

NewsLetter

No. 58 June 2005

New SWX-Rules on Ad Hoc Publicity and Disclosure of Management Transactions

On 1 July 2005, amendments of the SWX Swiss Exchange's listing rules on Ad hoc publicity and the disclosure of management transactions will become effective. Details regarding the new provisions are regulated in two new directives that will come into force at the same time. The main features of the new rules are summarized below.

Ad Hoc Publicity

"Ad hoc publicity" refers to the obligation of an issuer listed on the SWX Swiss Exchange ("SWX") to disclose potentially price-sensitive facts to the public, in principle, as soon as the issuer knows them. The purpose is to ensure that the public obtains true, clear and complete information on significant events arising in the course of the issuer's business activities. All present and potential investors shall thereby receive the same information to enable them to make an informed decision whether to sell, buy or hold the issuer's securities and to prevent investors who have inside information from having a more advantageous position than those who do not have access to such information.



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The current Article 72 of the listing rules of the SWX (the "Listing Rules") on ad hoc publicity is shortened and clarified by the new rules and reflects the recent practise of the SWX. The bulk of the regulation will now be found in the Directive on Ad Hoc Publicity, which will replace the Admission Board Circular No. 2 of 2 November 1998.

The manner of disclosing potentially price-sensitive information set forth in clause 3 of the directive is new. The issuer has to provide a service on its website that allows interested parties to receive, via e-mail distribution, free and timely notification of potentially price-sensitive facts (push system). The link for such

registration must be communicated to the SWX so that it can publish the link on its own website. When a published ad hoc notice is distributed, it must at the same time be made accessible on the issuer's website and remain accessible on that website for at least two years (pull system).

Further information on ad hoc publication will be included in updates of the Commentary Regarding Ad Hoc Publicity Directive.

Disclosure of Management Transactions

Articles 74a and 81 point 7 of the Listing Rules on the disclosure of management transactions also are new. Article 74a sets forth the obligation of the issuer to require its members of the board of directors ("Directors") and members of the senior management ("Managers") to report direct or indirect investments or divestments in (a) equity securities, (b) convertible securities and purchase rights in respect of the issuer's shares and (c) financial instruments whose price is largely influenced by the issuer's own equity securities. The directive specifies these instruments in more detail and states that transactions are relevant if they directly or indirectly affect the reporting person's wealth or are materially based on his or her own conscious decision. The directive excludes from the reporting requirement acquisitions of instruments based on employment agreements and compensation schemes if the beneficiary has no discretion in receiving such instruments.

The report has to be made by the issuer within a period of two consecutive days on which the SWX is open (trading days). Paragraph 2 of Article 74a lists the information to be provided, which includes in particular the price that was paid or received in the reported transaction. It is worth mentioning that the reporting obligation applies only to Directors and Managers of the listed company itself and not to directors and managers of any affiliated companies.

The issuer has to forward to the SWX information received from a person required to notify transactions. This notification is made through the web-based SWX notification platform. The issuer's notification obligation depends on the total value of reported transactions within a calendar month:

- If the total value of transactions concluded and notified by a person that is subject to the notification obligation within one calendar month exceeds CHF 100,000, the issuer must report these transactions and provide the details specified in Article 74 paragraph 2 of the Listing Rules to the SWX within two trading days.
- If such total value of such transactions does not exceed CHF 100,000, the issuer must notify the SWX of the transactions reported to it in aggregate form (batch form), broken down by persons who have notified, within four trading days following the end of the calendar month.

The directive makes clear that in order to calculate the total value, all reported transactions have to be added up, irrespective of whether they relate to a purchase or a sale transaction.

The SWX publishes the essential information contained in these notifications on the same trading day if possible. It is important to note that the name of the person subject to the notification obligation will not be disclosed. Rather, he or she will only be designated as executive Director, executive Manager or non-executive Director. The so published notifications will remain publicly accessible on the SWX website (pull system) for one year.

Article 81 point 7 of the Listing Rules deals with sanctions. The Admission Board or the Disciplinary Commission of the SWX can impose sanctions on an issuer that, despite being admonished by the Admission Board to do so, does not take action against a Director or Manager who has not met his or her obligation to notify transactions under Article 74a of the Listing Rules and does not force the Director or Manager to make the prescribed notification. Practise will have to show what measures of enforcement against the Director or Manager the issuer has to take in order to avoid sanctions because it is clear that the affected Director or Manager is required to make the notification, not the issuer, and ultimately, the affected Director or Manager cannot be "forced" to

make a notification. The potential sanctions are listed in Articles 82 and 82a of the Listing Rules.

The new provisions of the Listing Rules regarding the disclosure of management transactions and the corresponding directive will be complemented by a commentary from the SWX that is likely to become available in June 2005.

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The ww&p NewsLetter provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this NewsLetter should seek specific advice on the matters which concern them.

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