



Exchange Regulation

**COMMUNIQUÉ NO. 2/2013  
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***Main points of focus for the review of annual reports for 2013 and 2013/2014 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 (cf. Art. 49 para. 2 Listing Rules and the Directive on Information relating to 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. POINTS 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 2013 and 2013/2014:

*A. Significant shareholders (point 1.2 Annex DCG)*

In their annual report, issuers must list their significant shareholders, along with the level of their individual holdings. The aim of this provision is to give an overview of who actually controls the issuer as at the balance sheet date (cf. point 1.2 N 1 Commentary re. DCG [Com. DCG]). Insofar as they are known to the issuer, significant shareholders and groups of shareholders, as well as their holdings as at the balance sheet date, must therefore be disclosed.

The duty of disclosure applies equally to issuers which are domiciled in Switzerland and to those which are not domiciled in Switzerland, but have their main listing here, as defined in Art. 20 SESTA. Disclosures must be made in the statements in the annual report on corporate governance (CG report), in accordance with the information published pursuant to Art. 20 SESTA and the Ordinance of the Swiss Financial Market Supervisory Authority on Stock Exchanges and Securities Trading. The provision of more detailed information on the size of holdings is subject to the discretion of the issuer. Where equities are held indirectly, the beneficial owner in the sense of disclosure law must be given as a minimum. Under point 1.2 Annex DCG, financial instruments such as options and convertible bonds, which are subject to disclosure under disclosure law, do not need to be disclosed.

Reference to the SIX Swiss Exchange Disclosure Office website may be made in respect of individual disclosure notifications made during the financial year. A link or the URL must be given in such cases.

*B. Management contracts (point 4.3 Annex DCG)*

Point 4.3 Annex DCG (Management contracts) requires issuers to reproduce in the annual report the key elements of management contracts between the issuer and third parties who/which perform management tasks within the company. The aim of this provision is to ensure full transparency for investors about those persons who/which perform management functions in the company, and under what terms. Issuers must provide the key elements of all management contracts, even if they delegate only specific elements of management to a third party. For the scope of the information that is required, see point 4.3 N 1 et seqq. Com. DCG.

A functional view should be taken when deciding whether or not a natural person or legal entity can be classified as a member of management or an external third party, i.e. the decision should follow the principle of "substance over form" (Art. 5 DCG; see also the decision of the Sanction Commission of 8 December 2011 [SaKo-CG-I/11], point 22). The deciding factor is the actual performance of management functions for the issuer, rather than the third party's title, the contractual basis for collaboration, the commercial register entry or any fixed term for the mandate.

Management may regularly be outsourced in full by only a small number of companies. Such a management construct may not, for example, result in the issuer not having to disclose the information required under point 5 Annex DCG (compensations, shareholdings and loans), which applies primarily to the members of the executive committee and the board of directors. In such cases, the same information as required under point 5 Annex DCG must also be disclosed for those persons who fulfil their management tasks on the basis of a management contract (see also the decision of the Sanction Commission of 8 December 2011 [SaKo-CG-I/11], point 22).

It should also be noted here that, where Swiss-domiciled joint-stock companies are concerned, the preliminary draft of the ordinance "against rip-off salaries" states that only natural persons may be entrusted with management tasks (Art. 6). This means that, in the future, management contracts with issuers that will be subject to the said ordinance will probably be limited in scope to natural persons (see also point II.D below with regard to the preliminary draft of the ordinance).

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

For share and option plans, information must be given on the exercise price, the underlying security, subscription ratios, any lock-up periods applicable to the allocated options, as well as on the durations of such plans and the allocation criteria (cf. point 5.1 N 3 Com. DCG). Particular care must be taken here that the method used by the company to value the options, and its criteria for allocation to the individual members of the board of directors and

the executive committee, are presented and explained in a way that the average market participant can understand.

If compensation is determined or if the applicable criteria are weighted at the discretion of the competent body (e.g. the board of directors' compensation committee), this must be stated explicitly (see the decisions of the Sanction Commission of 28 October 2010 [SaKo 2010-CG-III/10], point 4.6, of 30 November 2010 [SaKo 2010-CG-IV/10], point 31, and of 8 December 2011 [SaKo 2011-CG-I/11], point 14).

#### *D. Application of the DCG in relation to the ordinance "against rip-off salaries"*

According to the explanatory report on the preliminary draft of the ordinance "against rip-off salaries", page 47, the said ordinance is scheduled to enter into force on 1 January 2014. Some of the provisions of the ordinance, however, will apply only later.

It may be assumed that the ordinance "against rip-off salaries" will necessitate the revision of parts of the DCG. However, since the need for any such amendments cannot be determined accurately before the final version of the ordinance is passed, the DCG will probably not be revised until some time in 2014. The new provisions are unlikely to come into force before the second half of 2014. Issuers will be notified well in advance. This means that issuers with a balance sheet date of 31 December will continue to apply the current DCG for the whole of the 2013 reporting year. The current DCG will also, in principle, remain applicable for issuers with other balance sheet dates, unless their reporting year ends after the revised DCG has entered into force.

### 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)

[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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