



Exchange Regulation

**COMMUNIQUÉ NO. 2/2012
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Main points of focus for the review of annual reports for 2012 and 2012/2013 with regard to compliance with the Directive on Information relating to Corporate Governance

I. BACKGROUND

Periodic reporting in conformity with the requirements of the Directive on Information relating to Corporate Governance (cf. Art. 49 para. 2 Listing Rules and the Directive on Information relating to Corporate Governance [DCG]) is an integral part of the information that should enable investors to access the quality of an issuer pursuant to the Stock Exchange Act (Art. 8 para. 2 SESTA).

II. POINTS OF FOCUS

As far as corporate governance reporting is concerned, particular attention will be paid to compliance with the following points of focus in the evaluation of annual reports for 2012 and 2012/2013:

A. Content and method of determining compensation and shareholding programmes (point 5.1 Annex DCG)

The principles and elements (architecture and mechanisms, as well as details and key points of the shareholding programme and how it works) of compensation and of shareholding programmes must be explained to investors in terms that are as comprehensible as possible. Several examples are given in point 5.1 of the commentary on the DCG (Com. DCG). The key points of the process used to determine compensation and participation in the shareholding programme must be described. Whether the bodies involved have only an advisory function, or hold actual decision-making powers, must be stated. Any involvement of external consultants must also be disclosed clearly.

In addition to the process itself, the elements (objectives and components) that are factored in to compensation, as well as their weightings, must be stated for market participants in comprehensible terms. If remuneration or the weightings of the applicable criteria are set at the discretion of the competent body, this fact must be disclosed explicitly (cf. decisions of the Sanction Commission of 28 October 2010 [SaKo 2010-CG-III/10], point 4.6, of 30 November 2010 [SaKo 2010-CG-IV/10], point. 31, and of 8 December 2011 [SaKo 2011-CG-I/11], point 14).

If benchmarks are used in determining remuneration, the report must give a brief explanation of the content or composition of such benchmarks (e.g. movements in the company's share price or the share price of competing companies, or whether they are based on an index, etc.). If remuneration that is paid by other companies is taken as a comparison, then those peer companies must be named or at least described. It is not sufficient to state that they are "international companies" or "companies of the same size". Instead, further information must be given such as the nature of the company's activities, the geographic field in which it operates, the economic significance of the companies concerned, or the actual names of such peers (cf. decisions of the Sanction Commission of 11 June 2010 [SaKo 2010-CG-I/10], point 8.2, and of 30 July 2010 [SaKo 2010-CG-II/10], point 9.6).

Payments and other benefits which members of the board of directors and executive committee receive when they leave the company must also be disclosed. This disclosure must, specifically, cover agreements concerning special notice periods or longer-term contracts where they exceed 12 months in duration, "golden parachutes", the waiver of lock-up periods for equities and bonds, shorter vesting periods and additional contributions to occupational pension schemes. This information must be included in the corporate governance report even if it concerns only individual members of the highest executive bodies. The persons concerned need not be mentioned by name. A disclosure obligation also exists where the terms and benefits in questions were not agreed in advance, but were granted only at the time a member of a governing or executive body left the company during the year under review (cf. point 5.1 N 4 Com. DCG).

Where such agreements also apply in the case of a change of control over the company, the corresponding details must also be given in the statements relating to point 7.2 Annex DCG (cf. heading B below). In such cases, the issuer may choose to incorporate by reference the information concerned (cf. Art. 6 DCG, ref. no. 6 N 1 Com. DCG).

Where a new member of the board of directors or executive committee receives a special payment when they join the company (i.e. a "golden handshake"), we recommend that this is also mentioned in the corporate governance report.

B. Change-of-control clauses (point 7.2 Annex DCG)

In its statements on corporate governance, the issuer must disclose whether agreements or schemes benefiting members of the board of directors and/or executive committee contain "change-of-control" clauses. The existence of such clauses in respect of other members of management – specifically, those holding key functions within the company – must also be mentioned. The persons concerned need not be mentioned by name. The aim of this disclosure obligation is to inform the investor whether or not the persons in question are "protected" by certain contractual conditions against the consequences of takeovers. Market participants should be able to determine whether or not a takeover would trigger certain obligations toward senior management individuals. Factors which must be disclosed in this connection include "golden parachutes", special provisions on the cancellation of contractual arrangements, agreements concerning special notice periods or longer-term contracts where they exceed 12 months, the waiver of lock-up periods for options, shorter vesting

periods, additional contributions to pension funds, etc. (cf. point 7.2 N 1 et seqq. Com. DCG).

III. CONCLUDING REMARKS

By rigorously enforcing the provisions of the DCG, SIX Exchange Regulation aims to improve the transparency of corporate governance. It regularly adapts its checks to accommodate new developments. Annual reports are examined by means of random sampling. Each issuer whose annual report statements on corporate governance are examined will receive at least a comment letter notifying them of the outcome of the review.

IV. FURTHER INFORMATION ON CORPORATE GOVERNANCE

The provisions governing information relating to the corporate governance of companies listed on SIX Swiss Exchange AG are available at the following URL:

http://www.six-exchange-regulation.com/obligations/governance_en.html

Previously published sanctions imposed for irregularities in corporate governance may be viewed at:

http://www.six-exchange-regulation.com/enforcement/sanction_decisions/corporate_governance_en.html

SIX Exchange Regulation Communiqués are published in English, German and French on the internet at:

http://www.six-exchange-regulation.com/publications/communiqués_en.html

http://www.six-exchange-regulation.com/publications/communiqués_de.html

http://www.six-exchange-regulation.com/publications/communiqués_fr.html

