



Exchange Regulation

**COMMUNIQUÉ NO. 3/2011  
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***Main points of focus for the review of annual reports for 2011 and 2011/2012 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 (Directive Corporate Governance (DCG)) is an integral part of the information that should enable investors to assess the quality of an issuer pursuant to the Stock Exchange Act (Art. 8 para. 2 SESTA).

II. AREAS OF FOCUS

As far as corporate governance reporting is concerned, particular attention will be paid to compliance with the following points of focus in the evaluation of annual reports for 2011 and 2011/2012:

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

The principles and elements (architecture and mechanisms, as well as details and key points of the shareholding programme and how it works) 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 key points of the process used to determine compensation and participation in the shareholding programme must be described. Whether the bodies involved have only an advisory function, or hold actual decision-making powers, must be stated. Any involvement of external consultants must also be disclosed clearly.

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.

The relevant provisions of the DCG apply equally to all issuers which, in principle, fall within the scope of applicability of the Directive (cf. Art. 3 DCG). The applicability of the DCG is not

affected in any way by the structure of individual systems of compensation and the actual amounts paid to members of the board of directors and executive committee.

If remuneration is not set subject to certain criteria, but instead at the discretion of the competent body, this fact must be disclosed explicitly (see decisions of the Sanction Commission of 28 October 2010 [SaKo 2010-CG-III/10], point 4.6, and 30 November 2010 [SaKo 2010-CG-IV/10], point 31, both available in German only). In the event that criteria are used to set compensation, but the weighting of these criteria is determined on a discretionary basis, the criteria must be stated along with a note to this effect.

The relationship between fixed and variable compensation must also be presented (see decisions of the Sanction Commission of 30 July 2010 [SaKo 2010-CG-II/10], point 9.1, and 30 November 2010 [SaKo 2010-CG-IV/10], point 26, both available in German only). Here, it is sufficient to give a bandwidth or a maximum figure.

#### *B. Relationship between Art. 663b<sup>bis</sup> of the Swiss Code of Obligations and point 5 Annex DCG*

Point 5.1 Annex DCG does not require disclosure of the amount of compensation as such. Art. 663b<sup>bis</sup> of the Swiss Code of Obligations (Obligationenrecht, OR) applies to the disclosure of remuneration paid by Swiss-domiciled joint-stock companies under private law. SIX Exchange Regulation does not examine compliance with this requirement under Swiss company law. By contrast, if a company that falls within the scope of application of the DCG (cf. Art. 3 para. 2 DCG and point 5.2 Annex DCG) is not domiciled in Switzerland, or if it constitutes a Swiss-domiciled legal entity which is not subject to the relevant provisions of company law, then in the same way as required by this rule, the amount of compensation must be disclosed in the statements on corporate governance. In such cases, SIX Exchange Regulation will examine whether or not remuneration has been disclosed in conformity with the regulations.

#### *C. Control instruments of the board of directors (point 3.6 Annex DCG)*

One of the inalienable duties of the board of directors is to exercise particular controlling functions within the company (cf. Art. 716a OR). With this in mind, certain information on internal auditing, risk-management systems and management information systems (MIS; point 3.6 Annex DCG) must be given in the statements on corporate governance. Among other data, registered risks and their handling, as well as the mechanism and structure of internal auditing, must be presented in this regard (see also point 3.7 N 2 DCG Commentary).

### III. CONCLUDING REMARKS

By rigorously enforcing the provisions of the DCG, SIX Exchange Regulation aims to improve the transparency of corporate governance. It regularly adapts its checks to accommodate new developments. Annual reports are examined by means of random sampling. Each issuer whose annual report statements on corporate governance are examined will receive at least a comment letter notifying them of the outcome of the review.

#### 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)

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