

## REGULATORY BOARD COMMUNIQUÉ NO. 5/2014 OF 16 OCTOBER 2014

### ***Treatment of cross and upstream guarantees with respect to the alternative fulfilment of capital resources and duration of existence requirements for issuers, within the meaning of Art. 8 of the Additional Rules for the Listing of Bonds***

*Decision of the Regulatory Board of 9 July 2014*

#### I. BACKGROUND

This Communiqué replaces Regulatory Board Communiqué No. 1/2011 of 17 June 2011.

Under Art. 8 Additional Rules Bonds (ARLB), the requirements for issuers under Arts. 11 and 15 LR (duration and capital resources) may be waived if, instead of the issuer, a third party which fulfils those requirements (guarantor) provides a guarantee commitment (guarantee) in respect of the obligations associated with the securities. In most cases, the parent company of the issuer acts as the guarantor within the meaning of Art. 8 ARLB (downstream guarantee). With respect to the listing of a bond, the Issuer Committee of the Regulatory Board had to decide whether, within the meaning of the aforementioned provision, the third party offering alternative fulfilment may also be a subsidiary or affiliate company of the issuer (cross or upstream guarantee).

#### II. DECISION

The Issuer Committee of the Regulatory Board decided that, as a general rule, cross and upstream guarantees from subsidiary or affiliate companies of the issuer may **not** be invoked as **alternative fulfilment by a guarantor** within the meaning of Art. 8 ARLB. Given the relationship between the issuer and guarantor, in such cases it would not be possible to ensure the value of the guarantee commitment at all times, and any alternative fulfilment by a subsidiary or affiliate company would not, fundamentally, be in accordance with Art. 8 ARLB.

From now on, however, alternative fulfilment by a guarantor (known as the "substitute guarantor") which is a direct or indirect subsidiary or affiliate company of the issuer is to be permitted subject to certain conditions. Such substitute guarantors may be used, in particular, if the issuer is a special purpose vehicle (SPV) which occupies a hierarchical level within the group which is higher than or the same as that of the substitute guarantor, or if the issuer does not fall within the group's scope of consolidation at all. Typically in such cases, several direct or indirect subsidiaries or affiliate companies will offer cross or upstream guarantees. Alternative fulfilment by such a subsidiary or affiliate company is permitted **upon application** subject to compliance with the conditions and transparency obligations which are listed below, so that an investor is able to make a well-founded assessment of the value of the guarantee commitment, and the particular risks arising from the guarantee structure.

The application for alternative fulfilment by a subsidiary or affiliate company, under the conditions set out in this Communiqué, must be made as part of the preverification appli-

cation in accordance with Art. 23 Directive Procedures Debt Securities (DPDS). In addition to stating the information required under Art. 23 DPDS, the application must address the following points:

- Statement of the proportion of group EBIT, or an alternative key financial indicator, accounted for by the guarantor subsidiaries and affiliate companies. If the information given does not relate to EBIT, the application must explain why the chosen financial indicator is regarded as key in the case at hand.

### III. LISTING PROVISIONS AND DISCLOSURE OBLIGATIONS

The guarantor subsidiaries' and affiliate companies' proportion of group EBIT, or an alternative key group financial indicator, must be significant in order to ensure a certain value for the guarantee commitment.

The following information must be included in the **listing prospectus** in addition to the details required under Scheme E:

#### **Transaction structure and risks:**

The following details must be included in easily understandable form in the introduction to the listing prospectus:

- graphical presentation of the transaction structure;
- brief description of the transaction structure;
- brief description of the guarantee commitment, as well as any other collateral, and the relationship between them;
- list of the specific risks attached to the transaction (e.g. structural subordination, limitations of cross and upstream guarantees and other collateral), as well as information on where these risks are described in the listing prospectus;
- statement that only the substitute guarantor, as guarantor within the meaning of the Listing Rules and its implementing provisions, is subject to the SIX Swiss Exchange rules and regulations.

The listing prospectus must also contain the following additional information:

- description of the transaction structure;
- description of the guarantee commitment, as well as any other collateral, and the relationship between them;
- the guarantee commitments or guarantees from the guarantors must be replicated in full, or incorporated by reference;
- description of the risks.

#### **Transaction documents and the relationship between them:**

Description of the key transaction documents and the relationship between them, including (non-exhaustive list):

- structurally superior loan agreements;
- agreements between lenders and bond creditors (intercreditor agreements).

**Information on guarantors:**

- full information on the substitute guarantor, in accordance with Scheme E;
- names of other guarantors, and a summary description as part of the presentation of the guarantee commitment;
- information on the aggregate percentage of group EBIT or an alternative key financial indicator accounted for by all guarantors together.

**Annual financial statements:**

- Statements for the past two financial years from the group to which the issuer belongs.

**Management discussion & analysis (MD&A):**

- Explanation of significant changes to the figures from the group management's perspective.

Provided the above transparency requirements are fulfilled, the following relaxations of the **procedural and listing maintenance obligations** may be granted:

**Procedural obligations**

The obligations marked "x" in the following table must be fulfilled; those marked "-" are not applicable.

Article	Description	Issuer	Substitute guarantor
Art. 12 LR	Annual financial statements	-	X
Art. 45 LR	Issuer declaration / Declaration of consent	X	X
Art. 4 DPDS	Duly signed listing prospectus	X	X
Art. 5 DPDS	Extract from the Commercial Register, valid articles of association	X	X

**Obligations concerning the maintenance of listing**

Obligation	Description	Issuer	Substitute guarantor
Regular reporting obligations	Report as per Circular No. 1	X (with the exception of Point 1.05 Annex 2)	X
Ad hoc publicity	Directive on Ad hoc Publicity	-	X

The Regulatory Board reserves the right to define conditions over and above the requirements stated above, should a specific transaction structure so require.

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