









- **Suspension of voting rights.** The FINMA (or, if the acquisition was made with the intention of submitting a tender offer, the Takeover Board), the target company or a target company shareholder can request the competent court to suspend the acquirer's voting rights under the securities in question for:
  - up to five years; or
  - permanently, if the acquisition was made with the intention of submitting a tender offer.

Acquirers must therefore be careful when building up a significant stake in a target company with the intention of later launching a tender offer. A potential violator risks considerable damage to its reputation that could be a significant disadvantage in a narrow takeover bid.

In addition, an inadvertent acquisition of a position exceeding the one-third statutory threshold will trigger the mandatory takeover bid obligation to launch a tender offer for the target company at a minimum price. The minimum price would then have to take into consideration (as the Takeover Board decided in the Saurer case) the value of any options, other derivatives or similar rights obtained or granted by the acquirer to other market participants from whom it acquired blocks of shares in order to build up a significant stake.

Banks and securities dealers also need to be aware of the risk when acting for clients who intend to obtain control of a target company through derivative transactions. Such institutions could be considered a party acting in concert with their client. Even though parties acting in concert are not usually liable to shareholders for failure of the forced offeror to launch an offer and to pay the required consideration to the other shareholders in lieu of the forced offeror, in the worst case, they could be jointly and severally liable for fines should the client fail to fulfil its disclosure obligations. Finally, if the client inadvertently exceeds the one-third threshold (taking into consideration certain indirect holdings of the client consisting of derivative positions or the holdings of parties allegedly acting in concert) and must launch a mandatory tender offer for the target company, the bank, securities dealer or derivative house might become liable for incomplete or wrong advice if it fails to make the client aware of the relevant regulations and disclosure obligations at an early stage.

## DISCLOSURE REQUIREMENTS DURING A TAKEOVER PROCEDURE

The SESTA and the takeover regulation impose more stringent disclosure and reporting requirements for direct or indirect interests in shares during an offer period, that is, from publication of a tender offer until the expiration of the additional acceptance period. In particular, the offeror must notify the Takeover Board and the relevant stock exchange's disclosure office of any transactions conducted in the target company's equity securities (or of any financial instruments relating to them). In a public exchange offer, the offeror must also notify any transactions in the securities (or of any financial instruments relating to them) offered in exchange. This also applies to persons acting in concert with the offeror or any significant shareholder that takes part in the procedure by applying for status as a party in order to be able to submit comments or objections to the offer to the Takeover Board.

During the offer period, the Takeover Board can also impose disclosure obligations on persons who directly or indirectly (or by acting in concert with third parties) own or control 3% or more of the voting rights (whether exercisable or not) in either the target company or company whose shares are offered as consideration in an exchange offer.

During the takeover period, a detailed report must be filed daily, containing information on the:

- Volume of each transaction
- Type of transaction.
- Price.
- Time of trading.
- Whether traded on or off-market.
- Identity of the stockbroker.
- Type and number of equity securities (and/or financial instruments) and voting rights held at the end of the day.

Reports must reach the Takeover Board and the relevant disclosure office by 12 noon on the trading day following the transaction. The Takeover Board publishes all transactions on its website.

## OTHER DISCLOSURE REQUIREMENTS

Further disclosure obligations exist for certain management transactions if the issuers are listed on the SIX Swiss Exchange. The issuer must disclose transactions concluded by members of its board of directors and senior management involving:

- Its equity securities.
- Conversion and purchase rights on its shares.
- Financial instruments whose price is materially dependent on its equity securities.

The members of the board of directors and senior management must inform their company of all transactions that fall within the scope of the relevant regulation. The notification deadline and whether or not the transactions are published on the exchange's website depend on the total transaction volume per calendar month.

## CONTRIBUTOR DETAILS

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