November 2023

An Analysis and Guidance on the Revised SIX Provisions on Management Transactions and Ad Hoc

SIX Exchange Regulation revised its Listing Rules to amend the rules on ad hoc publicity and reporting of management transactions alongside its Directive on the Disclosure of Management Transactions and Directive on Ad hoc Publicity. The amended rules on reporting of management transactions will provide for more comprehensive reporting obligations on related party transactions. On the ad hoc disclosure duties, the main change relates to SIX Exchange Regulation's *per se* practice. Annual and interim reports will no longer *per se* be considered ad hoc relevant facts for issuers that only listed debt securities on SIX Swiss Exchange. The new rules will enter into force on 1 February 2024 requiring issuers to update their internal policies and procedures and train its board and senior executive members in time.

1 INTRODUCTION

SIX Exchange Regulation ("SER") announced on 1 November 2023 a revision of the Listing Rules ("LR") as well as the Directive on the Disclosure of Management Transactions ("DMT") and the Directive on Ad Hoc Publicity ("DAH"). The revised rules will enter into force on 1 February 2024 and will require issuers to take prompt actions to update their policies and procedures.

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2 CHANGES REGARDING THE REPORTING OF MANAGEMENT TRANSACTIONS

2.1 Expanded reporting obligations regarding transactions of related parties

The most fundamental change pertains to the disclosure of management transactions involving related parties. From 1 February 2024, transactions in equity securities and related financial instruments between persons subject to the reporting obligations (members of the board of directors and executive management) and their related parties must be reported (article 56(3) LR). The report must include a description of the transaction, although the name and date of birth of the related party will not need to be reported to the issuer or published.

Related parties may include, *inter alia*, (i) domestic partners, (ii) individuals living in the same household and (iii) legal entities if the person subject to the reporting obligation holds a management position, controls directly or indirectly the entity or is a beneficiary of the entity.

Concurrently, additional exemptions to the reporting obligations will be introduced. Legacies (article 484 Swiss Civil Code) and endowments for the purpose of establishing foundations (*Stiftungen*) under Swiss law will be excluded from the reporting obligations (article 5(2) DMT). However, in case a transaction with a related party was not reported because it was exempted (*e.g.*, in connection with a gift or inheritance), the subsequent transaction of the related party with a third party will be subject to the reporting obligation, regardless of whether any influence was exerted by the person subject to the reporting obligations or whether the transaction had an effect on such person's assets. In such case, the reporting obligation remains with the board or senior executive member. For example, if a member of the board of directors transfers his or her shares in the issuer to his or her domestic partner as a gift, such transaction would be exempted from the reporting obligation (article 5(2) DMT). Should the domestic partner sell subsequently the shares to a third party thereafter, the board member would be required to report the transaction even if the board members did not exercise any influence on the follow-on transaction and that transaction had no effect on the board member's assets.

2.2 Further changes

The revised rules now provide for an explicit **reporting obligation for both listed and unlisted securities** if at least one category of equity securities of the relevant issuer is listed. Since SER's commentary regarding art. 56 LR and the DMT already provided for such supervisory practice, this change is a clarification that does not change the substance of reporting obligations in unlisted equity securities or financial instruments having such equity securities as underlying.

The reporting obligation was further extended (i) to sponsors and founding shareholders (*Gründeraktionäre*) of SPACs and (ii) for trades in global depository receipts (GDRs).

The DMT has further been supplemented and specified with regard to different modalities of the reporting obligation. Among other things, the revised DMT specifies (i) which details have to be reported in case of transactions of unlisted conversion or option rights and (ii) how to calculate the total value of a transaction. These modalities were already covered by the previous/current version of the commentary on the DMT and are largely modelled along the provision on the disclosure of significant shareholdings (article 120 FMIA). The same applies to the reporting obligation in case of a public takeover offer. Article 7a DMT specifies that the reporting duty only starts with the lapse of the additional acceptance period (*Ablauf der Nachfrist*).

Although a similar obligation was already included in the previous/current version commentary on the DMT, the revised DMT now explicitly provides for an obligation to correct the notifications if a previous report contained errors. To comply with this requirement, issuers should therefore oblige the members of their board of directors and executive committee to notify the company of any error they discover in previously reported transactions.

In a similar spirit, the DMT now explicitly states that intra-day purchases and sales may not be netted; this principle applied, however, already under the currently applicable rules.

Separately, certain provisions were recast from the DMT into the LR. This is, in particular, the case of the obligation of the issuers to instruct persons subject to the reporting obligation and its responsibility to take action should they fail to fulfil their obligation and the consent to store notifications on the electronic reporting platform for a period of four years. However, in substance these provisions remain unchanged.

2.3 Updated guideline and recast of the LR

The revision also updates the commentary on the DMT (which will be referred to as a guideline; "Guideline DMT"), aiming to ensure the proper application of the LR and the DMT in practice. The Guideline DMT includes new guidance for the following in particular:

- **Related party transactions** that are carried out under the significant influence of several persons subject to reporting obligations: The individuals subject to the reporting obligation have to report the transaction on a *pro rata basis*, whereas it is recommended to mention in the notification that the natural person/legal entity is related to several persons subject to the reporting obligation and that these persons are reporting the transaction on a *pro rata* basis (N 41 of the Guideline DMT).
- **Organization within the issuer**: The issuer must set up an appropriate internal reporting system. In addition to (repeated) instruction of the persons subject to the reporting obligation (particularly on the qualifying transactions and the short deadlines) and those responsible for reporting, it is also necessary to organize an internal system that ensures compliance with the provisions. A single person responsible for reporting is not deemed a sufficient organization to ensure timely disclosure of management transactions (N 70-72 of the Guideline DMT).

3 CHANGE TO THE *PER SE* PRACTICE UNDER AD HOC PUBLICITY RULES

Under article 53 LR, issuers are, as a matter of principle, required to inform the market of any price-sensitive facts which have arisen in their sphere of activity. Whether a fact is to be disclosed via ad hoc announcement must be determined by the issuer on a case-by-case basis (article 4(2) DAH), except for annual and interim reports (including quarterly or other trading updates) which are *per se* deemed to be price-sensitive under SER's so-called *per se* practice. Pursuant to the revised LR and DAH, such *per se* ad hoc relevancy only applies for issuers with primary listed equity securities on SIX Swiss Exchange. Therefore, issuers of bonds or other debt instruments (without primary listed equity securities) will in the future not be bound by this *per se* obligation.

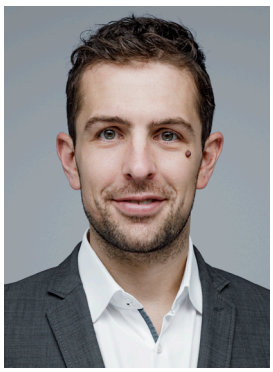
This long-awaited clarification is sensible: Whereas financial reports are highly significant for equity investors, they tend to be less important for investors in debt securities unless they imply a material effect on the creditworthiness of the issuer (such as illiquidity, payment difficulties, certain restructurings and potential insolvency).

4 NEXT STEPS FOR ISSUERS

The revisions will become effective as of 1 February 2024. Until this date, issuers have time to reflect the amended rules sufficiently in their internal policies and procedures as well as train the persons subject to the reporting obligation and those responsible for reporting within the issuer's organization.

Finally, because of the changes regarding ad hoc publicity, issuers with only debt securities listed on SIX Swiss Exchange will need to perform a case-by-case assessment on whether an ad hoc announcement is necessary with regard to the publication of annual and interim reports. Under normal circumstances, such reports are not capable of triggering a significant price change of the listed debt securities, and an ad hoc announcement will therefore usually not be required.

CONTACTS



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