EXCHANGE
REGULATION

Disclosure Office Notice I/09

Fulfilment of the Notification Obligation within the Prospectus and Simplified Disclosure of Lock-Up Groups

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Summary:

Notification obligations upon the initial listing of equity securities

The notification obligations of significant shareholders may be fulfilled at the time of the initial listing of equity securities on SIX Swiss Exchange with corresponding information in the listing prospectus.

The issuer must publish such information within two trading days following the initial listing of the equity securities via the electronic publication platform.

Fulfilment of the notification obligations of shareholders in case of a capital increase

Shareholders whose shareholdings fall below a threshold as a result of a capital increase may fulfil the notification obligations within the listing prospectus.

The issuer must publish such information via the electronic publication platform within two trading days following the publication of the capital increase in the Swiss Official Gazette of Commerce.

Where shareholders receive subscription rights immediately as a result of their shareholder status and corresponding to their existing participation (original acquisition), the subscription rights will not be subject to the disclosure obligation. The sale of originally acquired subscription rights is also not subject to notification. Finally, when a shareholder exercises originally acquired subscription rights in advance, this will also not trigger any notification obligation. In principle, the company is not required to disclose the issuance of such subscription rights as sale positions pursuant to Art. 14, para. 1, letter b FMIO-FINMA[1].

The derivative acquisition of subscription rights, and the sale of derivatively acquired subscription rights, will trigger a disclosure obligation if it results in a threshold being reached, fallen below or exceeded pursuant to Art. 120, para. 1 FMIA[2].

Notification obligations of underwriters

The disclosure obligations of underwriters in connection with a capital increase may be fulfilled by providing the following information in the listing prospectus:

- specification of all members of the bank consortium that have underwritten a share of the securities to be placed (each with details of the company 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; and
- the length of time for which the consortium members are likely to keep the equity securities.

The issuer need not publish this information via the electronic publication platform.

[1] Ordinance of the Swiss Financial Market Supervisory Authority on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FINMA Financial Market Infrastructure Ordinance, FMIO-FINMA) of 3 December 2015 (CC 958.111).

[2] Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Act, FMIA) of 19 June 2015 (CC 958.1).

Simplified disclosure of lock-up groups

Lock-up groups may forego the full disclosure of all group members providing certain requirements are met. If such requirements are not met, then all members of the group must be fully disclosed. A request for exemptions and easing provisions pursuant to Art. 26 FMIO-FINMA remains reserved. The issuer must publish notifications from lock-up groups via the electronic publication platform.

1. Notification obligations upon the initial listing of equity securities

The notification obligations of significant shareholders may be fulfilled at the time of the initial listing of equity securities by disclosing the corresponding information in the listing prospectus. In doing so, all of the information specified in Art. 22 FMIO-FINMA must be provided.

However, disclosing significant shareholders within the listing prospectus does not exempt the company from its publication obligation. The issuer must publish the significant shareholders reported in the listing prospectus within two trading days from the initial listing of the equity securities via the electronic publication platform.

2. Notification obligations in case of capital increases

2.1 Subscription rights

Pursuant to Art. 652b, para. 1 of the Swiss Code of Obligations[3], subscription rights give every shareholder the right to the proportion of the newly issued shares that corresponds to their existing participation. They therefore implement the right of the shareholder to maintain the amount of their shareholding. Where a shareholder receives subscription rights immediately as a result of their shareholder status and corresponding to their existing participation in line with their current shareholding amount (original acquisition), which is the case in the event of a capital increase by means of underwriting by a bank consortium while maintaining the subscription rights, this will not be subject to the disclosure obligation because the subscription right merely represents the consequence of a capital increase foreseen by the legislator and, ultimately, in other words, once the capital increase has been implemented, it does not change the shareholding amount of the shareholder in any way if the latter actually exercises the subscription rights. In principle, the company is not required to disclose the issue of such subscription rights as sale positions pursuant to Art. 14, para. 1, letter b FMIO-FINMA. Like the original acquisition of subscription rights, the sale of originally acquired subscription rights does not trigger any notification obligation either. When a shareholder exercises in advance originally acquired subscription rights, this will also not give rise to any notification obligation. Whereas, if a shareholder acquires shares for which the subscription rights will not be exercised, this can trigger a notification obligation.

On the other hand, a derivative acquisition of subscription rights, e.g. within a subscription rights trade on the SIX Swiss Exchange, will trigger a disclosure obligation if it causes the thresholds set out in Art. 120, para. 1 FMIA to be reached or exceeded. If a disclosure obligation is triggered by a derivative acquisition, any originally acquired subscription rights need not be disclosed in the corresponding notification. For companies with their registered office in Switzerland, according to Art. 14, para. 2 FMIO-FINMA, the total number of voting rights entered in the commercial register upon conclusion of the binding transaction will form the basis for calculating the positions requiring notification. For companies with their registered office abroad, publication in accordance with Art. 115,

[3] Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations) of 30 March 1911 (CC 220).

para. 3 FMIO[4] will apply (see also Disclosure Office Notice I/13 dated 30 April 2013 - Amended version of 20 September 2018).

2.2 Fulfilment of notification obligations of shareholders in the case of capital increases

The notification obligations of shareholders whose holdings fall below a threshold as a result of a capital increase, may be fulfilled within the listing prospectus providing all of the required information, including voting shares (calculated based on the total number of voting rights after the capital increase) is disclosed. On the other hand, shareholders whose shareholdings do not fall below any threshold requiring notification in spite of the capital increase, will have no notification duty pursuant to Art. 120 FMIA.

Issuers must publish the disclosure notifications in the listing prospectus via the electronic publication platform within two trading days following publication of the capital increase in the Swiss Official Gazette of Commerce.

3. Notification obligations of underwriters

3.1 Initial listing of equity securities

Upon the initial listing of equity securities, no notification obligation as defined in Art. 120 FMIA will arise for the placing bank consortium providing the part of the issuance procedure that is relevant to the disclosure requirement takes place before the listing.

3.2 Underwriting within capital increases with listing prospectus

The disclosure office deems the notification obligations of members of a bank consortium (also called a bank syndicate) arising as a result of underwriting to be met if the underwriting transaction procedure is described in the listing 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. If only an issuance prospectus is created in accordance with the Swiss Code of Obligations, it must be submitted to the disclosure office.

The following information must be disclosed in the prospectus (see also 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 company 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 in the company in question as a percentage. This percentage figure should be calculated based on the total number of voting rights entered (or for companies with their registered office abroad, published pursuant to Art. 115 FMIO) in the commercial register and, if already known at the time of printing the prospectus, on the total number of voting rights to be entered in the commercial register after the capital increase; and
- the maximum length of time for which the consortium members are likely to keep the equity securities.

This information must all be provided in one place in the prospectus. The individual members of the consortium who are acquiring a share may also be listed elsewhere (e.g. on the front page of the prospectus), together with the required information (registered office, etc.), provided an appropriate reference to that list is given. The notification obligations in connection with underwriting

[4] Ordinance on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Ordinance, FMIO) of 25 November 2015 (CC 958.11).

may be met in the prospectus even if it is not published within four trading days of the members of the consortium having undertaken to take on the underwriting.

In the «Significant Shareholders» section under no. 2.5.9 of Schemes A, C and D, and no. 2.6.9 of Scheme B, a reference must be included to the section(s) in the prospectus where this information is disclosed.

The issuer need not publish this information in connection with the underwriting via the electronic publication platform.

If one member of the consortium individually (or the consortium as a group as defined in Art. 12 FMIO-FINMA) holds a shareholding requiring notification in the company upon the day the newly created shares are listed, then this shareholding must be disclosed within four trading days, at the latest, by means of notification to the disclosure office and to the company (in accordance with the provisions of FMIO-FINMA).

These statements also apply to fulfilment of the disclosure obligations of underwriters in case of underwriting as part of the issuance of convertible bonds or warrant bonds.

3.3 Underwriting within capital increases without a prospectus

In case of an underwriting as part of a capital increase for which no prospectus is published, the consortium members must file disclosure notifications within four trading days at the latest of entering into the underwriting obligation where a threshold requiring notification is reached or exceeded. The issuer must publish such disclosure notifications via the electronic publication platform.

Pursuant to Art. 26, para. 1 FMIO-FINMA, exemptions and easing provisions from the notification and publication obligations may be granted where there is good cause to do so, namely when the transaction is short-term in nature or does not entail any intention to exercise voting rights. A corresponding notification must be submitted to the disclosure office in good time prior to entering into the underwriting obligation (see Art. 26, para. 2 FMIO-FINMA).

3.4 Underwriting by an individual underwriter

Where the underwriting is taken on by an individual underwriter rather than a consortium, the rules set out in this notice will apply accordingly to that individual underwriter.

4. Simplified disclosure of lock-up groups

4.1 Lock-up agreements can establish groups

Any party whose conduct regarding the acquisition or disposal of equity securities or exercise of voting rights with third parties by contract or other organised procedure or by law, is acting in concert or as an organised group (Art. 12, para. 1 FMIO-FINMA).

If shareholders conclude parallel (vertical) lock-up agreements with a third party, these are equivalent to the conclusion of an agreement between the shareholders because the conduct of the shareholders regarding the disposal of acquisition rights has been coordinated. According to standard practice by the disclosure office and FINMA, this leads to a group notification obligation as defined in Art. 12 FMIO-FINMA in conjunction with Art. 120, para. 1 and Art. 121 FMIA.

4.2 Handling of unrestricted equity securities and equity derivatives

If shareholders forming a group on account of lock-up obligations they have entered into hold or acquire additional equity securities or derivatives that are not subject to any lock-up period, the

question is, how should unrestricted equity securities and equity derivatives be handled. Such unrestricted equity securities and equity derivatives are not to be attributed to the portfolio of the group. Only equity securities and equity derivatives that may not be sold for a certain period are to be attributed to a portfolio of a lock-up group.

This raises the question of whether the equity securities and equity derivatives held outside the group must be disclosed additionally with the restricted equity securities and equity derivatives held by the respective group member, or separately and only once a voting rights threshold of 3 percent have has reached by the unrestricted equity securities and equity derivatives.

If individual group members were subject to an individual notification obligation for their restricted and unrestricted equity securities and equity derivatives as a whole (in addition to the notification obligation as a group member), their restricted equity securities and equity derivatives would be reported twice, once in the group notification but also in the individual notification. The duplicate notification of equity securities or derivatives is not only not provided for in Art. 120, para. 1 FMIA, but it is also not useful in terms of the desired transparency (Art. 1, para. 2 FMIA).

With this in mind, members of the lock-up group will be subject to a notification obligation for equity securities and equity derivatives held outside the group separately from the restricted equity securities and equity derivatives. Unrestricted equity securities and equity derivatives will thus only be subject to notification once voting rights of 3 percent are reached or exceeded, and the voting share is calculated without including the restricted equity securities and equity derivatives. To avoid misunderstandings, a corresponding individual notification should include a note stating that these are unrestricted equity securities and equity derivatives held outside the lock-up group. Reference should also be made to the disclosure notification by the lock-up group that the shareholder is a member of.

4.3 Easing provisions for lock-up groups

The disclosure of all shareholders belonging to a lock-up group can be extremely difficult in practice because they may, particularly when shares allotted to employees are also subject to a lock-up period, involve groups with hundreds, or even thousands, of members. In addition, any change to the composition of the group once again triggers a notification (see Art. 12, para. 3 FMIO-FINMA).

Although FMIO-FINMA, apart from Art. 19, does not provide for general exemptions or easing provisions from the disclosure obligation, these may only be granted upon request (see Art. 26 FMIO-FINMA), it has long since been consistent practice by the disclosure office that the disclosure obligations may be fulfilled within the prospectus. If the notification obligation by the lock-up group is met in the prospectus, the information required must be disclosed in the «Significant Shareholders» section under no. 2.5.9 of Schemes A, C and D and no. 2.6.9 in Scheme B.

Moreover, it appears useful to the disclosure office to supply issuers and shareholders with a practical solution for disclosing lock-up groups that is also more informative for market participants.

Simplifying the notification obligation is thus justified in particular when the accompanying requirements ensure that transparency is improved overall. For this simplification of the disclosure obligation in respect of lock-up groups, this requires the group to notify additional information. With this in mind, simplification of the obligation to disclose all members of lock-up groups may then be used when those members of the lock-up group whose individual shareholding represents 3 percent or more of the voting rights are disclosed with details of their surname, first name and place of residence, or company name and registered office, and with an indication of the percentage share of their (individual) shareholding.

4.4 Notification scheme for the simplified disclosure of lock-up groups

On these grounds, lock-up groups may forego full disclosure of all group members providing the following requirements are met:

- the precise duration of the lock-up obligation (with specification of exact end date) and the counterparty (e.g. the issuer or the bank consortium) must be disclosed;
- the number of group members, the type and quantity of equity securities and equity derivatives held by the group in total, the total voting share and the group's representatives are to be reported;
- mentioning by name those group members who individually hold a voting share, directly or indirectly, of less than 3 percent in the company, and details of their place of residence or registered office, may be omitted;
- group members who, directly or indirectly, hold a voting share of 3 percent of the voting rights or more, must be reported providing details of their surname, first name and place of residence or company name and registered office, along with details of the voting shares attributable to them. In the event of their shareholdings subsequently reaching, falling below or exceeding a threshold under Art. 120, para. 1 FIMA, this will once again trigger a group notification obligation. A notification obligation will also be triggered when the voting share of a group member that is covered by the lock-up obligation, reaches or exceeds the threshold of 3 percent or more of the voting rights during the lock-up obligation period;
- in the event of a notification obligation arising during the lock-up obligation period, the notification and publication must include the complete and up-to-date information in accordance with this notice. Changes in the composition of the group (Art. 12, para. 3 FMIO-FINMA) must then be disclosed and published when group members to whom a voting share of 3 percent or more of the voting rights is attributable join or leave the group during the lock-up obligation period;
- group members will be subject to a notification obligation for equity securities and equity derivatives held outside the group separately from the restricted equity securities and equity derivatives. These unrestricted equity securities and equity derivatives therefore only need to be reported when equivalent to 3 percent or more of the voting rights. A corresponding notification must note that these are unrestricted equity securities and equity derivatives held outside the group and include a reference to the disclosure notification by the lock-up group that the shareholder is a member of; and
- expiry of the lock-up period will trigger a notification obligation for the group and the group must report falling below of the threshold of 3 percent of the voting rights.

Those shareholders whose individual shareholdings reach or exceed the 3 percent of the voting rights threshold due to dissolution of the lock-up group must report this to the company and the disclosure office within four trading days at the latest following dissolution of the lock-up group in accordance with the provisions of FMIO-FINMA. Shareholders who have not already individually disclosed their unrestricted positions during the lock-up obligation period (see above) will also be subject to a notification duty if their shareholdings reach or exceed a threshold after expiry of the lock-up agreement. Once again in this case, the notification must be submitted to the company and the disclosure office within four trading days at the latest following dissolution of the lock-up group in accordance with the provisions of FMIO-FINMA.

If these requirements are not met, then all members of the group must be fully disclosed. A request for exemptions and easing provisions pursuant to Art. 123, para. 2 FMIA in conjunction with Art. 26 FMIO-FINMA remains reserved.

These easing provisions regarding the disclosure of lock-up groups also apply to lock-up groups not disclosed in a prospectus but by means of a notification to the company and the disclosure office (Art. 24, para. 1 FMIO-FINMA).

The issuer must publish lock-up group notifications via the electronic publication platform. If a lock-up group is formed in respect of the initial listing of equity securities, and is reported in a prospectus, publication must take place within two trading days following the initial listing. If a lock-up group is formed in respect of a capital increase, and is reported in a prospectus, publication must take place, for issuers with their registered office in Switzerland, within two trading days following publication of the capital increase in the Swiss Official Gazette of Commerce, and for companies with their registered office abroad, within two trading days following publication of the capital increase in accordance with Art. 115, para. 3 FMIO. If disclosure of the lock-up group is not in a prospectus, but by means of a notification to the company and the disclosure office in accordance with Art. 24, para. 1 the FMIO-FINMA, publication pursuant to Art. 24, para. 3 FMIO-FINMA must take place within two trading days following receipt of the notification by the company.

This notice has been brought to the attention of the Swiss Financial Market Supervisory Authority FINMA prior to publication.