



Exchange Regulation

**COMMUNIQUÉ NO. 4/2009  
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***Main points of focus for the review of annual reports for 2009 and 2009/2010 with regard to compliance with the Directive on Information relating to Corporate Governance.***

I. BACKGROUND

Periodic reporting in conformity with the requirements of the Directive on Information Relating to Corporate Governance (DCG; see Art. 49 para. 2 LR as well as the Directive Corporate Governance (DCG)) is an integral part of the information that should enable investors to assess the issuer quality pursuant to the Stock Exchange Act (Art. 8 para. 2 SESTA (in German)).

II. AREAS OF FOCUS

As far as corporate governance reporting is concerned, particular attention will be paid to the following points in the evaluation of annual reports for 2009 and 2009/2010:

*A. Content and method of determining compensation and shareholding programmes (Point 5.1 Annex DCG)*

The principles and elements (structure and process mechanisms) of compensation and of shareholding programmes must be explained to investors in terms that are as comprehensible as possible. Several examples are given in Point 5.1 of the Commentary on the DCG (DCG Commentary). The main features of the method of determination must be described, and it must be stated whether the bodies involved act only in an advisory capacity, or hold decision-making authority. Any involvement of external consultants must also be disclosed. In addition to the process itself, the elements (objectives and components) that are factored in to compensation, as well as their weightings, must be stated for market participants in comprehensible terms. Other rules applying to the content and/or determination process for individual members of the board of directors or executive committee must be disclosed separately.

If the compensation or pay systems of other companies are used as benchmarks, the composition of the benchmark or the companies concerned must be described in such a way that permits the investor to gain a clear picture of the other companies with which the issuer is comparing itself.

If the compensation paid to the members of the board of directors and/or the executive committee is entirely at the discretion of the board of directors, this must also be stated explicitly.

*B. Additional fees paid to external auditors (Point 8.3 Annex DCG)*

Should the external auditors perform other services for the issuer in addition to their actual auditing duties, the related compensation must be disclosed. The total must be broken down into its main components, such as tax advice, legal advice, and transaction consulting, incl. due diligence. Catch-all descriptions such as "consulting services" fail to satisfy the regulations as they are not sufficiently specific (see ref. no. 5 N 5 DCG Commentary).

*C. Information instruments pertaining to an external audit (Point 8.4 Annex DCG)*

Statements concerning the information instruments used by external auditors must be formulated such that investors are able to draw conclusions as to the extent to which the board of directors keeps itself informed of the auditors' activities during the financial year in question, and how it has examined the auditors' services. For this reason, such statements must include information on the criteria that the board of directors has used to assess the auditors' services and the fees received for the audit services performed. Further information on the explanations that must be given can be found in Point. 8.4 N 2 DCG Commentary).

If a new audit firm has been entrusted with auditing the annual financial statements, the reasons for this change of auditor must be given, and the key criteria in the board of directors' decision to engage precisely this audit firm and to propose its appointment to the annual general meeting must be stated. Please refer also to the examples given in Point 8.4 N 2 DCG Commentary, as well as the Admission Board decision of 29 November 2005 (ZUL/CG/IV/05, Point 18).

The boards of directors of issuers subject to Federal Financial Market Supervisory Authority (FINMA) supervision must, regardless of this fact, fulfil their obligations under Swiss company law, as set out in the Swiss Code of Obligations. They are therefore obliged to review the activities of the external auditors, and the fees they receive. The disclosure obligations set out in Point 8.4 Annex DCG also apply to these boards of directors. The fact that they must provide FINMA with certain information on the external auditors does not discharge them from these obligations.

Explanations on corporate governance serve to provide better information to investors. This applies specifically also to (foreign) market participants that may not be familiar with the applicable regulations of the Code of Obligations. Any rotation intervals that apply to the auditor-in-charge must therefore be stated explicitly, even if such intervals are the statutory maximum of seven years that Swiss companies must observe (Art. 730a para. 2 Code of Obligations (in German)).

### III. CONCLUDING REMARKS

By rigorously enforcing the provisions of the DCG, SIX Exchange Regulation aims to improve the transparency of periodic reporting, especially that relating to corporate governance. It regularly adapts its checks to accommodate new developments.

### IV. FURTHER INFORMATION ON CORPORATE GOVERNANCE

The provisions governing information relating to the corporate governance of companies listed on SIX Swiss Exchange AG are available at the following URL:

[http://www.six-exchange-regulation.com/obligations/governance\\_en.html](http://www.six-exchange-regulation.com/obligations/governance_en.html)

Previously published sanctions imposed for irregularities in corporate governance may be viewed at:

[http://www.six-exchange-regulation.com/enforcement/sanction\\_decisions/corporate\\_governance\\_en.html](http://www.six-exchange-regulation.com/enforcement/sanction_decisions/corporate_governance_en.html)

The SIX Exchange Regulation Communiqués are published in English, German and French on the internet at:

[http://www.six-exchange-regulation.com/publications/communiques/six\\_exchange\\_regulation\\_en.html](http://www.six-exchange-regulation.com/publications/communiques/six_exchange_regulation_en.html)

[http://www.six-exchange-regulation.com/publications/communiques/six\\_exchange\\_regulation\\_de.html](http://www.six-exchange-regulation.com/publications/communiques/six_exchange_regulation_de.html)

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