

New rules relating to the disclosure of major shareholdings in Swiss listed companies as of 1 December 2007 – Information for investors

Important notice:

This paper is intended to serve as a short overview only of the new rules enhancing transparency in the acquisition and sale of shares (and financial instruments in relation to shares) of Swiss listed companies. It has been drawn up to the best actual knowledge of its authors. However, no decision with respect to the acquisition or sale of shares or financial instruments in Swiss listed companies should be taken or no disclosure obligation be assessed exclusively on the merits of this paper.

I) Revised Stock Exchange and Securities Trading Act (SESTA, as of 1 December 2007)

In order to **enhance transparency** in the acquisition of major shareholdings in Swiss companies listed on Swiss stock exchanges, the federal parliament has adopted tighter disclosure rules which will enter into effect on **1 December 2007** (revised article 20 SESTA).

Investors must be aware of the following **new disclosure obligations**:

- **New thresholds** for disclosure notifications: attaining, exceeding or falling below **3 %**, **15 %** and **25 %** of the voting rights (whether or not such voting rights may actually be exercised) in addition to the existing thresholds of 5, 10, 20, 33 1/3, 50 or 66 2/3 % of the voting rights (revised article 20 para. 1 SESTA),
- Disclosure for trading and holding of **share sale rights** (e.g. acquisition and sale of put options) in addition to the existing disclosure obligations with respect to conversion and share acquisition rights (revised article 20 para. 1 SESTA);
- Disclosure of **financial instruments** which, although not granting any right to directly acquire shares, nevertheless **economically** enable the acquisition of such shares with a view to a public tender offer (revised article 20 para. 2bis SESTA);
- Introduction of the possibility for the Swiss Federal Banking Commission (SFBC or FBC), the listed company or any of its shareholders to request the **suspension of the voting rights** by means of civil court proceedings if an acquirer has not complied with disclosure rules (revised article 20 para. 4 bis SESTA);
- Exceptions on disclosure notifications for **banks and securities dealers** according to international standards (revised article 20 para. 5 SESTA).

SWX Swiss Exchange will amend its unofficial **English translation of the SESTA** which will be published on the internet (http://www.swx.com/admission/regulation/rules_federal_en.html).

II) Revised Stock Exchange and Securities Trading Ordinance of Swiss Federal Banking Commission (SESTO-FBC)

In order to complete the SESTA, the Swiss Federal Banking Commission has amended its SESTO determining in more details what kind of transactions in shares of Swiss listed companies are subject to disclosure obligations. The following modifications have been adopted:

a) *as of 1 July 2007*

Since 1 July 2007, the acquisition or sale of conversion or share acquisition rights (financial instruments) must be disclosed, **regardless whether or not these rights legally provide for the actual delivery of shares**, thus including inter alia cash settlement options).

Furthermore, financial instruments are no longer exempt from the obligation to notify in case they do not attain 5 % of the voting rights. Thus, any holding of such financial instruments has to be disclosed and, as the case may be, **added to any existing shareholding**.

b) *as of 1 December 2007*

- **Intraday transactions** (revised article 9 para. 4 SESTO-FBC):
no obligation to disclose any temporary (i.e. intraday) acquisition or sale of shares (and financial instruments) attaining, exceeding or falling below any threshold.
 - **Financial instruments** (revised article 13 para. 1 to para. 1ter SESTO-FBC):
obligation to disclose applies – subject to the condition that such financial instruments relate to voting rights that attain, exceed or fall below any of the afore-mentioned thresholds – :
 - to the acquisition or sale of conversion rights, share acquisition rights and share sale rights;
 - to the granting (writing) of conversion rights, share acquisition rights and share sale rights;
 - whether or not such financial instruments provide for or allow actual delivery of the underlying share (i.e. disclosure rules also apply for e.g. cash settlement-options);
 - to financial instruments economically enabling the acquisition of shares with a view to a public tender offer.
 - Disclosure notification to be **split up in two “pots”** (revised article 10 para. 3 SESTO-FBC):
as no netting of holdings in a company for disclosure purposes is permitted, the disclosure notification must distinguish between:
 - any acquisition and sale of shares, conversion rights, share acquisition rights and the granting of share sale rights (financial instruments that potentially increase the shareholding in a company) on the one side, and
 - any acquisition and sale of share sale rights and granting of share acquisition rights (financial instruments that potentially reduce the shareholding in a company) on the other side.
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- **Changes in the number of directly held shares** (revised article 14 para. 1 letter d SESTO-FBC):
any change in the holding of shares attaining, exceeding or falling below on itself any threshold must be disclosed, irrespective whether the aggregate amount of voting rights (including any financial instruments) attains, exceeds or falls below any threshold.
- **Content of disclosure notification** (revised article 17 para. 1 and 1bis SESTO-FBC):
disclosure notification must contain more information allowing a better understanding of the quality of the shareholding:
 - each notification has to mention any and all holdings of shares of the company and financial instruments related to shares of the company held by the investor, whether or not any existing shareholding had been notified and published earlier already;
 - the fact setting the cause for the notification has to be indicated (i.e. acquisition, sale, securities lending etc.);
 - notification of holding of financial instruments must contain either ISIN (International Securities Identification Number) or the material terms and conditions of such financial instrument
- **Securities lending and borrowing and similar transactions** (article 12 SESTO-FBC):
No changes have been made for securities lending and similar (e.g. Repurchase agreements) transactions, i.e. the existing rule will continue to be applicable: obligation to notify transactions in shares by way of securities lending and borrowing as well as similar transactions that attain, exceed or fall below the above thresholds if the borrower can exercise voting rights.

SWX Swiss Exchange will amend its unofficial **English translation of the SESTO-FBC** which can be accessed on http://www.swx.com/admission/regulation/rules_federal_en.html.

III) **New platform for publication set up by SWX Swiss Exchange (including virt-x) (article 19 SESTO-FBC)**

Stock exchanges in Switzerland may limit publication of disclosure notifications to a publication platform which electronically collects and publishes all disclosure notices provided by the companies. SWX will set up its new platform for publication in the **first half-year of 2008**. This platform will provide an easy and worldwide access to information on major shareholdings in Swiss listed companies.

However, investors will continue to file their **disclosure notifications in writing** with the company and the stock exchange. The time limits have neither been altered, i.e. notification has to be made **within four trading days** after the creation of the obligation to notify (see article 18 SESTO-FBC).

Investors are strongly recommended (although not being under the obligation) to use the **disclosure form prepared by SWX** http://www.swx.com/admission/being_public/disclosure/disclosure_form_en.html.

IV) Transition rules

The new rules will apply as from **1 December 2007**. However, a transition period has been fixed up to **29 February 2008** in order to “implement” the modified regulation.

This means that any and all transactions occurring on or after 1 December 2007 have, as a rule, to be disclosed under the new regime. In particular, the **new thresholds are applicable as of 1 December 2007** and any holding of shares at that date triggers an obligation to disclose to the extent

- (i) it has not been subject to disclosure under the existing rules (see example a) hereafter) or
- (ii) it differs, as the case may be, from the earlier published shareholding and such gap would, had it been caused by a transaction occurring on or after 1 December 2007, trigger an obligation to disclose (see example b) hereafter).

However, a “**passive**” investor (i.e. not engaging in any transaction in such shares or financial instruments related to such shares) may **postpone the notification** of the above described holding of shares or financial instruments to the company and the stock exchange until 29 February 2008. Nevertheless, if an investor who is subject to the above disclosure obligation engages in any transaction in the same shares or financial instruments on or after 1 December 2007 (i.e. an “**active**” investor), he/she must hand in notification within the legally fixed four trading days after execution of the transaction.

Examples:

- a) an investor holding 3.2 % of voting rights in a Swiss listed company on 1 December 2007 has to disclose his/her shareholding, but may postpone notification of this shareholding until 29 February 2008 at the latest, unless he/she engages in transactions in such shares (or financial instruments relating to such shares) notify this shareholding within four trading days after execution of any such transaction.
 - b) an investor holding 13 % of voting rights in a Swiss listed company on 1 December 2007 but whose most recent publication of his/her shareholding amounts to 16 % (which reduction had not, under the old rules, led to an obligation to disclose), must disclose – due to the fact that the new threshold of 15 % will apply – his/her “new” shareholding. However, again to the extent he/she will not engage in any transaction in these shares until 29 February 2008, he/she may postpone the notification of this shareholding until 29 February 2008 at the latest.
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V) New commentary report to be issued by SFBC as of 1 December 2007

The Swiss Federal Banking Commission published, on 26 November 2007, a short commentary report regarding the new regulation in its SESTO-FBC.

Investors may access this **commentary report** (in German and French only) on http://www.ebk.ch/d/aktuell/20071126/20071126_01d.pdf

VI) New commentary report to be issued by SWX as of 29 February 2008

SWX Swiss Exchange will, as well, publish a commentary report focussing on **technical issues** of the entire disclosure obligations according to Swiss legislation. This commentary report will be published in English, too. However, publication of this commentary report is scheduled for 29 February 2008 at the earliest.

Investors seeking **information regarding their disclosure obligations** are asked to contact either their bank representative and/or their securities dealer or may directly contact the disclosure office of SWX Swiss Exchange (for details see http://www.swx.com/admission/being_public/disclosure/contacts_en.html).