

Swiss Takeover Board Release no. 1
Regarding Equity Security Repurchases
Version of 28 March 2000¹
Enforcement: 1. September 2000

Following consultation with the Federal Banking Commission (now: Swiss Financial Market Supervisory Authority [FINMA]), the Takeover Board has adopted the following principles regarding companies' repurchases of their own equity securities (hereafter "shares").

I. PRINCIPLE

Public offers by a company to repurchase its own shares - including the announcement of its intention to repurchase such shares via the exchange - represent "public takeover offers" within the meaning of SESTA Art. 2.e. Such repurchase offers are therefore subject to the provisions of Chapter Five of the Act.

The Takeover Board may exempt the Offeror from the provisions governing public takeover offers on condition that equality of treatment, transparency, integrity and good faith are ensured and insofar as there is no evidence that the Offeror is circumventing the Stock Exchange Act or other legal provisions.

Based on the experience gathered since the Chapter Five of SESTA took effect, the Takeover Board has come to the conclusion that the system of case-by-case exemption, which has been in use up to now, should be complemented by a system of general exemption (Section II below), as well as a system of exemption via a reporting procedure (Section III below).

II. GENERAL EXEMPTION

Repurchases representing a maximum of 2% of the Offeror's capital are exempt from the regulations governing public takeover offers. Such repurchases need not be announced to the Takeover Board.

III. EXEMPTION VIA REPORTING PROCEDURE

Repurchase offers fulfilling the conditions detailed in paragraphs 1 to 3 below don't need to comply with the provisions governing public takeover offers. Such repurchase offers must be announced to the Takeover Board by means of the "Request Form for Exemption via Reporting Procedure". The draft text of the repurchase offer, which must at least include the details requested in the form mentioned above, must be attached to the announcement.

The Takeover Board's Secretariat shall inform the Offeror in writing, within three trading days following receipt of the request form and draft offer text, whether the conditions for an

¹ The Communication has been formally adapted to the new legal bases which entered into force as from 1 January 2009. With regards to contents, no alterations have been made.

exemption according to this paragraph are met. If such is not the case, the Takeover Board shall initiate exemption proceedings pursuant to Section IV below.

If the Takeover Board's Secretariat confirms that the requirements of an exemption via reporting procedure are met, the exemption shall take effect on reception of the confirmation. The Offeror shall publish the offer in such a way that it may be disseminated on a national scale. The text must be made available to at least one of the principal electronic media specializing in stock market data.

1. Common exemption requirements for fixed-price and market-price repurchases:

1.1 The amount of the repurchase offer may not exceed 10% of the Offeror's capital or votes. The capital recorded in the Commercial Registry shall form the basis of calculation for this threshold.

1.2 Execution of the repurchase shall not lead to the delisting of one of the shares concerned.

1.3 The repurchase shall affect all categories of the Offeror's listed shares.

1.4 On the first trading day after expiry of the offer, the Offeror shall report the number of shares tendered for repurchase in each category to the Takeover Board and at least one of the principal electronic media specializing in stock market data.

2. Additional exemption requirements specific to fixed-price repurchase offers (respectively for repurchases executed via an issue of put options):

2.1 No offer may be made public:

- if the Offeror delays the disclosure of information considered price-sensitive under the regulations of the exchange on which the shares are listed;
- during the ten trading days prior to publication by the media of the Offeror's financial results;
- if the date of reference for the company's last published consolidated report is more than nine months earlier.

2.2 The offer may not be conditional.

2.3 The Offeror shall ensure that the differences between the offer prices applied to the different share categories are proportionate.

2.4 If all tender declarations cannot be satisfied in full, they must be satisfied proportionally.

2.5 If, during the offer period, the Offeror acquires stock at a higher price than the repurchase price, it must offer this price to all of the repurchase offerees ("Best Price Rule").



2.6 The repurchase offer must be made public at least ten trading days prior to its expiry. The offer price may be left open on publication. In that case, the Offeror must publish the offer price, via the electronic media, at least three trading days prior to the offer's expiry; the offer may only be accepted after publication of the offer price.

2.7 On the first trading day following the offer's expiry, the Offeror shall provide the Takeover Board with a declaration confirming that the requirements stated in paragraphs 2.1 through 2.5 have been met.

3. Additional exemption requirements for repurchases at market price:

3.1 The Offeror shall interrupt repurchases:

- if it delays the disclosure of information considered price-sensitive under the regulations of the exchange on which the shares are listed;
- during the ten trading days prior to publication by the media of the Offeror's financial results;
- if the date of reference for the company's last published consolidated report is more than nine months earlier.

3.2 If the repurchase affects different share categories, the Offeror is required to place simultaneous bids for each share category.

3.3 During the repurchase period, the Offeror may not, on the ordinary trading line, repurchase more than 25% of the security's average daily trading volume on the exchange over the last thirty trading days via that trading line. So-called block trades constitute an exception to this rule, provided that the price paid for such a block is not higher than the last price paid or the last price paid or offered by a person other than, and independent of, the Offeror. A shareholding qualifies as a block when, according to the regulations of the exchange on which the security is listed, it may be traded over the counter.

3.4 The Offeror may not place repurchase orders during the opening and closing auctions, nor during the auction performed after a "stop trading".

3.5. If the repurchases are executed via a specific trading line, the price offered on the second trading line may as a general rule not exceed the price offered on the first trading line by more than 5%. Should this nonetheless be the case in an isolated transaction, the Offeror must publicise and justify the event within ten trading days following the transaction.

3.6 If the repurchases are not conducted via a specific trading line, the Offeror must announce, once every ten trading days, the numbers of shares it has bought and sold, as well as the net number of shares purchased since the beginning of the repurchase programme².

²Modification according to the Swiss Takeover Board's decision of April 30, 2004.



3.7 Paragraphs 3.1, 3.3, 3.4 and 3.6 do not apply to the usual trading activity of banks and securities dealers in their own shares.

3.8 The exchange participant entrusted with the execution of the repurchase shall undertake to provide the Takeover Board with a declaration confirming that the conditions stated in paragraphs 3.2 through 3.6 have been met. This declaration must be handed in on the first trading day after the offer's expiry or, if the repurchase period is longer than one year, upon convocation of the company's annual general meeting.

The exemption of a repurchase according to the clauses included in this section is subject to payment of a fee. The fee amounts to 0.5 per mill of the repurchase offer's total amount, but shall not be less than CHF 5'000.-- or more than CHF 10'000.--³.

IV. OTHER EXEMPTIONS

Based on a justified request, the Takeover Board may exempt other repurchase offers from the regulations governing public takeover offers, as long as such exemptions are in line with the objectives of the SESTA. The request must be presented to the Takeover Board at least ten trading days prior to the planned start date of the repurchase. The request must include all documents establishing that the requirements for exemption are fulfilled.

Takeover Board

³ Modification according to the Swiss Takeover Board's decision of November 28, 2001.