

# Directive on Exemptions regarding Duration of Existence of the Issuer (Track Record)

(Directive Track Record, DTR)

Dated 1 January 2016  
Basis Arts. 7 and 11 LR

## I. GENERAL PROVISIONS

### *Art. 1 Scope*

<sup>1</sup> This Directive governs the requirements for the granting of exemptions to the listing requirement of the minimum duration of the existence of an issuer ("track record requirement").

<sup>2</sup> This Directive pertains exclusively to the requirement laid down in Art. 11 LR, according to which the issuer must have presented financial statements covering three complete financial years.

<sup>3</sup> The alternative fulfilment of this requirement by a guarantor pursuant to Art. 9 Additional Rules Bonds, Art. 10 Additional Rules Derivatives or Art. 4 Additional Rules Exchange Traded Products remains reserved.

### *Art. 2 Principle of the granting of an exemption*

The Regulatory Board may refrain from applying the listing requirement governing the minimum duration of existence of an issuer if:

1. such an exemption appears desirable in the interest of the company or of investors; and
2. it has a guarantee that investors possess the information required to make a well-founded assessment of the company and the security to be admitted.

### *Art. 3 Facts justifying exemptions*

The Regulatory Board may, amongst others, grant exemptions from the track record requirement in the following cases:

1. mergers, spin-offs and other transactions in which a pre-existing company or portions thereof are continued as commercial entities;
2. admission of securities for which, owing to the specific guarantees involved, the duration of existence of the issuer is irrelevant, specifically in the case of issuers whose securities are

guaranteed by special physical collateral (e.g. asset-backed securities);

3. admission of companies that have not yet been able to present financial statements for the prescribed period of time but nonetheless wish to tap the capital market in order to finance their strategy for growth. Such companies must submit financial statements covering at least one full financial year and fulfil the listing requirements laid down in Arts. 7 et seq. ("young companies").

*See also:*

- Directive Complex Financial History (DCFH)

*Art. 4  
Obligations with respect  
to listing*

<sup>1</sup> The Regulatory Board may require that additional information be included in the listing prospectus so that investors are able to make a well-founded assessment of the company and the continuity of its business.

<sup>2</sup> The Regulatory Board may adopt conditions, namely with regard to the form of presentation of the financial statements.

*See also:*

- Directive Complex Financial History (DCFH)

*Art. 5  
Listing procedure*

An exemption within the context of this Directive must be requested in the listing application pursuant to Art. 44 LR and be appropriately justified. In so doing, the applicant must provide evidence of the material facts supporting such request.

*Art. 6  
Conditions for  
maintaining listing*

The conditions for maintaining listing pursuant to Arts. 49 et seq. LR are applicable without exception.

## **II. SPECIAL PROVISIONS FOR YOUNG COMPANIES**

*Art. 7  
Principle*

In connection with the listing of young companies pursuant to Art. 3, the provisions of the Listing Rules apply except where this Directive contains diverging or supplementary provisions.

## A. REQUIREMENTS IN THE SCOPE OF LISTING

### *Art. 8 Capital increase*

The listing of a young company is only possible if it takes place in conjunction with a placement of equity securities in which at least 50% of the equity securities being placed emanate from a capital increase versus cash payment.

### *Art. 9 Content of the listing prospectus*

Supplemental to and at variance with Art. 28 LR, the following requirements for the content of the listing prospectus apply to young companies within the context of this Directive:

1. the listing prospectus must contain the financial statements for at least one full financial year in accordance with the provisions regarding applicable accounting standards;
2. if at the time of listing the effective date of the most recently published annual report is older than five, eight or 11 months, then in addition all quarterly financial statements published to date must be included in the listing prospectus;
3. the lock-up agreement referred to in Art. 10 is to be fully disclosed in the listing prospectus by providing the names of persons so obliged and the holding period(s) associated with such obligation(s);
4. the listing prospectus shall contain in a prominent place information with respect to the risks and their possible concrete impact on the issuer and the securities being listed. Within the context of this Directive, risks are deemed to be factors such as:
  - a. unusual competitive conditions;
  - b. particular dependencies on patents and licences;
  - c. risks related to the market introduction of products;
  - d. dependency on particular markets, individual customers or related parties;
  - e. price developments of raw materials and foreign exchange rates;
  - f. risks of governmental intervention;
  - g. risks related to industry-specific cycles; or
  - h. risks related to specific know-how of individual persons who are members of the executive committee of the issuer.

*See also:*

- Directive Financial Reporting (DFR)

## B. LOCK-UP AGREEMENT

### *Art. 10 Principle*

<sup>1</sup> Upon submission of the listing application, the applicant of a young company must prove that the following persons have severally and in a legally binding manner obligated themselves not to sell any of the issuer's equity securities within the period of time defined below as from the date of the initial listing:

1. the issuer itself, for a six-month period;
2. shareholders of the issuer who, immediately prior to the placement date of the equity securities, were in possession of more than three percent of the issuer's outstanding share capital or outstanding voting rights, for a twelve-month period;
3. members of the issuer's board of directors and executive committee, for a twelve-month period;

<sup>2</sup> Art. 10 para. 1 does not apply to contractually established lock-up obligations that exceed the scope of applicability described below. This applies in particular to:

1. contractual lock-up obligations, which continue to apply after the six-month or twelve-month period; and
2. contractual lock-up obligations involving persons who do not fall under the scope of this Directive.

### 1. Scope of applicability

#### *Art. 11 Issuer*

<sup>1</sup> The issuer itself shall be subject to the lock-up obligations in that it shall obligate itself – as a rule, in the underwriting agreement – vis-à-vis the lead underwriter or underwriting syndicate not to sell any of its own equity securities, or to issue any new equity securities within the framework of a capital increase.

<sup>2</sup> The lock-up obligations shall apply as of the first trading day.

#### *Art. 12 Pre-existing shareholders*

<sup>1</sup> Shareholders who, immediately prior to the beginning of the offering period (e.g. bookbuilding) of the equity securities, possess more than three percent of the outstanding capital or outstanding voting rights ("pre-existing shareholders") shall be subject to the lock-up obligations.

<sup>2</sup> The following criteria are decisive in this regard:

1. the number of outstanding equity securities (capital or voting rights) is determined on the basis of the issuer's current entry in the Commercial Register or on information provided by a comparable foreign registrar. In the absence of such compe-

tent foreign registrar, the number of pending and fully paid-in equity securities according to the listing prospectus shall be authoritative;

2. the determination of the basis for calculation within the context of Art. 12 para. 1 depends on the capital structure at the point in time at which the offering period or subscription period commences. Of the new equity securities being offered to the public as a part of such offering, those that are being issued against cash payment as part of the prescribed capital increase (Art. 8) shall not be taken into account in the determination of the basis for calculation;
3. if the new equity securities being offered to the public were entered into the Commercial Register prior to the offering period or subscription period, they shall be subtracted from the basis for calculation.

<sup>3</sup> The lock-up obligations shall apply as of the first trading day. A sale by pre-existing shareholders within the framework of the public offering being conducted, including sales that are a part of the over-allotment option (greenshoe option), is permissible.

<sup>4</sup> Equivalent in status to the pre-existing shareholders within the context of Art. 12 para. 1 herein are the beneficial owners of the corresponding equity securities. In interpreting this rule, the practice in regard to the provisions governing the disclosure of shareholdings (Art. 120 et seqq. FMIA and relevant implementing provisions) is applicable analogously.

<sup>5</sup> If a bank or a securities dealer is a pre-existing shareholder pursuant to Art. 12 para. 1, the restrictions of this Directive do not apply for the trading inventory.

<sup>6</sup> Pre-existing shareholders who are acting in concert or as an organised group are severally subject to the lock-up obligations if, together, they hold more than three percent of the outstanding capital or outstanding voting rights, even if their individual holdings do not exceed the three-percent threshold. The provisions governing the disclosure of shareholdings (Art. 120 et seqq. FMIA and relevant implementing provisions) are applicable analogously in connection with the interpretation of this rule.

<sup>7</sup> Also applicable analogously in the calculation of the proportional holdings of capital or voting rights within the context of Art. 12 para. 1 are purchase, convertible and exchange rights, usufructs, securities lending, as well as sales with repurchase agreements ("repo" transactions), pursuant to Art. 120 et seqq. FMIA and Art. 10 et seqq. FMIO-FINMA.

<sup>8</sup> Equity securities that have been acquired by pre-existing shareholders within the framework of the public offering are also subject to the lock-up obligations.

*See also:*

- Federal Act of 19 June 2015 on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Act, FMIA)
- Swiss Financial Market Supervisory Authority Ordinance of 3 December 2015 on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FINMA Financial Market Infrastructure Ordinance, FMIO-FINMA)

*Art. 13  
Governing bodies of the issuer*

<sup>1</sup> Members of the board of directors and of the executive committee shall be subject to the lock-up obligations.

<sup>2</sup> The lock-up obligations shall apply as of the first trading day.

<sup>3</sup> A sale by members of the issuer's governing bodies within the framework of the public offering being conducted, including sales that are a part of the over-allotment option (greenshoe option), is permissible.

<sup>4</sup> Equity securities that have been additionally acquired by members of the governing bodies within the framework of the public offering are also subject to the lock-up obligations.

## **2. Acts similar to a sale**

*Art. 14  
Impermissible transactions*

<sup>1</sup> An announcement of the intention to sell, as well as any measures, which, from a commercial perspective directly or indirectly, amount to a sale, are deemed to be equivalent to a sale within the context of Art. 10.

<sup>2</sup> Transactions that are not permissible under this Directive include, in particular:

1. the outright sale, any form of offering to sell, expressions of the intent to sell, forward transactions, the granting (writing) of conversion rights and purchase rights (call options), the purchase of put options, the conclusion of swap or exchange contracts, as well as the transfer of title as collateral;
2. the issuance of equity securities by the issuer, as well as the issuance of purchase, conversion or exchange rights that en-

title the holder to acquire new equity securities (e.g. from conditional capital). The following remain reserved:

- a. the issue of shares on the basis of pre-existing purchase, conversion or exchange rights; and
- b. the issue of shares and purchase, conversion or exchange rights based on employee stock ownership plans (Art. 15 para. 1).

*Art. 15*  
*Permissible transactions*

<sup>1</sup> The following transactions do not fall under the lock-up obligations ruling, insofar as such transactions have been disclosed without delay to the Regulatory Board and the legal successor is unconditionally subjected to the lock-up obligations by concluding the same contracts and submitting such contracts to the Regulatory Board:

1. matrimonial property rights disputes;
2. donations to immediate family members (limited to direct descendants, spouses and registered domestic partners, parents, siblings, nieces and nephews, grandnieces and grandnephews);
3. transfer to a private holding company, the shareholders of which are limited to the given pre-existing shareholder and his/her immediate family members within the context of Point 2;
4. transfer to a trust or foundation, the beneficiaries of which are either the pre-existing shareholder or his/her immediate family members within the context of Point 2;
5. sales in connection with a compulsory execution;
6. the transfer of equity securities within the same group of companies, if such transfer does not change the underlying control relationship;
7. the issuance of shares or options in the context of employee stock ownership plans announced in the issuing prospectus. The conditions of the employee stock ownership plans must include provisions whereby the issued shares or options may not be sold during the twelve-month period.

<sup>2</sup> A subsequent pledge of the equity securities that are subject to the lock-up obligations is only then permissible if the pledgee, with a view to a compulsory execution, subjects itself in advance to the lock-up obligations.

### 3. Exceptions

*Art. 16  
Exceptions to the  
lock-up agreement*

<sup>1</sup> Contractually defined exceptions to the lock-up obligations for the benefit of the issuer (such as the issuance of new equity securities by the issuer in connection with acquisitions) are, for the duration of the prescribed regulatory lock-up period of six months, only permissible if, upon request of the issuer, the Regulatory Board has granted them in advance (e.g. use of shares from authorised capital for planned or future acquisitions).

<sup>2</sup> Such exceptions are to be individually disclosed in the listing prospectus.

<sup>3</sup> During the lock-up period, the Regulatory Board may, in individual cases and for important reasons, grant exceptions to the lock-up obligations.

### 4. Obligations with respect to listing

*Art. 17  
Disclosure in the listing  
prospectus*

The following information is to be disclosed in the listing prospectus:

1. a list of the names of those pre-existing shareholders who are subject to the lock-up obligations;
2. the number of pre-existing shareholders and of equity securities not subject to the lock-up obligations. Insofar as such information is not precisely known, approximate values may be relied upon;
3. a clearly arranged, tabular presentation of the number of equity securities (voting rights) that are subject to contractual or regulatory lock-up obligations and the associated lock-up periods. Shareholders who have contractually submitted to a lock-up obligation (Art. 10 para. 2, "voluntary" lock-up) that goes beyond the lock-up obligations set out in this Directive must also be named; the number of shares held by these persons must be disclosed as a total amount subject to further provisions regarding disclosure by members of the governing bodies.

*Art. 18  
Granting of exceptions*

<sup>1</sup> In accordance with Art. 16, the granting of an exception must be made known to the public under observance of a waiting period of at least five exchange days.

<sup>2</sup> The public announcement may also be published in the listing prospectus.



<sup>3</sup> The Regulatory Board may, for important reasons, grant a release from the obligation to make such prior public announcement if it is demonstrated how the equity securities will be placed in a manner that avoids impairment of trading.

*Art. 19  
Violation of lock-up  
obligations*

<sup>1</sup> Any suspicion of violation of the lock-up agreement must be reported to the Regulatory Board without delay.

<sup>2</sup> As soon as the Regulatory Board learns that there has been a violation of the lock-up agreement, it shall – upon consultation with the issuer – make public announcement of such violation (via an “Official Notice” and/or a Press Communiqué).

<sup>3</sup> Insofar as it has determined that a violation of the lock-up agreement has occurred, SIX Exchange Regulation may also announce the results of its own inquiries and investigations. Prior to the announcement of such results, it shall consult with the issuer.

## **5. Procedure**

*Art. 20  
Listing application*

<sup>1</sup> Drafts of the contractual lock-up agreements must be submitted to SIX Exchange Regulation together with the listing application.

<sup>2</sup> Copies of the duly signed agreements must be submitted no later than three exchange days after the first trading day of the given issue.

*Art. 21  
Confirmation as part of  
the listing application*

<sup>1</sup> The issuer and applicant shall, within the framework of the listing procedure, confirm in writing to the Regulatory Board that, to their knowledge, all pre-existing shareholders (Art. 12) and all governing bodies pursuant to Art. 13 that are subject to lock-up agreements have submitted to obligations within the context of Art. 10.

<sup>2</sup> This written declaration must be submitted together with the listing application.

*Art. 22  
Separate security  
number*

<sup>1</sup> In connection with the submission of the listing application, confirmation must be provided that all equity securities within the listed category that are subject to the lock-up agreement will be carried under a separate security number by a recognised clearing organisation of SIX Swiss Exchange for clearing and settlement of stock-exchange transactions (SIX SIS Ltd) until the expiry of the prescribed lock-up period(s).

<sup>2</sup> Equity securities with this separate security number are deemed to be listed but may not be traded on the SIX Swiss Exchange until the expiry of the lock-up period.

*Art. 23  
Reporting requirement* Up to the expiry of the regulatory six- or twelve-month lock-up period, every rebooking made in the blocked share inventories held by the recognised clearing organisation of SIX Swiss Exchange for clearing and settlement of stock-exchange transactions (SIX SIS Ltd) must be reported immediately to SIX Swiss Exchange.

### C. OBLIGATIONS FOR MAINTAINING LISTING

*Art. 24  
Conditions for  
maintaining listing* The obligations of issuers set forth in Arts. 25 et seq. apply as long as the issuer has not yet presented its annual accounts for three complete financial years pursuant to Art. 11 LR; afterwards, the provisions of the Listing Rules apply without exception.

*Art. 25  
Quarterly reporting* <sup>1</sup> With respect to interim financial reporting, in deviation from Art. 50 para. 2 LR, the issuer is obligated, within the context of this Directive, to publish quarterly financial statements in accordance with applicable accounting standards.

<sup>2</sup> The first-quarter financial statements must cover the first three months; the second-quarter financial statements, the first six months; and the third-quarter financial statements, the first nine months of the issuer's accounting year. The annual financial statements may be submitted in lieu of the fourth-quarter financial statements.

<sup>3</sup> Quarterly reports must be drawn up for a maximum of two full financial years.

*Art. 26  
Publication of quarterly  
financial statements* The issuer must publish its quarterly financial statements no later than two months after the end of the corresponding reporting period, and must submit them to SIX Exchange Regulation no later than the date of publication.

*See also:*

- Directive Regular Reporting Obligations (DRRO)

### III. CONCLUDING PROVISIONS

*Art. 27*  
*Entry into force*

This Directive enters into force on 1 July 2009 and replaces the Directive on Exemptions regarding Duration of Existence of the Issuer (Track Record) of 1 April 2004 as well as the Directive on Lock-Up Agreements of 1 April 2004.

*Art. 28*  
*Transitional provisions*

Applications by new issuers will be assessed according to this Directive if they are submitted to SIX Exchange Regulation on or after the date of its entry into force.

*Art. 29*  
*Revisions*

<sup>1</sup> The revision of Art. 1 para. 3 that was decreed in the resolution of 1 October 2010 enters into force on 15 October 2010.

<sup>2</sup> The revision of Art. 1, decreed by the resolution dated 12 March 2015 enters into force on 1 August 2015.

<sup>3</sup> Amendments due to the entry into force of the Financial Market Infrastructure Act and related ordinances in Art. 12 as of 1 April 2016.

ANNEX 1

**Leaflet of SIX SIS Ltd**

**SIX Swiss Exchange provisions for lock-up agreements**

**Carrying of blocked share inventories under a separate security number**

The Admission Board of SIX Swiss Exchange Ltd ("SIX Swiss Exchange") suspended the Directive on Lock-Up Agreements effective 29 October 2008 and integrated these provisions into the Directive on Exemptions regarding Duration of Existence of the Issuer ("RLTR") (entry into force on 1 July 2009). In accordance with Art. 10, this Directive governs, among other things, the obligation of issuers, their governing bodies and their pre-existing shareholders not to sell shares for a period of six or twelve months beginning on the first trading day. As a means of facilitating the enforcement of the lock-up obligation, the Directive also specifies the obligation of the issuer to register and carry under a separate security number the inventories of shares held at SIX SIS Ltd ("SIX SIS") that are affected by the lock-up obligations (Arts. 22 f.). SIX SIS offers this service upon request in consultation with SIX Swiss Exchange.

In connection with this matter, the following general conditions shall apply:

- a) The lead underwriter must report the separate security number to SIX SIS through use of the standard form. The opening of this securities issue is subject to the standard tariff.
- b) SIX SIS will carry only one separate security number per original securities issue. An inventory of the segregated securities issue may only be established by the lead underwriter – this by delivering of individual certificates or of one or more global certificates or, as the case may be, promises to deliver. In the case of registered shares that are subject to the SIX SIS registered-share model, then the stock registrar must establish the inventory. This must also be booked or reported in the share registry as a separate inventory.
- c) The nominal value of the global certificate(s) or promise(s) to deliver must correspond to the relevant lock-up period. If, in addition to the 6- or 12-month lock-up period prescribed in Art. 10, there remain further blocking periods of varying durations for different groups of shareholders, a separate global certificate or promise to deliver must be supplied for each individual lock-up period.
- d) The transfer of a blocked inventory carrying a separate security number into the original issue traded on the SIX Swiss Exchange, regardless of whether such transfer is the result of the expiry of the lock-up period or is based on an approved exception, may only be ordered by the lead underwriter.
- e) In the case of instructions relating to administrative operations in the original securities issue, the lead underwriter must ensure that SIX SIS also receives appropriate instructions for the segregated securities issue.
- f) SIX SIS assumes **no responsibility** with respect to the volume and lock-up period of the separately booked securities issue and shall handle inventory rebookings of the original

securities issue upon the order of the lead underwriter. The responsibility for managing the segregated inventory lies fully with the lead underwriter.

- g) The same rules shall apply in the case of foreign securities issues that are being applied for listing, whereby the lead underwriter shall be required to establish a separate inventory either with SIX SIS or with a custodian of SIX SIS in favour of SIX SIS.

The Regulatory Board Directive mentioned in the leaflet can be found on the SIX Exchange Regulation Website. For further information in this regard, please contact the Regulatory Board at +41 58 399 29 90 at any time.

1 July 2009