

swiss code of best practice for corporate governance

Imprint

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In co-operation with SWX Swiss Exchange, economiesuisse, invited interested members and organizations to take part in a broad-based Panel of Experts on Corporate Governance (members see page 3) pursuant to a decision of its Board of 22nd August 2000. The following Working Group was formed from this Panel to prepare and publish a Code of Best Practice on Corporate Governance:

- **Prof. Peter Böckli**, Attorney-at-law, member (*inter alia*) of the Boards of Directors of Nestlé SA (Audit Committee) and UBS (independent Vice-Chairman) – author of the Swiss Code;
- **Prof. Karl Hofstetter**, University of Zurich, General Counsel/Executive Vice President Schindler Holding AG (therefore a representative of a typical large Swiss group with a strong family shareholding) – author of the analysis report;
- **Thomas Hodler**, J.S.D., General Secretary, Swiss Re;
- **Richard T. Meier**, Ph. D., SWX Swiss Exchange, Project Manager for Corporate Governance guidelines;
- **Christian Stiefel**, Federation of Swiss Industrial Holding Companies,
- as well as **Thomas Pletscher**, Member of the Executive Board, economiesuisse, and Chairman of the Panel of Experts, who attended part of the meetings.

This working group also undertook the reconciliation of the Swiss Code and the SWX Swiss Exchange guidelines on corporate governance. The Swiss Code of Best Practice for Corporate Governance (hereafter «Swiss Code») was unanimously approved on 25th March 2002 by the Board of Directors of economiesuisse on the unanimous recommendation of the Panel of Experts. The following organizations, which follow closely the topic of corporate governance in the context of their statutory activities, have explicitly endorsed the Swiss Code:

	Date of endorsement
ASIP Swiss Association of Pension Funds Talstrasse 20, 8001 Zurich	25 th April 2002
Association of Private Limited Companies St. Jakobs-Strasse 7, Postfach 2879, 4002 Basel	17 th April 2002
Confederation of Swiss employers Hegibachstrasse 47, 8032 Zurich	29 th April 2002
ethos – Swiss Investment Foundation for Sustainable Development Place Cornavin 2, Case postale, 1211 Geneva 1	29 th April 2002
Federation of Swiss Industrial Holding Companies Luisenstrasse 38, Postfach 209, 3000 Berne 6	25 th April 2002
SGCI Swiss Society of Chemical Industries Nordstrasse 15, Postfach, 8035 Zurich	6 th June 2002
sgv – Umbrella organization of small and medium-sized enterprises SME Schwarztorstrasse 26, Postfach, 3001 Berne	19 th April 2002
SwissBanking Swiss Bankers Association Aeschenplatz 7, Postfach 4182, 4002 Basel	22 nd April 2002
Swiss Institute of Certified Accountants and Tax Consultants Limmatquai 120, Postfach 892, 8025 Zurich	8 th April 2002

Swiss Insurance Association C.F. Meyer-Strasse 14, 8002 Zurich	8 th May 2002
Swissmem Kirchenweg 4, Postfach, 8032 Zurich	16 th April 2002
Swiss Retail Federation Marktgasse 50, Postfach, 3000 Berne 7	2 nd May 2002
Swiss Society of Financial Analysts and Portfolio Managers (SSFP) Feldstrasse 80, 8180 Bülach	9 th April 2002

economiesuisse will be responsible for the further development of the Swiss Code. It will coordinate the procedure for the approval of amendments.

The following organizations and companies were represented in the «Corporate Governance» Panel of Experts:

- ABB Ltd, Zurich
- Alcan Holding Switzerland AG, Zurich
- ASIP – Swiss Association of Pension Funds, Zurich
- Bâloise Holding, Basel
- Bühler AG, Uzwil
- Ciba Speciality Chemicals AG, Basel
- Clariant International Ltd., Muttenz
- Credit Suisse Group, Zurich
- Ethos – Swiss Investment Foundation for Sustainable Development, Geneva
- F. Hoffmann-La Roche AG, Basel
- Georg Fischer AG, Schaffhausen
- Lombard, Odier & Cie., Geneva
- Lonza Group AG, Zurich
- Nestlé SA, Vevey
- Novartis International AG, Basel
- Rieter Holding AG, Winterthur
- Schindler Holding AG, Hergiswil
- SwissBanking Swiss Bankers Association, Basel
- Confederation of Swiss employers, Zurich
- Swiss Society of Financial Analysts and Portfolio Managers (SSFP), Bülach
- Swiss Insurance Association, Zurich
- SGS Société Générale de Surveillance Holding SA, Geneva
- Swiss Banking Institute, University Zurich, Zurich
- Swiss Re, Swiss Reinsurance Company, Zurich
- Swiss Retail Federation, Berne
- Swissca Holding AG, Berne
- SwissCham, Zurich
- Swissmem, Zurich
- SWX Swiss Exchange, Zurich
- Swiss Institute of Certified Accountants and Tax Consultants, Zurich
- UBS AG, Zurich and Basel
- Association of Private Limited Companies, Basel
- Federation of Swiss Industrial Holding Companies, Berne
- Versicherungskasse der Stadt Zürich, Zurich
- Zurich Financial Services, Zurich

1 Since *economiesuisse* is the federation of Swiss businesses from all sectors of the economy (industry, financial sector, other services), it is the appropriate private sector institution to establish the principles of corporate governance in Switzerland.

In the light of international discussions and on the initiative of interested circles, *economiesuisse* entrusted a «Corporate Governance» Panel of Experts at the beginning of 2001 with the task of unifying the different efforts to codify all the various aspects of corporate governance in Switzerland. Pre-existing models form a reliable basis for the Swiss Code, first and foremost those from Great Britain («*Cadbury Report*» 1992, «*Hampel Report*» 1998 and the «*Combined Code*», which is compulsory for all companies listed in London). Further text proposals are based on models from a number of other countries such as France (*Rapport Viénot*) and recently Germany (the corporate governance study of July 2001 by the «*Baum Commission*» appointed by the Federal Chancellor and the «*German Corporate Governance Code*» published in February 2002).

2 The «*Swiss Code*» addresses the situation in Switzerland with its characteristic mixture of large, medium and small companies. Here, despite all the criticism, there has been a gradually perceptible improvement in corporate practices since the revision of the Company Law, which came into effect on 1st July 1992. The conceptual principles of this law differ from German and Anglo-Saxon company laws. The «*Swiss Code*» will comprehensively embody the high standard of practices which – with some well-known exceptions – are now being widely observed by many exemplary companies in Switzerland. At a time when capital markets are being linked worldwide the «*Swiss Code*» will give mainly foreign investors an idea of what has been achieved and what is anticipated in corporate governance practices.

3 The «*Swiss Code*» is intended as recommendations for *Swiss public limited companies*. *Non-listed* economically significant companies or organizations (also in other legal forms) should be able to develop appropriate guidelines from the Swiss Code.

4 Each of the participating *organizations* should be free to emphasize the importance of different aspects and pursue its own ideas in the development of the «*Swiss Code*», even departing where necessary from its core aspects.

5 The question of *capital structure* and particularly the principle of «*one share – one vote*» requested by investors are not part of the «*Swiss Code*». The reasons for this decision are set forth in the analysis report «*Corporate Governance in Switzerland*» by Professor Karl Hofstetter and discussed in detail by the Panel of Experts. According to the guidelines of SWX Swiss Exchange, however, each restriction on the proportional capital voting rights is subject to *disclosure*.

6 As in other countries, corporate governance in Switzerland is *governed by current Swiss law*. Some foreign criticism shows that certain peculiarities of Swiss company and stock exchange law have not been sufficiently taken into consideration. The separate report «*Corporate Governance in Switzerland*», written by Professor Hofstetter in collaboration with the Working Group, analyses the major points of criticism and the provisions of currently applicable Swiss Law. This report deals especially with the current state of the *Swiss stock exchange and take-over law* (notification threshold, public offers, threshold for compulsory offering, opting out, ad hoc publicity, half year reports, accounting standards, etc.). Most of these aspects have a connection with corporate governance as well but cannot, or can only to some extent, be the object of recommendations of a «*Code of Best Practice*». The «Swiss Code» presented here should be understood in the light of this analysis.

«Corporate Governance» as a guiding principle

Corporate governance encompasses the full range of principles directed towards shareholders' interest seeking a good balance between direction and control and transparency at the top company level while maintaining decision-making capacity and efficiency.

The «Swiss Code of Best Practice for Corporate Governance» as a guideline and recommendation

The Swiss Code of Best Practice for Corporate Governance («Swiss Code») is intended for public limited companies. Certain provisions are addressed to institutional investors and intermediaries. The purpose of the «Swiss Code» is to set out guidelines and recommendations, but not force Swiss companies into a straightjacket. Each company should retain the possibility of putting its own ideas on structuring and organization into practice.

I Shareholders

1 **As investors, shareholders have the final decision within the company.**

- The powers of the shareholders are defined by statute. They alone are entitled to make decisions with regard to personnel matters at the top company level (electing and granting release to members of the Board of Directors and appointing the company's auditors), the final approval of accounts (annual and consolidated financial statements) and policy on distributions and shareholders' equity (dividends, increase in capital or reduction of capital). The shareholders determine in the Articles of Association the purpose of the company and other key elements and rules. Their approval is required for decisions on mergers, demergers, changes in the Articles of Association and liquidation.
- Shareholders exercise their rights in the General Shareholders' Meeting and have the right to make motions on items prescribed by the agenda. They may also request information on company matters not included in the agenda and, if appropriate, a special audit.
- Institutional investors, nominees and other intermediaries exercising shareholders' rights in their own name should ensure, as far as possible, that beneficial owners may exercise their influence as to how such shareholders' rights are brought to bear.
- Where registered shares are acquired through custodian banks, the latter should invite the party acquiring the shares to apply for registration in the company's Register of Shareholders.

2 **The company should endeavour to facilitate the exercise of shareholders' statutory rights.**

- To this end the Articles of Association may lower to an appropriate degree the statutory threshold for shareholders to place items on the agenda or to convene an Extraordinary General Shareholders' Meeting.
- If the General Shareholders' Meeting reduces the par value of shares through repayment, the Board of Directors should review whether it would be appropriate to adjust the required threshold (relating to requests to place items on the agenda, convene meetings or, where appropriate, for a special audit to be carried out) to ensure that shareholders' rights are not curtailed.
- The Articles of Association should be available in writing or in electronic form at any time.

3 **The company should ensure that the General Shareholders' Meeting is used as a forum for communication so that it is well-informed in discharging its function as the highest corporate authority.**

- The Board of Directors should inform the shareholders in such a way that they can exercise their rights in the knowledge of the essential basis of their decisions.

- The company should, when convening meetings, provide concise explanations on agenda items and on motions put forward by the Board of Directors. Requests by shareholders to place items on the agenda and motions made by them should, if received in time, be officially communicated.

4 The company should facilitate the participation of shareholders at General Shareholders' Meetings by clearly setting dates and time limits well in advance.

- The Board of Directors should give notice of the date of the next ordinary General Meeting as early as possible.
- The company should give notice of the deadline for shareholders to propose items for the agenda as well as corresponding motions. This date should not be set any further in advance of the meeting's date than necessary.
- If the Board of Directors sets a deadline prior to the General Meeting in order to identify the persons entitled to exercise shareholders' rights, this deadline, both for holders of registered and of bearer shares, should ordinarily be no more than a few days before the date of the meeting.

5 The organization of the meeting should enable shareholders to make relevant and concise comments on the agenda items.

- The Chairman should use his¹ powers to ensure that shareholders may exercise their rights. He should conduct the meeting in a balanced and purposefully way.
- In the interest of the efficient running of the meeting the Chairman should take care that there be no rambling, repeated or unnecessarily derogatory statements. He may limit the time allotted to each speaker, if there are numerous requests to speak on the same agenda item.

6 Arrangements should be made to ensure that shareholders' rights to information and inspection are met.

- The Chairman should answer questions which are in order and relate to the company or arrange for a competent specialist or the Chairmen of the Board Committees to reply.
- Complex questions or those having a number of different aspects should be submitted to the Board of Directors in writing in sufficient time to allow for a response to be prepared.
- The minutes of the meeting should be made available to the shareholders as soon as possible but not later than three weeks after the meeting's date.

¹ Terms which indicate a particular gender are intended to denote either gender.

7 In the General Shareholders' Meeting the will of the majority should be clearly and fairly expressed.

- The Chairman should implement the voting procedures in such a way that the majority will can be determined in as an unambiguous and efficient a way as possible.
- In the absence of a clear majority, the Chairman should arrange for voting to take place by written or electronic ballot. If voting takes place by a show of hands, shareholders may request votes against the motion and any abstentions to be recorded. The number of such votes cast should be communicated to the meeting.
- The Chairman may arrange for a combined poll to be taken when electing members of corporate bodies or granting release to them, provided no opposition from the shareholders is apparent and there is not a request for a separate vote on one or more individuals.

8 The Board of Directors should also take steps to contact shareholders in between the General Shareholders' Meetings.

- The Board of Directors should inform shareholders on the progress of the company also during the course of the financial year.
- The Board of Directors should appoint a position for shareholders relations. In the dissemination of information, the statutory principle of equal treatment should be respected.

II Board of Directors and Executive Management

a Functions of the Board of Directors

9 **The Board of Directors, which elected by the shareholders, is responsible for the strategic direction of the company or the group.**

- The Board of Directors should determine the strategic goals, the general ways and means to achieve them and the individuals charged with management.
- In its planning it should ensure the fundamental harmonization of strategy and finances.

10 **Swiss company law lays down the inalienable and non-transferable primary functions of the Board of Directors.**

- The primary functions are:
 1. the ultimate direction of the company and the giving of the necessary directives;
 2. the establishment of the organization;
 3. the structuring of the accounting system and of the financial controls as well as financial planning, insofar as necessary to manage the company;
 4. the appointment and removal of the persons entrusted with the management and representation of the company;
 5. the ultimate supervision of the persons entrusted with the management, with regard, in particular, to compliance with the law, the Articles of Association, regulations and directives;
 6. the preparation of the annual report as well as the preparation of the general shareholders' meeting and the implementation of its resolutions;
 7. the notification of the court in case of an excess of indebtedness over assets. (Art. 716a (1) Swiss Code of Obligations)

11 **Subject to the provisions of the Articles of Association the Board of Directors should lay down the powers and responsibilities of the persons in charge of managing the business.**

- The Board of Directors should ensure that management and control functions are allocated appropriately.
- If the Board of Directors delegates management responsibilities to a Managing Director or to a separate Executive Board, it should issue organizational regulations with a clear definition of the scope of the powers conferred. As a rule it should reserve to itself the power to approve certain significant business transactions.

b Composition

12 **A well-balanced membership of the Board of Directors should be sought for.**

- The Board of Directors should be small enough in numbers for efficient decision-making and large enough for its members to contribute experience and knowledge from different fields and to allocate management and control functions (section 21 ff.) among themselves. The size of the Board should match the needs of the individual company.
- Members of the Board of Directors should be persons with the abilities necessary to ensure an independent decision-making process in a critical exchange of ideas with the Executive Management.
- The majority of the Board should, as a rule, be composed of members who do not perform any line management function within the company (non-executive members).
- If a significant part of the company's operations is abroad, the Board of Directors should also include members having long-standing international experience or members from abroad.

13 **The Board of Directors should plan for the succession of its members and ensure that members receive continuing education.**

- The ordinary term of office for members of the Board of Directors should, as a rule, not exceed four years. Adequately staggered terms of office are desirable.
- The Board of Directors should plan the succession of its members and lay down the criteria for selecting candidates.
- The Board of Directors should ensure that newly elected members receive appropriate introduction and that Board Members, where required, receive further training with respect to their responsibilities.

c Procedures and Chairmanship of the Board of Directors

14 **The Board of Directors should determine the procedures appropriate to perform its function.**

- The Board of Directors should, as a rule, meet at least four times a year according to the requirements of the company. The Chairman should ensure that deliberations are held at short notice whenever necessary.
- The Board of Directors should review regulations it has issued at regular intervals and amend them as required.
- The Board of Directors may obtain at the company's expense independent advice from external experts on important business matters.
- The Board of Directors should discuss annually its own and its members' performance.

- 15 The Chairman is responsible for the preparation and conduct of meetings; the providing of appropriate information is one of his core responsibilities.**
- The Chairman is entrusted with conducting the Board of Directors in the company's interest. He should ensure that procedures relating to preparatory work, deliberation, passing resolutions and implementation of decisions are carried out properly.
 - The Chairman should ensure in mutual cooperation with the Executive Management that information is made available in good time on all aspects of the company relevant for decision-making and supervision. The Board of Directors should receive, as far as possible prior to the meeting, the well presented and clearly organized documentation; if that is not possible, the Chairman should make the documentation available prior to the meeting allowing, sufficient time for perusal.
 - As a rule persons responsible for a particular business should be present at the meeting. Anyone who is indispensable for answering questions in greater depth should be available.
- d Dealing with conflicts of interest and advance information**
- 16 Each member of the Board of Directors and Executive Board should arrange his personal and business affairs so as to avoid, as far as possible, conflicts of interest with the company.**
- Should a conflict of interest arise, the member of the Board of Directors or Executive Management concerned should inform the Chairman of the Board. The Chairman, or Vice-Chairman, should request a decision by the Board of Directors which reflects the seriousness of the conflict of interest. The Board shall decide without participation of the person concerned.
 - Anyone who has interests in conflict with the company or is obligated to represent such interests on behalf of third parties should not participate to that extent in decision-making. Anyone having a permanent conflict of interest should not be a member of the Board of Directors or the Executive Management.
 - Transactions between the company and members of corporate bodies or related persons should be carried out «at arm's length» and should be approved without participation of the party concerned. If necessary, a neutral opinion should be obtained.
- 17 The Board of Directors should regulate the principles governing ad hoc publicity in more detail and take measures to prevent insider-dealing offences.**
- The Board of Directors should consider in particular whether appropriate action (e.g. «close periods») should be taken with regard to purchasing and selling securities of the company or other sensitive assets during critical periods, e.g. in connection with take-over projects, before media conferences or prior to announcing corporate results.

e Chairman of the Board of Directors and President of the Executive Management: joint or separate function

18 The principle of maintaining a balance between direction and control should also apply to the top of the company.

- The Board of Directors should determine whether a single person (with joint responsibility) or two persons (with separate responsibility) should be appointed to the Chair of the Board of Directors and the top position of the Executive Management (Managing Director, President of the Executive Board or Chief Executive Officer).
- If, for reasons specific to the company or because the circumstances relating to availability of senior management makes it appropriate, the Board of Directors decides that a single individual should assume joint responsibility at the top of the company, it should provide for adequate control mechanisms. The Board of Directors may appoint an experienced non-executive member («lead director») to perform this task. Such person should be entitled to convene on his own and chair meetings of the Board when necessary.

f Internal control system dealing with risk and compliance

19 The Board of Directors should provide for systems for internal control and risk management suitable for the company.

- The internal control system should be geared to the size, the complexity and risk profile of the company.
- The internal control system should, depending on the specific nature of the company, also cover risk management. The latter should apply to both financial and operational risks.
- The company should set up an Internal Audit function which should report to the Audit Committee or, as the case may be, to the Chairman of the Board.

20 The Board of Directors should take measures to ensure compliance with applicable rules.

- The Board of Directors should arrange the function of compliance according to the specific nature of the company. It may also allocate compliance to the internal control system.
- The Board of Directors should review at least once a year whether the principles of compliance applicable to themselves and the company are sufficiently known and are constantly observed.

g Committees of the Board of Directors

21 The Board of Directors should form committees to perform defined tasks.

- The Board of Directors should appoint committees from amongst its members responsible for carrying out an in-depth analysis of specific business related or personnel matters for the full Board in preparation for passing resolutions or exercising its supervisory function.
- The Board of Directors should appoint the members as well as the Chairman of each committee and determine its procedures. Otherwise, the rules applying to the Board of Directors should apply accordingly to the committees.
- The Board may combine the functions of several committees provided that all their members fulfil the respective qualifications.
- The committees should report to the Board of Directors on their activities and findings. The overall responsibility for duties delegated to the committees remains with the Board of Directors.

22 As regards committee members, particular rules on independence should be applied.

- It is recommended that a majority of the members of certain committees be independent. Independent members shall mean non-executive members of the Board of Directors who never were or were more than three years ago a member of the executive management and who have no or comparatively minor business relations with the company.
- Where there is a cross membership in Boards of Directors, the independence of the respective member should be carefully examined case by case.
- The Board of Directors may lay down further criteria of independence.

Audit Committee

23 The Board of Directors should set up an Audit Committee.

- The Committee should consist of non-executive, preferably independent members of the Board of Directors.
- A majority of members, including the Chairman, should be financially literate.

24 The Audit Committee should form an independent judgement of the quality of the external auditors, the internal control system and the annual financial statements.

- The Audit Committee should form an impression of the effectiveness of the external audit (the statutory auditors or, if applicable, the group auditors), and the internal audit as well as of their mutual cooperation.
- The Audit Committee should additionally assess the quality of the internal control system, including risk management and should have an appreciation of the state of compliance with norms within the company.

- The Audit Committee should review the individual and consolidated financial statements as well as the interim statements intended for publication. It should discuss these with the Chief Financial Officer and the head of the internal audit and, separately, should the occasion warrant, with the head of the external audit.
- The Audit Committee should decide whether the individual and consolidated financial statements be recommended to the Board of Directors for presentation to the General Shareholders' Meeting.
- The Audit Committee should assess the performance and the fees charged by the external auditors and ascertain their independence. It should examine compatibility of the auditing responsibilities with any consulting mandates.

Compensation Committee

25 The Board of Directors should set up a Compensation Committee.

- A majority of the Compensation Committee should consist of non-executive and independent members of the Board of Directors.
- The Chairman of the Board respectively the President of the Executive Management should, as a rule, be consulted except when their own remuneration is under review.
- The Compensation Committee should draw up the principles for remuneration of members of the Board of Directors and the Executive Management and submit them to the Board of Directors for approval.

26 The Committee should see to the defining of a remuneration policy, primarily at top company level.

- The Compensation Committee should take care that the company offers an overall package of remuneration, which corresponds to performance and the market, in order to attract and retain persons with the necessary skills and character.
- The remuneration should be demonstrably contingent upon sustainable company success and the individual contribution by the person in question. False incentives should be avoided.
- The dilution effect caused by share option schemes for senior managers should be minimized and the conditions for exercising options shall not be modified subsequently in favour of the option holders.
- Contracts of employment with top managers should contain such provisions on termination of employment as are commensurate with market conditions and which protect the company's interest. In case of early termination of a top management contract only such severance compensation should be paid which is either owed due to the contract or which has been negotiated in compatibility with the interests of the company.

Nomination Committee

27 The Boards of Directors should set up a Nomination Committee.

- The Nomination Committee should lay down the principles for the selection of candidates for election or re-election to the Board of Directors and prepare a selection of candidates in accordance with these criteria.
- The Nomination Committee may also be assigned responsibilities in connection with the selection and assessment of candidates for top management.

h Particular circumstances

28 The rules contained in this Code may be adapted to actual circumstances, depending on the shareholder structure and size of the company.

- Companies with active major shareholders (including subsidiaries listed on the stock exchange) as well as small and medium-sized enterprises may adapt or simplify the guidelines. Such companies should implement in their own way an appropriate arrangement for the assessment of the external audit, a functionally efficient internal control system, the remuneration policy for members of the Board of Directors and the Executive Management and the succession policy for the Board of Directors.
- Small and medium-sized companies may assign responsibilities to individuals instead of setting up committees or have the full Board of Directors perform these tasks.

III Auditing

29 The function of the external audit is performed by the statutory auditors elected by the shareholders and, should that be the case, the group auditors.

- The external auditors should discharge the functions assigned to them in accordance with the guidelines relevant to them. They should cooperate in an appropriate way with those in charge of internal auditing.
- Auditors and group auditors should comply with the guidelines on maintaining independence applicable to them.

IV Disclosure

30 The company should disclose information on Corporate Governance in its annual report.

- The SWX Swiss Exchange Directive on information relating to Corporate Governance is applicable with regard to detailed disclosures.

SWX-Directive on Information Relating to Corporate Governance



Basis Arts. 1, 3 and 64 LR
Decision of 17 April 2002
Entry into force 1 July 2002

- 1 Background**
Under the Federal Act on Stock Exchanges and Securities Trading (SESTA), the SWX Swiss Exchange determines what information needs to be published so that investors can evaluate the properties of securities and the quality of issuers. Internationally recognized standards must be taken into account (Art. 8 SESTA). The information to be published includes details on the management and control mechanisms at the highest corporate level of the issuer (corporate governance).
- 2 Purpose of the directive**
The directive is intended to encourage issuers to make certain key information relating to corporate governance available to investors in an appropriate form.
- 3 Scope**
This directive applies to all issuers whose securities are listed on the SWX and whose registered office is in Switzerland. It also applies to issuers whose registered office is not in Switzerland but whose securities are listed on the SWX and not in their own country.
- 4 Information to be published**
The information that is to be published in the annual report is indicated in the annex to this directive.
- 5 Clarity and importance**
The publication of information relating to corporate governance should be limited to what is essential to investors, and the information should be provided in an appropriate and comprehensible form.
- 6 Place of publication**
Information relating to corporate governance must be published in a separate chapter of the annual report. This chapter may refer to other parts of the annual report or other easily accessible sources of information. References to Web pages should include the appropriate search paths (URLs).
- 7 «Comply or explain»**
The information described in section 5 of the annex ('Compensations, share-holdings and loans') must be disclosed absolutely. A comply-or-explain principle applies in the case of other information: if the issuer decides not to disclose certain information, it must give specific reasons for each instance of non-disclosure.

8 Disclosure deadline

The conditions on the balance sheet date constitute the deciding factor in terms of the information that must be disclosed. Important changes occurring between the balance sheet date and the copy deadline for the annual report should be indicated in an appropriate form.

9 Entry into force

This directive enters into force on 1 July 2002. It applies to all annual reports for financial years beginning on 1 January 2002 or later.

Annex

SWX-Directive on Information Relating to Corporate Governance

Scope and extent of the information relating to corporate governance

1 Group structure and shareholders

The following information on the group structure and the shareholders must be disclosed:

1.1 Group structure

1.1.1 Description of the issuer's operational group structure.

1.1.2 All listed companies belonging to the issuer's group, including the company names, their domiciles, where they are listed, their market capitalization, the percentage of shares held by group companies and the securities' security or ISIN numbers.

1.1.3 The non-listed companies belonging to the issuer's consolidated entities, including the company names, their domiciles, their share capital and the percentage of shares held by group companies.

1.2 Significant shareholders

Significant shareholders and significant groups of shareholders and their shareholdings to the extent that the issuer is aware of them. For issuers domiciled in Switzerland, disclosure must take place in accordance with the information published in the Swiss Commercial Gazette in the year under review under Art. 20 SESTA and the provisions of the Ordinance of the Federal Banking Commission on the Stock Exchanges and Securities Trading. This includes the key elements of shareholders' agreements published in this connection.

1.3 Cross-shareholdings

Cross-shareholdings that exceed 5% of the capital shareholdings or voting rights on both sides.

2 Capital structure

The following information on the capital structure must be disclosed:

2.1 Capital

The amount of the issuer's ordinary, authorized and conditional capital on the annual balance sheet date.

2.2 Authorized and conditional capital in particular

In addition, the following information must be disclosed in connection with the issuer's authorized and conditional capital:

- a The maximum increase in authorized or conditional capital and the duration of the authorization period to carry out an increase in capital.
- b The group of beneficiaries who have the right to subscribe for this additional capital.
- c The terms and conditions of the issue or creation of securities corresponding to the additional capital.

2.3 Changes of capital

A description of the changes of capital that took place within the last three financial years.

2.4 Shares and participation certificates

The number, type and par value of the issuer's shares and participation certificates, including the main features, for example entitlement to dividend payments, voting rights, preferential rights and similar rights, along with an indication of the portion of the ordinary capital which is not paid in.

2.5 Bonus certificates

The number and the main features of the issuer's bonus certificates.

2.6 Limitations on transferability and nominee registrations

- 2.6.1 Limitations on transferability for each share category, along with an indication of statutory group clauses, if any, and rules on making exceptions.
- 2.6.2 Reasons for making exceptions in the year under review.
- 2.6.3 Admissibility of nominee registrations, along with an indication of percent clauses, if any, and registration conditions.
- 2.6.4 Procedure and conditions for cancelling statutory privileges and limitations on transferability.

2.7 Convertible bonds and options

Outstanding convertible bonds and number of options issued by the issuer or by group companies on securities of the issuer (including employee options, which must be indicated separately), along with an indication of the duration, the conversion conditions or the exercise price, the subscription ratio and the total amount of the share capital concerned.

3 Board of directors

The following information on the issuer's board of directors must be disclosed:

3.1 Members of the board of directors

For each member of the board of directors:

- a Name, nationality, education and professional background.
- b Operational management tasks for the issuer or one of the issuer's group companies (executive/non-executive member).
- c For each non-executive member of the board of directors:
 - Information on whether he or she was a member of the management of the issuer or one of the issuer's group companies in the three financial years preceding the period under review;
 - Information on whether he or she has important business connections with the issuer or one of the issuer's group companies.

3.2 Other activities and functions

For each member of the board of directors:

- a Activities in governing and supervisory bodies of important Swiss and foreign organizations, institutions and foundations under private and public law;
- b Permanent management and consultancy functions for important Swiss and foreign interest groups;
- c Official functions and political posts.

3.3 Cross-involvement

An indication of cross-involvement among the boards of directors of listed companies.

3.4 Elections and terms of office

3.4.1 The principles of the election procedure (total renewal or staggered renewal) and limits on the terms of office.

3.4.2 The time of the first election and the remaining term of office for each member of the board of directors.

3.5 Internal organizational structure

3.5.1 Allocation of tasks within the board of directors.

3.5.2 Members list, tasks and area of responsibility for each committee of the board of directors.

3.5.3 Work methods of the board of directors and its committees.

3.6 Definition of areas of responsibility

Basic principles regarding the definition of the areas of responsibility of the board of directors and the management board.

3.7 Information and control instruments vis-à-vis the management board

The structure of the board of directors' information and control instruments vis-à-vis the issuer's management board such as internal auditing, risk-management systems and management information systems (MISs).

4 Management board

The following information on the issuer's management board must be disclosed:

4.1 Members of the management board

For each member of the management board:

- a Name, nationality and function.
- b Education and professional background.
- c Tasks previously carried out for the issuer or one of the issuer's group companies, if any.

4.2 Other activities and functions

For each member of the Management Board:

- a Activities in governing and supervisory bodies of important Swiss and foreign organizations, institutions and foundations under private and public law;
- b Permanent management and consultancy functions for important Swiss and foreign interest groups;
- c Official functions and political posts.

4.3 Management contracts

Key elements of management contracts between the issuer and companies (or natural persons) not belonging to the group, including the names and domiciles of the companies, the delegated management tasks and the form and extent of compensation for the fulfilment of these tasks.

5 Compensations, shareholdings and loans

The following information must be disclosed on the compensations for and shareholdings of the members of the issuer's management board and board of directors and on loans granted these members:

5.1 Content and method of determining the compensations and of the shareholding programmes

Basic principles and elements of compensations for and shareholding programmes of acting and former members of the issuer's board of directors and management board and basic principles regarding the responsibility and procedure for determining these compensations and shareholding programmes.

5.2 Compensations for acting members of governing bodies

5.2.1 The total of all compensations such as honorariums, salaries, credits, bonuses and benefits in kind (benefits in kind are to be valued according to the market value at the time they were conferred) that were conferred by the issuer or one of the issuer's group companies during the year under review and directly or indirectly benefited members of the board of directors and/or the management board; this also applies to all the members of governing bodies who gave up their functions during the year under review (i.e. who were no longer members on the disclosure deadline).

5.2.2 The amount is to be disclosed in the case of:

- a The executive members of the board of directors and the management board in toto;
- b The non-executive members of the board of directors in toto.

5.2.3 Additional severance payments to the persons mentioned above who gave up their functions in a governing body during the year under review are to be disclosed separately.

5.3 Compensations for former members of governing bodies

5.3.1 The total of all compensations such as honorariums, salaries, credits, bonuses and benefits in kind (benefits in kind are to be valued according to the market value at the time they were conferred) that were conferred by the issuer or one of the issuer's group companies during the year under review and directly or indirectly benefited members of the board of directors and/or the management board who gave up their functions during the year under review.

5.3.2 The amount is to be disclosed in the case of:

- a Former executive members of the board of directors and the management board in toto;
- b Former non-executive members of the board of directors in toto. In each case, the number of beneficiaries must be indicated.

5.4 Share allotment in the year under review

The number of shares of the issuer that were allotted to the following parties in the year under review:

- a The executive members of the board of directors, the members of the management board and parties closely linked¹ to such persons, in toto;
- b The non-executive members of the board of directors and parties closely linked¹ to such persons, in toto.

¹ «Closely linked parties» are natural persons and legal entities pursuant to Art. 678 CO.

5.5 Share ownership

The number of shares of the issuer that were held by the following parties at the time of the disclosure deadline:

- a The executive members of the board of directors, the members of the management board and parties closely linked¹ to such persons, in toto;
- b The non-executive members of the board of directors and parties closely linked¹ to such persons, in toto.

5.6 Options

Overview of the options on shares of the issuer (including options stemming from synthetic shareholding programmes) that were held by the following parties at the time of the disclosure deadline:

- a The executive members of the board of directors, the members of the management board and parties closely linked¹ to such persons, in toto;
- b The non-executive members of the board of directors and parties closely linked¹ to such persons, in toto.

In each case, the allotment year, the duration, the subscription ratio and the exercise price are to be disclosed.

5.7 Additional honorariums and remunerations

The sum of the honorariums (e.g., consultancy honorariums) and other remunerations billed to the issuer or one of the issuer's group companies by each member of the board of directors or the management board or parties closely linked¹ to such persons for additional services performed during the year under review in the case of sums exceeding half of the ordinary remuneration of the member in question.

5.8 Loans granted by governing bodies

5.8.1 The total amount and conditions of the guarantees and outstanding loans, advances or credits granted to members of the board of directors or the management board or parties closely linked¹ to such persons by the issuer or one of the issuer's group companies.

5.8.2 The amount is to be disclosed in the case of:

- a The executive members of the board of directors, the members of the management board and parties closely linked¹ to such persons, in toto;
- b The non-executive members of the board of directors and parties closely linked¹ to such persons, in toto. In each case, the number of beneficiaries must be indicated.

5.9 Highest total compensation

Without providing any names, the compensations and share and option allotments must be disclosed separately (according to Arts. 5.2, 5.4 and 5.6 respectively) in the case of the member of the board of directors upon whom the highest total compensation (according to Arts. 5.2, 5.4 and 5.6) was conferred in the year under review.

6 Shareholders' participation rights

The following information on the participation rights of the issuer's shareholders must be disclosed:

6.1 Voting-rights restrictions and representation

- 6.1.1 All voting-rights restrictions, along with an indication of statutory group clauses and rules on making exceptions, particularly in the case of institutional voting-rights representatives.
- 6.1.2 Reasons for making exceptions in the year under review.
- 6.1.3 Procedure and conditions for cancelling statutory voting-rights restrictions.
- 6.1.4 Statutory rules on participating in the general meeting of shareholders if they differ from applicable legal provisions.

6.2 Statutory quorums

Resolutions of the general meeting of shareholders which, under the issuer's articles of association, can only be carried by a majority greater than that set out by applicable legal provisions, along with an indication of the size of the majority for each case.

6.3 Convocation of the general meeting of shareholders

Statutory rules on the convocation of the general meeting of shareholders if they differ from applicable legal provisions.

6.4 Agenda

Rules for adding items to the agenda of the general meeting of shareholders, especially rules on deadlines.

6.5 Registrations in the share register

Rules on the deadline for registering holders of registered shares in the issuer's share register in connection with attending the general meeting of shareholders, as well as rules on making exceptions, if any.

7 Changes of control and defence measures

The following information on changes of control and defence measures must be disclosed:

7.1 **Duty to make an offer**

Existence of statutory rules on opting out or opting up (SESTA Art. 22), along with an indication of the threshold in percent.

7.2 **Clauses on changes of control**

Content of clauses on changes of control in agreements and plans benefiting members of the board of directors and/or the management board and/or other members of the issuer's cadre (e.g., golden parachutes).

8 Auditors

The following information on the auditors must be disclosed:

8.1 Duration of the mandate and term of office of the head auditor

8.1.1 Date of assumption of the existing auditing mandate.

8.1.2 Date on which the head auditor responsible for the existing auditing mandate took up office.

8.2 Auditing honorarium

The total of the auditing honorariums charged by the auditors in the year under review.

8.3 Additional honorariums

The total of the honorariums charged in the year under review by the auditors and parties associated with them for additional services (e.g., management consulting) performed for the issuer or one of the issuer's group companies.

8.4 Supervisory and control instruments vis-à-vis the auditors

Composition of the board of directors' supervisory and control instruments vis-à-vis the external auditors.

9 Information policy

The following information on the issuer's information policy must be disclosed:

The frequency with which and form in which the issuer provides its shareholders with information, along with an indication of permanent sources of information and contact addresses of the issuer that are publicly accessible or made specially available to shareholders (e.g., links to Web pages, information centres, printed matter, etc.).

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