

## Media Release

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### **Record high number of disclosure notifications after tightening of the law**

#### **Disclosure Office of SIX Swiss Exchange publishes its 2008 annual report**

**The number of reports submitted by significant shareholders trebled in 2008. With the revised law governing disclosure obligations, Switzerland is playing a leadership role and enhancing the transparency of significant shareholdings in listed companies. The Disclosure Office also set records in terms of the number of requests received for the evaluation of the existence of a disclosure obligation or the grant of exceptions and easier disclosures, as well as the number of suspected cases of reporting violations forwarded to the attention of the Swiss Financial Market Supervisory Authority (FINMA).**

In 2008, more than 1,400 reports regarding significant shareholders were submitted to the SIX Swiss Exchange Disclosure Office, representing a 65% increase over the previous year (944 reports) and three times as many compared to the multiyear average (see Annual Report 2008, Section 5). Deemed to be significant shareholders are those who control more than 3% of the voting rights of a company domiciled in Switzerland. The disclosure of significant shareholders creates transparency with regard to the ownership of listed companies, and acts as an early warning system in terms of potential corporate takeovers.

The increased number of reports is by and large attributable to the revised federal law governing the disclosure of shareholdings, which entered into force in December 2007. With the partial revisions introduced in 2007 and the total revision enacted as of 1 January 2009 in conjunction with the introduction of the Stock Exchange Ordinance-FINMA, the disclosure obligations of significant shareholders have been broadened markedly. A brief overview of the new aspects that entered into force on 1 January 2009 can be found in the accompanying annual report (see Annual Report 2008, Section 3). The currently valid rules governing the disclosure of shareholdings, in particular the obligation to disclose sale positions (e.g. put options), as well the reporting requirement for financial instruments, lead the way by international comparison and afford substantially enhanced transparency.

With the electronic publication platform introduced by the Disclosure Office in November 2008, the relevant information can be made available to the public faster

and more efficiently than ever before. Most disclosure reports are now accessible via the SIX Exchange Regulation Website already on the day following their submission to the company (see Annual Report 2008, Section 6). By way of comparison, it was previously the case that a week or more could pass between the time a report was received and when it was officially published in the Swiss Official Gazette of Commerce.

The revised penal provisions of the Disclosure Act now provide for prosecution not only of willful but also negligent violation of the reporting obligation. In addition, there exists the possibility since December 2007 to suspend the shareholder's voting rights in the event of a rule violation. This has sensitized market participants: the increased need for legal certainty is being more frequently satisfied these days by their requesting a recommendation from the Disclosure Office. The recent distortions in the financial markets and resulting corporate recapitalizations also have contributed to an increase in the number of requests. In 2008, the Disclosure Office addressed a total of 76 requests for rulings in advance regarding disclosure obligations as well as for exceptions and easier disclosure. Thus compared to the 33 recommendations issued in the previous year, the number of requests administered in 2008 more than doubled (see Annual Report 2008, Section 4.3).

In parallel with the increase in reports, the number of suspected cases of reporting requirement violations also rose: 78 instances were referred to the supervisory authority in 2007 compared to the 101 cases the Disclosure Office forwarded to the attention of FINMA in 2008. According to FINMA's 2008 annual report, it filed charges with the Federal Department of Finance only in two cases. The Disclosure Office was also not aware of any sanctions pronounced by the Finance Department in 2008. However, with the 1 January 2009 introduction of criminal liability for negligent violation of the reporting obligations, an increase in the number of sanctions can be reckoned with (see Annual Report 2008, Section 7).

The Disclosure Office was established upon the introduction of the obligation to disclose shareholdings in Swiss-domiciled companies whose equity securities are listed at least in part in Switzerland, if and when the relevant shareholding reaches, exceeds or falls below the threshold values of 3, 5, 10, 15, 20, 25, 33  $\frac{1}{3}$ , 50 and 66  $\frac{2}{3}$  %. The task of the Disclosure Office is to receive the related reports, monitor the pertinent reporting and publication obligations, advise FINMA of any potential violations of the disclosure obligations, grant exceptions and easier disclosure with regard to the reporting obligation, and rule on the existence or non-existence of a duty to disclose. The Disclosure Office is a stand-alone department within the SIX Exchange Regulation unit. The Disclosure Office's fulfilment of any legal requirements is subject to the supervision of FINMA, whereby the Disclosure Office is not accorded sovereign authority in this regard.

The 2008 annual report of the SIX Swiss Exchange AG Disclosure Office can be accessed, in German, via the following link: [http://www.six-exchange-regulation.com/duties/disclosure/annual\\_reports\\_en.html](http://www.six-exchange-regulation.com/duties/disclosure/annual_reports_en.html)

Further information can be obtained at [Disclosure of Shareholdings](#).

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