BÄR & KARRER

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REVISED SIX REGULATIONS ON DISCLOSURE OF MANAGEMENT TRANSACTIONS AND AD HOC PUBLICITY

INTRODUCTION

On 1 November 2023, the Regulatory Board of the SIX Group announced amendments to its regulations pertaining to the disclosure of management transactions and ad hoc publicity. The revised rules will enter into force on 1 February 2024. This means that issuers listed on SIX Swiss Exchange will need to update their internal policies and procedures and provide training for their board and executive committee members prior to such date. This briefing provides an overview of the key changes.

DISCLOSURE OF MANAGEMENT TRANSACTIONS

MANAGEMENT TRANSACTIONS WITH RELATED PARTIES

According to the new article 56 para. 3 of the Listing Rules dated 23 August 2023 (entering into force on 1 February 2024) ('nLR') and article 5 para. 1bis of the revised Directive on the Disclosure of Management Transactions dated 28 June 2023 (entering into force on 1 February 2024) ('rDMT'), **transactions between members of the board of directors or of the executive committee**[1] **and related parties** of such persons must be reported and, which is new, specifically described as transactions with related parties. A related party is a natural person (for instance, spouses, partners, children or persons living in the same household) or legal entity (due to control) which has a relationship with the board or management member that is closer than that of other parties. It is the responsibility of the relevant member of the board of directors or of the executive committee to notify the issuer of such transactions (art. 56 nLR in connection with article 2 DMT). The reporting duty for transactions between persons subject to the reporting obligation and their respective related parties ends when a person ceases to be a board member or a member of the executive committee or when the related party relationship ends[2] (for instance upon a divorce).

The revised Guidelines on the DMT (version as of 1 February 2024) issued by SIX Exchange Regulation Ltd. ('SER') recommend that when describing the transaction, the relationship between the individual subject to the obligation and the related party should be described in anonymised form (for example: "Acquisition of shares from directly controlled legal entity").

In certain cases, transactions with a related party, and equally with third parties, continue to be exempt as per article 5 para. 2 DMT, e.g., gifts or inheritances. However, under the new rules, **if the transaction with a related party was exempt, the subsequent transaction conducted by the related party with a third party is reportable**, regardless of whether the assets of the person subject to the reporting obligation are affected or whether or not the transaction is carried out under the

[1] In addition, until one month after the end of the lock-up-period, sponsors and founding shareholders of SPACs are also deemed to be persons subject to the reporting requirements (article 89p nLR).

[2] Note that in such case the transaction must still be reported by the respective board member or member of the executive committee, but not as a transaction with a related party.

significant influence of the person subject to the reporting obligation (article 5 para. 3 rDMT). The responsibility for notifying the issuer lies with the persons subject to the reporting obligation (i.e., member of the board or of the executive committee). Such notification must be made no later than on the second trading day after conclusion of the reportable transaction (*Verpflichtungsgeschäft*) or, if the transaction was undertaken on a stock exchange, after execution of the transaction by the related party (article 56 para. 2 LR). In these cases, it is recommended to also describe the original transaction and not only the follow-up transaction. To ensure compliance with such later notification duty, the relevant member of the board or executive committee should consider imposing a respective requirement on the related party when it carries out the exempt transaction.

Transactions of related parties carried out under the significant influence of a person who is subject to the reporting obligations are still – as under the current disclosure rules – subject to the reporting obligation of the respective board or executive committee member. In this respect, the revised Guidelines on the DMT specify that if a transaction of a related party is carried out under the significant influence of several such persons, the individual persons subject to the reporting obligation have to report the transaction on a pro rata basis. In such case, the report should specify in the publication comments field that the related party is related to several persons subject to the reporting obligation, who are reporting the transaction on a pro rata basis.

DISCLOSURE OF UNLISTED CLASSES OF SHARES

Article 1 DMT (specifying its scope of applicability) was supplemented by a second paragraph, stating that transactions in listed and unlisted securities of the issuer have to be reported if at least one category of equity securities of such issuer is listed. As a result, it is irrelevant whether all or only part of the equity securities of an issuer are listed – all transactions, even those in unlisted equity securities (or derivatives on such securities) of an issuer, have to be reported if at least one category of equity securities of such issuer is listed.

CONTENT OF THE DISCLOSURE NOTIFICATION

Furthermore, article 4a rDMT now explicitly stipulates that if the conversion or purchase right or the financial instrument is not listed, the primary terms and main conditions of the transaction must be disclosed, including the subscription ratio, the strike price, the exercise period, exercise type, underlying equity security (if the company has several types of equity securities) and further details or descriptions to illustrate the conversion and share purchase right or derivative instruments, if necessary for an understanding of the instrument. This provision is based on article 56 para. 4 point 5 of the (current) LR, and was already recommended by the SER in its current Guidelines on the DMT. Article 4b rDMT includes details on the determination and disclosure of the total value of the transaction as per article 56 para. 4 LR (which were previously only part of the SER's Guidance on the DMT).

OBLIGATION TO CORRECT REPORTS

According to the revised DMT, should issuers identify errors on a submitted report on the electronic platform, they are required immediately to submit a corrected report. This too was already recommended in the previous Guidelines on the DMT, but is now mandatory as per the new article 8 para. 1bis rDMT.

OTHER CHANGES

There were several further, smaller additions and specifications to the DMT which were already recommended by the SER before this revision, but which have now been explicitly included in the rDMT, such as the commencement of the reporting obligation with the execution of the order – the so-called 'matching' – in case of transactions settled via an exchange (article 7 para. 1 rDMT), or the prohibition to offset purchases and sales in a notification (article 7 para. 2 rDMT). In addition, article 7a rDMT now explicitly states that the notification period in case of a public tender offer commences on the last day of the additional acceptance period.

Furthermore, certain existing obligations were moved from the DMT to the nLR, underscoring the importance of these rules from a SIX perspective. This includes the issuer's responsibility to instruct and train those persons subject to the reporting obligation appropriately about their duty and to take measures in case of non-compliance, as well as the provision that reported information be stored for four years in SER's electronic database.

AD HOC PUBLICITY

With respect to ad hoc publicity, there were two key changes, one of them formal and the other of substantive nature:

First, as a formal change but underscoring the importance of this rule from a SIX perspective, the existing provision regarding **per se price sensitivity** was moved from article 4 para. 2 of the Directive on Ad hoc Publicity dated 10 March 2021 ('DAH') to article 53 para. 1ter nLR. It states that apart from annual and interim reports pursuant to articles 49 and 50 LR, which must always be published by way of an ad hoc announcement pursuant to article 53 LR, there are no facts that are always classified as price sensitive; consequently, whether or not the disclosure of a fact is capable of triggering a significant price change must be decided on a case-by-case basis.

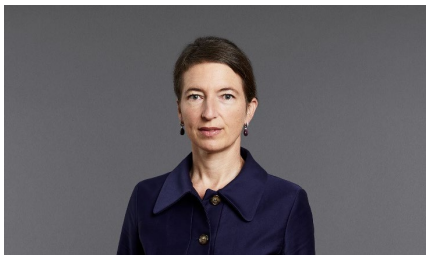
In addition, contrary to the current rules, according to which annual and interim reports always have to be published by way of an ad hoc announcement, the nLR now differentiate between issuers of equity securities and issuers of debt securities: Under the new rules, **the per se price sensitivity of these reports will only apply to issuers of equity securities**.

REQUIRED ACTIONS

The revised rules will enter into force on 1 February 2024, only three months after their announcement. Issuers should therefore proceed swiftly to:

- amend their internal policies to reflect the recent changes; and
- provide information and training for those persons subject to reporting obligations for management transactions with respect to these updates (internally documenting the measures taken). Note that based on case law of the SIX sanctions commission, a personal instruction of the members of the board of directors and the executive committee is required to fulfil the issuer's duties in connection with the reporting of management transactions. This means that it is not sufficient simply to distribute the amended internal policies.

AUTHORS



Dr. Mariel Hoch
Partner
T: +41 58 261 56 13
mariel.hoch@baerkarrer.ch

Dr. Urs Kägi, LL.M.
Partner
T: +41 58 261 55 99
urs.kaegi@baerkarrer.ch

Dr. Vera Naegeli, LL.M.
Partner
T: +41 58 261 55 89
vera.naegeli@baerkarrer.ch

Marie-Cristine Kaptan, MBA, LL.M.
Senior Associate
T: +41 58 261 55 77
marie-cristine.kaptan@baerkarrer.ch