

**Leaflet**  
of 1 February 2022

# Leaflet regarding applications for exemptions and easing provisions concerning disclosure in the prospectus for lock-up groups and (sub-)underwriters

## 1 General information

Given that parts of the Disclosure Office Notice I/09 (i.e. fulfilment of the notification obligations within the prospectus) have become obsolete, this leaflet is intended to provide assistance for any applications for exemptions and easing provisions concerning disclosure in the prospectus for lock-up groups and (sub-)underwriters.

Applications must be submitted to the competent Disclosure Office in good time in advance of the intended transaction (Art. 26 para. 2 FMIO-FINMA).

Applications must contain the relevant facts, motion and statement of reasons. The facts must be documented appropriately and have to include all the details outlined in Art. 22 FMIO-FINMA (Art. 28 para. 1 FMIO-FINMA). The intended wording of the prospectus must be enclosed.

Only the minimum requirements are referred to below. However, a presentation of the facts of the case and reasons must be indicated in each individual case.

As a general rule, a fee of CHF 1,000 is charged for the processing of an application concerning the disclosure of shareholdings in the prospectus for lock-up groups and (sub-)underwriters. The general principles set out in Art. 8 para. 1 of the Disclosure Office Rules apply in relation to applications of exceptional scope or difficulty.

In cases which have been processed within a reduced time limit at the request of the applicant, an additional fee of CHF 15,000 is charged (Art. 8 para. 2 of the Disclosure Office Rules).

## **2 Information concerning underwriting in the event of a capital increase**

The notification obligations of members of a bank consortium arising as a result of underwriting may, upon request, be deemed to have been met if the underwriting transaction procedure is described in the prospectus. This also applies to the disclosure obligations of underwriters in the case of underwriting as part of the issuance of convertible bonds or warrant bonds. Where the underwriting is taken on by an individual underwriter rather than a consortium, the information set out below will apply accordingly to that individual underwriter.

The application must state that inter alia the following information is disclosed in the prospectus collectively in one single place (cf. Art. 22 FMIO-FINMA):

- specification of all members of the consortium that have underwritten a share of the securities to be placed (each with details of the corporate name and registered office);
- type and number (maximum) of the equity securities to be underwritten by each of the individual members of the consortium;
- the associated voting share as a percentage. This percentage figure shall be calculated based on the total number of voting rights entered in the commercial register (or for companies with their registered office abroad, published pursuant to Art. 115 FMIO) and, if already known, on the total number of voting rights to be entered in the commercial register after the capital increase;
- the length of time for which the individual members of the consortium are likely to keep the equity securities.

The application may also include a request for an exemption for the issuer, according to which the information need not be published via the publication platform.

## **3 Information concerning lock-up groups**

According to Notice I/09, lock-up groups may forego the full disclosure of all group members providing certain requirements are met. These easing provisions concerning disclosure of lock-up groups apply for lock-up groups disclosed by means of a notification (form) to the company and to the Disclosure Office (Art. 24 para. 1 FMIO-FINMA). Accordingly, the application for exceptions and easing provisions must contain reasons as to why disclosure in the prospectus is requested on an exceptional basis.

The application must state that inter alia the following information is disclosed in the prospectus collectively in one single place (cf. Art. 22 FMIO-FINMA):

- members of the lock-up group whose individual shareholding represents 3 percent or more of the voting rights, with details of their surname, first name and place of residence, or corporate name and registered office, and with an indication of the percentage share of their (individual) shareholding;
- duration of the lock-up obligation, with specification of exact end date;
- counterparty (e.g. the issuer or the bank consortium);
- number of group members;
- type and quantity of equity securities and equity derivatives held by the group in total;
- total percentage of voting rights;
- group's representatives.

The application must also contain any information concerning unrestricted equity securities or derivatives of group members. In addition, the information contained in the updated Notice I/09 is applicable mutatis mutandis.