regulatory Board as part of an **approval procedure**. The application for the approval of a new issuer of derivatives must be submitted by a recognised representative no later than 20 exchange days prior to the desired approval date. The application must, among other things, state the extent to which the issuer and/or the guarantor satisfies the requirements for issuers as set out in the Additional Rules for the Listing of Derivatives.

However, where bonds are concerned, **new issuers are subject only to an advance review** with a shorter review period of three exchange days.

For **further information on changes**, please refer to the **report on the consultation process** published on the SIX Swiss Exchange website:

[http://www.six-swiss-exchange.com/admission/news\\_en.html](http://www.six-swiss-exchange.com/admission/news_en.html)

## V. CANCELLATION OF DIRECTIVES

As part of the revision of the regulations governing listing, the provisions of a number of directives have been integrated into other listing regulations, adopted into the SIX SIS Ltd ("SIX SIS") rules and regulations, or cancelled entirely.

### A. *Directives integrated into other listing regulations*

The following Directives have been integrated into other listing regulations:

- **Directive on Lock-Up Agreements:** this has now been incorporated into the Directive on Exemptions Regarding the Duration of Existence of the Issuer (Track Record);
- **Directive on Applicable Law and Place of Jurisdiction for Debt Securities:** this has now been incorporated into the Additional Rules for the Listing of Bonds;
- **Directive on Increasing Bond Issues:** this has now been incorporated into the Directive on the Procedures for Debt Securities;
- **Directive on the Listing of Standard Options and Directive on the Listing of Derivatives:** these have now been incorporated into the Additional Rules for the Listing of Derivatives.

### B. *Directives adopted into the rules and regulations of SIX SIS*

The Regulatory Board has cancelled the **Directive on the Production of Securities Certificates Qualified for Listing (Printing Regulations)** and the **Directive on Controlling Compliance with the Printing Regulations for Securities Certificates Qualified for Listing**. This has nonetheless been done only on condition that, in the future, SIX SIS issues requirements on the possible printing of securities and checks that recognised printers are complying with these regulations. The Regulatory Board regards this procedure as appropriate since SIX SIS is also in regular contact with non-SIX Swiss Exchange-listed issuers with regard to the printing of their securities, and is responsible for ensuring that such securities are held in safekeeping in a sensible and secure manner.

The corresponding SIX SIS regulations can be accessed via the internet via the following link:

<https://www.sec.sisclear.com/sec/cm/directives.htm>

*C. Directives that have been cancelled*

The following directives have been cancelled without replacement:

- **Directive on the Listing of Original Shares and Home Country Safekeeping:** in practice, safekeeping in the home country has now become established as the international standard;
- **Directive on the Tradability of Registered Shares:** issuers must nonetheless continue to report their restrictions on transferability to SIX Exchange Regulation in accordance with Circular No. 1, using the form available on the website [http://www.six-swiss-exchange.com/admission/being\\_public/reporting/forms\\_en.html](http://www.six-swiss-exchange.com/admission/being_public/reporting/forms_en.html)
- **Directive on the Free Transferability of Payments in the Case of Foreign Bonds**

VI. ENTRY INTO FORCE

The revised regulations governing listing enter into force on **1 July 2009** and are available immediately on the internet at the following addresses:

**Rules:**

[http://www.six-swiss-exchange.com/admission/regulation/rules\\_en.html](http://www.six-swiss-exchange.com/admission/regulation/rules_en.html)

**Prospectus Schemes:**

[http://www.six-swiss-exchange.com/admission/regulation/templates\\_en.html](http://www.six-swiss-exchange.com/admission/regulation/templates_en.html)

**Directives:**

[http://www.six-swiss-exchange.com/admission/regulation/guidelines\\_en.html](http://www.six-swiss-exchange.com/admission/regulation/guidelines_en.html)

**Circulars:**

[http://www.six-swiss-exchange.com/admission/regulation/circulars\\_en.html](http://www.six-swiss-exchange.com/admission/regulation/circulars_en.html)

In addition to regular PDF format, all rules and regulations will also be available to users **from 1 July 2009** in **HTML format** with **electronic links to the relevant articles and regulations** on the new SIX Exchange Regulation website, which will go live on that date.

The Regulatory Board Communiqués are published in English, German and French on the internet at:

[http://www.six-swiss-exchange.com/admission/regulation/messages/2009\\_en.html](http://www.six-swiss-exchange.com/admission/regulation/messages/2009_en.html)

[http://www.six-swiss-exchange.com/admission/regulation/messages/2009\\_de.html](http://www.six-swiss-exchange.com/admission/regulation/messages/2009_de.html)

[http://www.six-swiss-exchange.com/admission/regulation/messages/2009\\_fr.html](http://www.six-swiss-exchange.com/admission/regulation/messages/2009_fr.html)