

## ADMISSION BOARD COMMUNIQUÉ NO. 3/2007 OF 15 JUNE 2007

### ***Recognition of equivalence by the Financial Services Authority (FSA) with regard to the rules governing the SWX "EU-Compatible" Segment***

#### I. BACKGROUND

Within the framework of implementing the EU Transparency Directive<sup>1</sup> (TD), the Financial Services Authority (FSA), as competent authority for the United Kingdom has, according to Art. 23 para. 1 TD, the possibility to exempt third-country issuers from the provisions governing **periodic reporting, continuing information obligations, disclosure of participations and notification and data retention obligations**, provided the relevant third country has equivalent provisions in that regard.

The FSA has implemented the TD as of 20 January 2007 and put into force its "Disclosure and Transparency Rules" (DTR), which regulate the aforementioned aspects in DTR 4 (**Periodic Financial Reporting**), DTR 5 (**Vote Holder and Issuer Notification Rules**) and DTR 6 (**Continuing Obligations and Access to Information**).

The provisions of the DTR are accessible via the Internet at:

<http://fsahandbook.info/FSA/html/handbook/DTR>

In conjunction with the implementation of the TD, the SWX Swiss Exchange also adapted its rules governing the SWX "EU-compatible" segment with a view to receiving equivalence recognition from the FSA. Details on the revised SWX rules, which entered into force on 20 January 2007, were provided in the **Admission Board Communiqué No. 17/2006 of 21 December 2006**. Those rules are accessible via the Internet at:

[http://www.swx.com/download/admission/regulation/notices/2006/notice\\_200617\\_en.pdf](http://www.swx.com/download/admission/regulation/notices/2006/notice_200617_en.pdf)

For issuers whose shares are **listed in the main segment of the SWX** and admitted to trading in the "UK Exchange Regulated Market" segment of virt-x, **the implementing provisions with regard to the TD are not applicable**. For those issuers, Swiss rules and regulations are applicable exclusively.

#### II. FSA RECOGNITION OF EQUIVALENCE: BASIC PRINCIPLES

On its website, the FSA has published a list of the DTR provisions for which it has recognised the Swiss provisions as equivalent. Those DTR provisions are not applicable to issuers whose shares are listed in the SWX "EU-compatible" segment and have the UK as their Home Member State. For those issuers, only the Swiss rules and regulations shall apply in terms of the transparency obligations. Furthermore, Swiss bodies bear sole responsibility for enforcing the provisions that have been deemed equivalent.

<sup>1</sup> EU Directive 2004/109/EG on harmonisation of the transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EG

The list of the DTR provisions recognised by the FSA as being equivalent can be accessed on the Internet at:

[http://www.fsa.gov.uk/Pages/Doing/UKLA/company/notifications/non\\_eea/index.shtml](http://www.fsa.gov.uk/Pages/Doing/UKLA/company/notifications/non_eea/index.shtml)

For issuers with a Home Member State other than the United Kingdom, the provisions of that Member State are applicable.

### III. DETAILS OF EQUIVALENCE RECOGNITION BY THE FSA

#### A. DTR 4 (Periodic financial reporting)

As regards **DTR 4**, the Swiss provisions are recognised as being **equivalent with the exception of the following articles**:

**DTR 4.1.2, DTR 4.1.6, DTR 4.1.7(2), DTR 4.1.10, DTR 4.2.4, DTR 4.2.5, DTR 4.2.8(2) and (3) and DTR 4.4**

However, the Admission Board views the articles deemed non-equivalent to present **no problem** to issuers listed in the SWX "EU-compatible" segment because:

- **DTR 4.1.2** and **4.1.10**, which are non-binding guidelines;
- in terms of **DTR 4.1.6** and **4.2.4(1)** as well IFRS-IASB as US GAAP until 2009 (incl. 2008 annual financial statements), have been admitted in the sense of a transitional solution;
- **DTR 4.1.7(2), 4.2.4(2), 4.2.5, 4.2.8(2) and (3)** only affect issuers that are not obligated to prepare and publish consolidated financial statements;
- **DTR 4.4** pertains exclusively to issuers of bonds and securities other than shares.

#### B. DTR 5 (Vote holder and issuer notification rules)

The relevant Swiss provisions have been **fully recognised as being equivalent** by the FSA.

#### C. DTR 6 (Continuing obligations and access to information)

As regards **DTR 6**, the Swiss provisions are recognised as being **equivalent with the exception of the following articles**:

**DTR 6.1.3 (2), DTR 6.1.7, DTR 6.1.8, DTR 6.1.10, DTR 6.1.14, 6.1.15, DTR 6.2 and DTR 6.3**

- **DTR 6.1.3(2), 6.1.10, 6.1.14** and **DTR 6.1.15** pertain only to issuers of bonds and securities other than shares.
- The provisions governing electronic communication with shareholders and bondholders (**DTR 6.1.7 and 6.1.8**) are only **applicable if a Swiss issuer communicates with its shareholders by electronic means**.
- **DTR 6.2** (Filing information and use of language) and **6.3** (Dissemination of information) are, under ref. no. 22 of the Directive on Requirements for Maintaining Listing in the

SWX "EU-compatible" Segment, **applicable** for issuers with the UK as their Home Member State.

**Therefore, DTR 6.2 and DTR 6.3 are applicable for all issuers that are listed in the SWX "EU-compatible" segment and have the UK as their Home Member State.**

#### IV. ENFORCEMENT COMPETENCE AND APPLICABLE LAW

With regard to the DTR provisions for which the SWX has received an **equivalence recognition** from the FSA, **only Swiss bodies bear responsibility for surveillance and enforcement. Swiss law is exclusively applicable.**

With regard to the DTR provisions for which the SWX has **not received equivalence recognition** from the FSA, the framework that was established by the SWX with the FSA in 2005 in an "Exchange of Letters", dated 12 June 2005, in connection with the implementation of the Prospectus and Market Abuse Directives, will apply. Under those provisions, enforcement is **primarily the task of the SWX** although the **FSA reserves the right to conduct its own proceedings under certain circumstances**. This arrangement for the TD was formalised in an "Exchange of Letters" on 24 May 2007 between the SWX and the FSA, in which the "Exchange of Letters" of 12 July 2005 is referred to explicitly.

The Admission Board Communiqués are available in English, German and French at [http://www.swx.com/admission/regulation/messages/2007\\_en.html](http://www.swx.com/admission/regulation/messages/2007_en.html)

