

Newsletter March 2016

Financial Market Infrastructure Act and its implementing ordinances – Provisions concerning disclosure of shareholding / End of transitional period on 31 March 2016

1. Generalities

On 1 January 2016, the Financial Market Infrastructure Act ("FMIA") and its implementing ordinances, inter alia the Financial Market Infrastructure Ordinance ("FMIO") and the Financial Market Infrastructure Ordinance - FINMA ("FMIO-FINMA") came into force.

Art. 120 to 124 FMIA and Art. 10 to 29 FMIO-FINMA include provisions with regard to the disclosure of shareholdings. Most of these provisions are not new as they used to be included in the Stock Exchange Act and in the Stock Exchange Ordinance – FINMA.

2. New disclosure duties linked to discretionary power to exercise the voting rights

As before, anyone who directly or indirectly or acting in concert with third parties acquires or disposes of shares or acquisition or sale rights relating to shares of a company with its registered office in Switzerland whose equity securities are listed in whole or in part in Switzerland, or of a company with its registered office abroad whose equity securities are mainly listed in whole or in part in Switzerland, and thereby reaches, falls below or exceeds the thresholds of 3%, 5%, 10%, 15%, 20%, 25%, 33⅓%, 50% or 66⅔% of the voting rights, whether exercisable or not, must notify this to the company and to the stock exchanges on which the equity securities are listed.

Anyone who has the discretionary power to exercise the voting rights associated with equity securities in accordance with the former paragraph is now also subject to this notification obligation. This new obligation is in particular of importance for asset managers and applies in addition to any disclosure obligation of the beneficial owner. However, the disclosure notifications will have to specify whether the notification is based on beneficial ownership or discretionary power to exercise the voting rights. If the person who has the discretionary power to exercise the voting rights is a legal entity, the notification must be

made by the person who directly or indirectly controls this legal entity.

Due to the new disclosure obligation linked to the discretionary power to exercise the voting rights, the definition of beneficial ownership has been amended. According to the new definition the beneficial owner is the person having the voting power and the economic risk linked to the shares.

3. Provisions re disclosure duties of collective investment schemes

As before, the Swiss and foreign collective investment schemes authorized for public distribution in Switzerland are deemed to be the beneficial owners of the positions they hold; for this reason, their disclosure duties must be fulfilled by their fund management company or the fund itself respectively. The positions to be disclosed must be aggregated at the level of the fund management company, of each collective investment scheme and - in case of umbrella funds - of each sub-fund of the corresponding collective investment scheme.

With regard to foreign collective investment schemes not authorized for public distribution in Switzerland, a distinction is made between collective investment schemes which are dependent of a group ("sponsored funds") and those which are independent. While the disclosure duties of independent collective investment schemes correspond to the disclosure duties of collective investment schemes authorised for public distribution in Switzerland (see paragraph before), the disclosure duties of sponsored funds are to be taken care of at group level. Disclosable positions held by sponsored funds have to be aggregated with those of their "sponsor" financial group.

4. Transitional provisions / End of transitional period on 31 March 2016

The transitional provisions of the FMIO-FINMA provide in particular for the following:

- Disclosure notifications made according to the previous legal provisions before 1 January 2016 remain valid, in particular notices that included information no longer required do not need to be amended immediately.
- Facts having occurred before 1 January 2016 and which did not need reporting under the previous legal provisions but which must now be reported under the new or amended provisions of the FMIA and FMIO-FINMA, must be reported by **31 March 2016**. This applies for instance to the disclosable positions held by asset managers.

The content of this Newsletter does not represent legal advice and may not be used as such. For a personal consultation, please get in touch with your contact at Suter Howald Attorneys at Law. Should you have further questions in relation to the topics in this Newsletter, please contact:

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