

REGULATORY BOARD COMMUNIQUÉ NO. 2/2017 OF 2 JUNE 2017

Partial revision of the Directive on Information relating to Corporate Governance (DCG) and the Directive on Regular Reporting Obligations for Issuers of Equity Securities, Bonds, Conversion Rights, Derivatives and Collective Investment Schemes (DRRO)

Entry into force: 1 July 2017

I. BACKGROUND

The Directive on Information relating to Corporate Governance (DCG) is intended to oblige issuers to make available certain key information to investors in a suitable form with regard to Corporate Governance practices within their company.

In recent years, sustainability reporting as an additional component of annual reporting alongside corporate governance disclosures significantly gained importance at the international level. The Regulatory Board has decided to issue certain regulations in response to this trend.

II. ADAPTATION OF THE DCG

By means of an *opting in* clause issuers now have the opportunity to inform SIX Exchange Regulation that they issue a sustainability report in accordance with an internationally recognised standard (Art. 9 DCG in conjunction with Art. 9 Point 2.03 DRRO). This fact will be published on the website of SIX Swiss Exchange for the purpose of informing market participants. The *opting in* can be understood as a "quality label": The investor can be confident that the issuer's sustainability reporting complies with certain internationally recognised rules and meets certain regulatory requirements.

In addition, companies remain free to issue and publish a sustainability report in line with an [internationally recognised standard](#) without reporting this to SIX Exchange Regulation. It is also permissible to include certain sustainability topics in their annual report.

However, issuers that decide to make use of the *opting in* are obliged to adopt the sustainability report in accordance with an accepted, internationally recognised standard and to publish it on their website within the prescribed deadline for a period of five years. This is the only way to ensure quality as purpose of the *opting in*. SIX Exchange Regulation will update the list of accepted, internationally recognised standards periodically to take account of international developments.

III. ADAPTATION OF THE DRRO

A. *Opting in clause regarding sustainability reporting*

The *opting in* takes the form of a new regular reporting obligation (Art. 9 Point 2.03 DRRO). *Opting in* is entirely voluntary for issuers. However, if they choose an *opting in*, they must meet certain regulatory requirements (see para. II above).

SIX Exchange Regulation has taken the corresponding amendment of the DRRO as an opportunity to amend other regular reporting obligations:

B. *Regular reporting obligation in connection with publicly disclosed buyback programmes*

With the adaption of provisions regarding the prohibition of insider trading and market manipulation in the Stock Exchange Act with effect from 1 May 2013 new requirements concerning the permissibility of issuers' buybacks of their own equity securities came into force. As of 1 January 2016, these provisions are to be found in Art. 142 et seq. of the Financial Market Infrastructure Act (FMIA) in conjunction with Art. 124 para. 1 lit. a of the Financial Market Infrastructure Ordinance (FMIO). They restrict the permissibility of such buybacks insofar as buybacks may in principle not be carried out during a *black-out period*. However, buybacks may be carried out during a black-out period in exceptional cases. For example, in case of a postponement of disclosure pursuant to Art. 54 to the Listing Rules, buybacks at market price are permissible, if they are undertaken by a securities dealer commissioned for this purpose prior to the start of the buyback programme. Furthermore, the securities dealer must carry out the buyback within the parameters originally prescribed by the issuer without the latter having any further influence (Art. 124 para. 2 lit. a FMIO). If the issuer with a publicly buyback programme is a securities dealer itself (i.e. a listed bank), buybacks may be carried out at the market price while disclosure is postponed if they are undertaken by a trading unit belonging to the issuer that is segregated from its other business units with information barriers (*Chinese walls*) (Art. 124 para. 2 lit. b FMIO).

The Swiss Financial Market Supervisory Authority wants SIX Exchange Regulation to strengthen the monitoring of compliance with these rules. Therefore, SIX Exchange Regulation will foster increased contact with issuers with publicly disclosed buyback programmes. To reduce unnecessary questions, a new regular reporting obligation has been introduced which obliges issuers with publicly disclosed buyback programmes to inform SIX Exchange Regulation about the buyback programme which is undertaken by an independent securities dealer or a trading unit within the meaning of Art. 124 para. 2 lit. a and b FMIO (Art. 9 Point 1.11 DRRO). SIX Exchange Regulation must also be informed if the requirements set out in Art. 124 para. 2 lit. a and b FMIO are no longer met.

C. *Regular reporting obligation in connection with redemption of own units by real estate funds*

In the rare cases where a real estate fund redeems its own units (collective investment schemes; Art. 12 Point 2.06 and Art. 13 Point 2.05 DRRO), the issuer is obliged to report this to SIX Exchange Regulation so that the corresponding changes – in particular in the relevant index – can be made.

D. Non-disclosure of official net asset value by collective investment schemes

The currently regulations require issuers with collective investment schemes to report the official *net asset value* (NAV; Art. 83 of the Collective Investment Schemes Act) and, where applicable, the indicative NAV of *exchange-traded funds* to SIX Exchange Regulation. As SIX Swiss Exchange does not publish these key figures on its website, the decision has been taken to waive henceforth this reporting obligation. The corresponding provisions of the DRRO (Art. 12 Point 2.01 et seq. and Art. 13 Point 2.01 et seq. [DRRO](#)) are therefore repealed.

IV. ENTRY INTO FORCE

The revised DCG and DRRO enter into force on 1 July 2017.

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