

Disclosure Office Notice

III/13

Fulfilling Disclosure Obligations when forming Groups, in Case of Changes in the Composition of the Group, and upon the Dissolution of Groups

Date of 3 December 2013
Version Amended version of 20 September 2018

Summary:

If a person who reported a significant shareholding as an individual person becomes a new member of a group, they must report falling below the threshold of 3 percent of the voting rights with the shareholding previously reported as an individual person.

If the group already had a shareholding requiring notification before the new member joined, the group must report the change in the composition of the group, regardless of whether or not a threshold is reached or exceeded on account of the new member joining. The group must also report if a member leaves the group as a change to the composition of the group (regardless of falling below threshold). If the former member of the group holds a shareholding of 3 percent of the voting rights or more, they must report their shareholding individually after leaving the group.

The dissolution of a group is subject to a disclosure obligation. The group must also report falling below the threshold of 3 percent of the voting rights. The former members of the dissolved group who individually hold a shareholding of 3 percent of the voting rights or more must, in turn, report that shareholding individually.

1. Introduction

If multiple (natural or legal) persons act in concert or as an organised group, those persons must comply with the notification obligation pursuant to Art. 120 FMIA as an organised group (Art. 121 FMIA¹). Group notifications must include, among other details, the total shareholdings, the identity of the individual members, the nature of the agreement and the representation of the group (Art. 121 FMIA in conjunction with Art. 22, para. 2, letter b FMIO-FINMA²). If a shareholding to be assigned to the group is held indirectly, the information stated in Art. 11 in conjunction with Art. 22, para. 3 FMIO-FINMA is also required.

2. Disclosure obligations when forming a group

If a group is formed, it must fulfil its notification obligation in compliance with Art. 121 FMIA in conjunction with Art. 12 and Art. 22, para. 2, letter b FMIO-FINMA. The members of the group are jointly and severally responsible for meeting the notification obligation of the group.

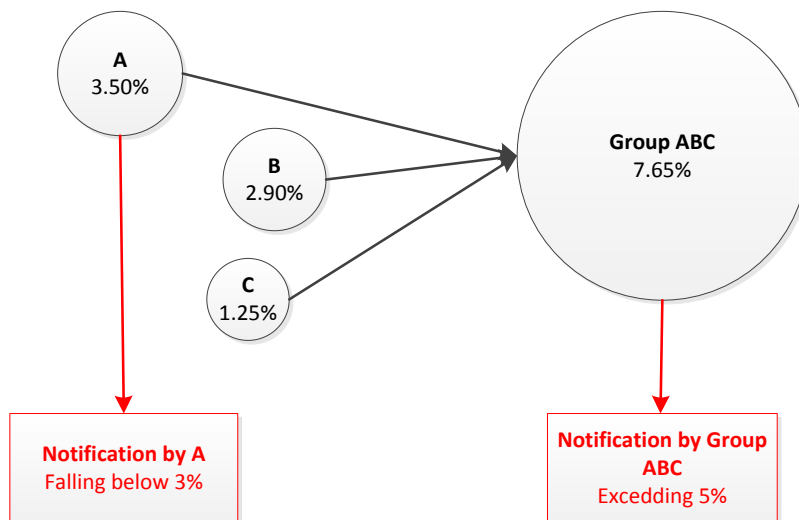
If group members who coordinate in terms of the exercise of voting rights also hold shareholdings that are not directly subject to the group agreement, such shareholding must essentially also be attributed to the group (see Disclosure Office Annual Report 2006, no. 3.2.2). Exceptionally, not attributing such shareholdings to the group may be justified however upon assessing all of the circumstances.

If a member of the group was individually subject to a notification obligation prior to formation of the group, then at the time of forming the group, individually falling below the threshold of 3 percent of the voting rights must be reported if the entire shareholding of said member is to be attributed to the group.

¹ Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Act, FMIA) of 19 June 2015 (SR 958.1).

² 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 (SR 958.111).

Example: Formation of a group

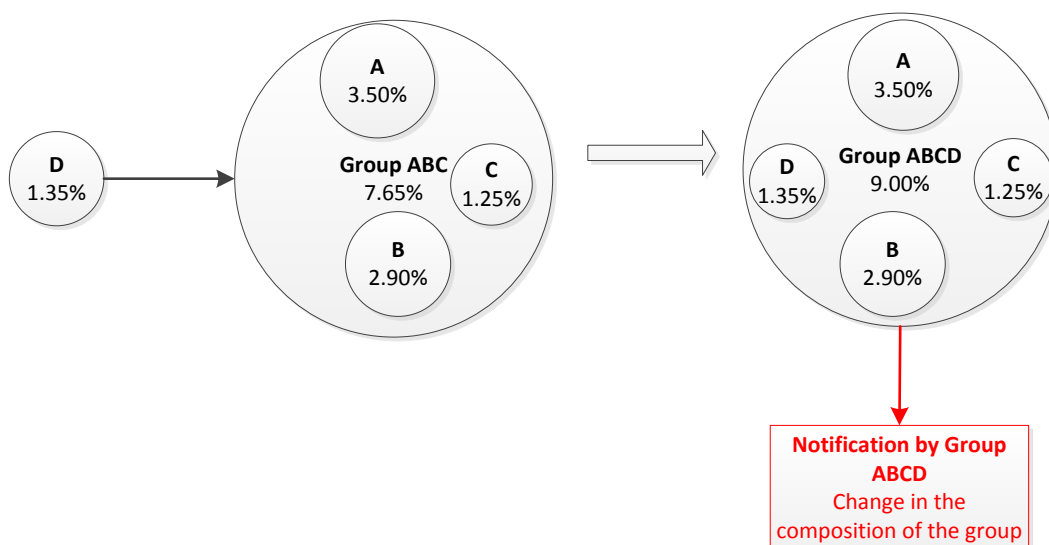


3. Disclosure obligations in case of changes to the composition of the group

When a person becomes a new member of a group, where that person joining the group causes the total shareholding of the group to reach or exceed 3 percent of the voting rights, a notification obligation will arise for the group.

A group that had already reported a shareholding of 3 percent of the voting rights or more must also report the new member joining the group even if the total shareholding of the group does not reach or exceed any threshold as a result. This is because pursuant to Art. 12, para. 3 FMIO-FINMA, any change to the composition of the group must be reported.

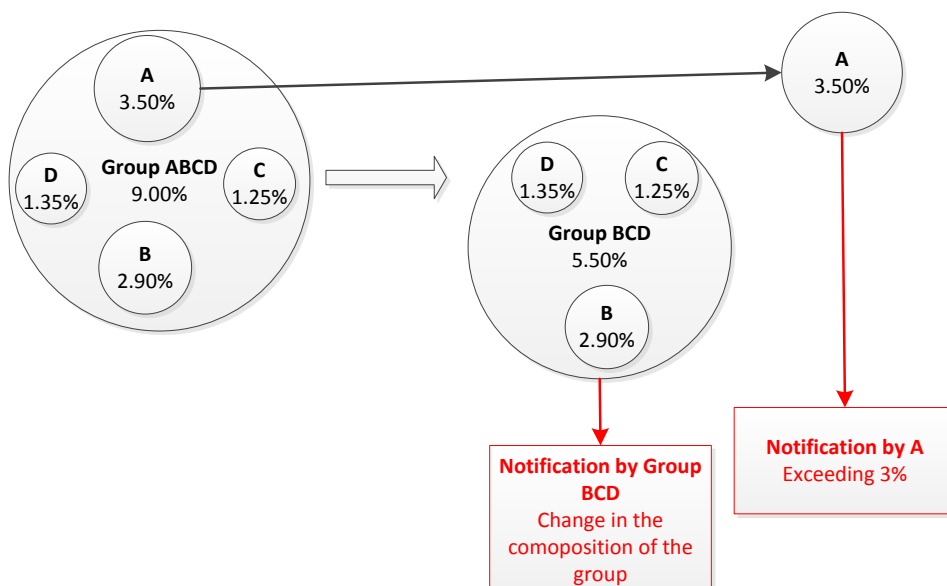
Example: Joining of a new group member



If the new group member was individually subject to a notification obligation prior to joining the group, then joining the group may trigger a disclosure obligation for that member that must be met individually. For further information on this, see the explanations in no. 2 above (disclosure obligations when forming a group).

A group that reported a shareholding of 3 percent of the voting rights or more must report if a member of the group leaves the group in accordance with Art. 12, para. 3 FMIO-FINMA, even if the total shareholding of the group does not fall below any threshold as a result of said member leaving the group. If the former member of the group holds a shareholding of 3 percent of the voting rights or more after leaving the group, they must report their shareholding individually.

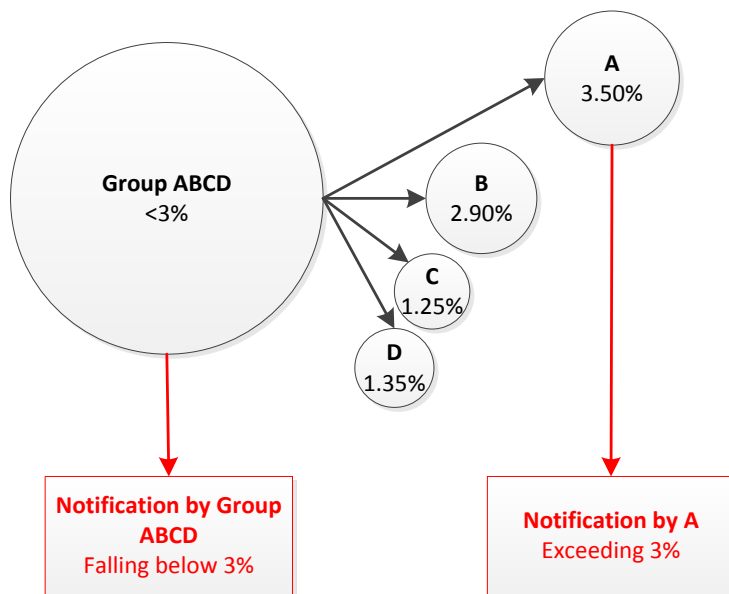
Example: A group member leaving the group



4. Disclosure obligations upon the dissolution of groups

Dissolution of a group is subject to a disclosure obligation. The group must also report falling below the threshold of 3 percent of the voting rights. The former members of the group who individually hold 3 percent or more of the voting rights after the dissolution of the group must disclose their shareholdings as an individual person.

Example: Dissolution of a group



Note: For the simplified disclosure of lock-up groups, see Disclosure Office Notice I/09 dated 7 April 2009 – Amended version of 20 September 2018.



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