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Regulations of the Takeover Board (R-TOB)

of 21 August 2008 (Status as of 1 January 2016)

Approved by the Swiss Federal Banking Commission¹ on 24 September 2008

The Takeover Board,

based on Article 126, paragraph 1 of the Financial Market Infrastructure Act of 19 June 2015² (“FMIA”),

based on the Takeover Ordinance of 21 August 2008³ (“TOO”),⁴

decrees:

Article 1 Purpose

(Article 126, paragraph 1, FMIA)⁵

These Regulations govern the organisation of the Takeover Board.

Article 2 Management bodies

(Article 126, paragraph 1, FMIA, Articles 54 ff., Takeover Ordinance)⁶

The Takeover Board comprises the following management bodies:

- a. the Plenary Board;
- b. the committees (Article 54, Takeover Ordinance);
- c. the President;
- d. the Vice-President;
- e. the Secretariat (Article 55, Takeover Ordinance).

Section 1: Responsibilities

Article 3 Plenary Board

¹ The Plenary Board comprises the President, the Vice-President and five to nine further members.

¹ Today: Swiss Financial Market Supervisory Authority FINMA.

² SR 958.1

³ SR 954.195.1

⁴ Version pursuant to section I of the Regulations of the Takeover Board of 30 October 2015, approved by the FINMA on 2 December 2015 and in force since 1 January 2016 (AS 2015 5335).

⁵ Version pursuant to section I of the Regulations of the Takeover Board of 30 October 2015, approved by the FINMA on 2 December 2015 and in force since 1 January 2016 (AS 2015 5335).

⁶ Version pursuant to section I of the Regulations of the Takeover Board of 30 October 2015, approved by the FINMA on 2 December 2015 and in force since 1 January 2016 (AS 2015 5335).

² The Plenary Board has the following duties:

- a. It adopts the Ordinance and regulations of the Takeover Board and submits them to the Swiss Financial Market Supervisory Authority (FINMA) for approval (Article 126, paragraphs 1 and 2, Article 131, Article 132 paragraph 3, Article 133, paragraph 2, Article 134, paragraph 5, FMIA).
- b. It exercises the right to submit proposals to FINMA relating to the enactment or amendment of provisions on the obligation to make an offer (Article 135, paragraph 6, FMIA).
- c. It adopts the annual report for approval by FINMA (Article 126, paragraph 4, FMIA).
- d. It issues general circulars, communications and opinions (Article 65, paragraph 2, Takeover Ordinance).
- e. It approves the budget (Article 11, paragraph 2).
- f. It appoints the auditors (Article 12, paragraph 1).
- g. It approves the annual accounts (Article 12, paragraph 3).
- h. It decides on questions submitted by the committees (Article 54, paragraph 4, Takeover Ordinance).⁷

³ The Plenary Board is responsible for any other business that does not fall within the competence of another management body.

Article 4 Executive bodies

¹ The President:

- a. decides on the opening of proceedings;
- b. appoints the committee members and decides on their remuneration (Article 54, paragraph 2, Takeover Ordinance, Article 13, paragraph 2);
- c. convenes the Plenary Board and decides on the method by which decisions are made (Article 8, paragraphs 5 and 6);
- d. makes proposals to the Plenary Board in relation to its business (Article 3);
- e. supervises the management of the Secretariat;
- f. cultivates relations with the business sector, with public authorities and with foreign takeover authorities;
- g. cultivates contacts with the media;
- h. is authorised to represent the Takeover Board in legal transactions and may authorise further persons to do the same.

² The Vice-President:

- a. carries out the duties of the President in his or her absence;
- b. is authorised to represent the Takeover Board and may authorise further persons to do the same.

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⁷ Version pursuant to section I of the Regulations of the Takeover Board of 30 October 2015, approved by the FINMA on 2 December 2015 and in force since 1 January 2016 (AS 2015 5335).

³ The President and the Vice-President together:

- a. decide on the appointment of legal advisors;
- b. allocate special duties to members and decide on their remuneration (Article 13, paragraph 6);
- c. approve the general rules on the organisation of the Secretariat (Article 6, paragraph 2k).

⁴ If the President and the Vice-President are unable to fulfil their obligations, they shall designate another member of the Takeover Board to replace them. If they are unable to designate another member, they shall be replaced by the longest serving member of the Board who is able to carry out their duties.

Article 5 Committees

(Article 54, Takeover Ordinance)

¹ Any transaction relevant to the law on public offers shall be reviewed by a committee that shall normally comprise three members.

² Procedural decisions shall be issued by the President, by the presiding committee member or by the Secretariat.

Article 6 Secretariat

¹ The Secretariat shall comprise one or more legal advisers and is supported by one or more assistants.

² The Secretariat:

- a. conducts preliminary examinations and submits proposals to the President in relation to the instigation of proceedings;
- b. prepares the business of the Plenary Board, the committees and the Executive;
- c. conducts the proceedings in consultation with the President or the presiding committee member;
- d. participates in an advisory capacity in the meetings of the committees and the Plenary Board;
- e. submits proposals to the committees regarding their business;
- f. gives notice of and implements the decisions of the committees and the Plenary Board;
- g. deals with the business delegated by the Plenary Board to the Secretariat (Article 55, paragraph 3, Takeover Ordinance);
- h. maintains direct contact with the parties, third parties and authorities (Article 55, paragraph 2, Takeover Ordinance);
- i. provides non-binding legal information where proof of a legitimate interest is provided (Article 55, paragraphs 4 and 5, Takeover Ordinance);
- j. decides after consulting the President on the appointment of assistants;

- k. submits the general rules governing the organisation of the Secretariat to the Executive for approval (Article 4, paragraph 3c);
- l. carries out other duties in accordance with the terms of the general rules governing the organisation of the Secretariat.

Section 2: Decisions

Article 7 Plenary Board

- ¹ The President shall convene the Plenary Board as required or at the request of a member.
- ² The Plenary Board constitutes a quorum if at least half its members participate in making the decision.
- ³ It decides by a majority of votes cast. In the event of a tie, the President has the casting vote.
- ⁴ Decisions shall in principle be made at meetings, which may also be held by telecommunication. Circular decisions may in particular be made by e-mail.

Article 8 Committees

- ¹ The committee chair shall determine the modalities for making decisions. In principle, decisions shall be made by telecommunication. The chair may also convene a meeting or conduct a circulation procedure.
- ² The committees shall decide by a majority of votes cast. If no decision is reached, the committee chair shall request the President to convene the Plenary Board.
- ³ In exceptional cases, committees may make decisions with only two members. Such decisions must be unanimous.

Article 9 Official copies of decisions

Decisions of the Takeover Board and its management bodies shall be issued in writing and signed as follows:

- a. decisions of the Plenary Board by the President and a legal adviser;
- b. decisions of the committee by the presiding committee member, who may arrange to be represented by a legal adviser;
- c. procedural decisions by a legal adviser.

Section 3: Personnel and finances

Article 10 Personnel

¹ The Takeover Board shall employ legal advisers and assistants on the basis of private law contracts.

² The legal advisers are subordinate to the President.

³ The assistants are subordinate to the legal advisers.

Article 11 Budget

(Article 126, paragraph 5, FMIA)⁸

¹ Each year, the President shall submit a draft budget for the coming year to the Plenary Board, wherever possible by the end of October.

² The budget shall be approved by the Plenary Board. It shall be submitted to SIX Swiss Exchange AG, which may add its comments within a month. In the event of any differences of opinion, FINMA shall decide.

Article 12 Annual accounts

(Article 126, paragraph 5, FMIA)⁹

¹ The annual accounts shall be drawn up in accordance with the provisions of the company law.

² The annual accounts shall be subject to a limited audit by a firm of auditors licensed in accordance with the Auditor Supervision Act of 16 December 2005¹⁰.

³ The President shall submit the annual accounts and audit report to the Plenary Board in the spring of the following year.

⁴ The annual accounts shall be approved by the Plenary Board. They shall be submitted to SIX Swiss Exchange AG, which may add its comments within one month. Any remarks shall be passed on to FINMA.

Article 13 Remuneration of members

(Article 126, paragraph 5, FMIA)¹¹

¹ Each member of the Takeover Board shall be entitled to reimbursement of his or her expenses and an annual fee of 20,000 Swiss francs. The Vice-President shall receive a further 10,000 Swiss francs in addition to his or her annual fee.

² For their participation in the committees to review the individual transactions, the members of the Takeover Board shall for each case receive remuneration of 5,000 Swiss francs for their activity as a presiding member, or 3,000 Swiss francs for their activity as ordinary member of a committee. If a transaction results in more than one ruling, remuneration shall be paid for each additional ruling.

³ The President of the Takeover Board may adjust these amounts, depending on the quantity of work involved.

⁸ Version pursuant to section I of the Regulations of the Takeover Board of 30 October 2015, approved by the FINMA on 2 December 2015 and in force since 1 January 2016 (AS 2015 5335).

⁹ Version pursuant to section I of the Regulations of the Takeover Board of 30 October 2015, approved by the FINMA on 2 December 2015 and in force since 1 January 2016 (AS 2015 5335).

¹⁰ SR 221.302.

¹¹ Version pursuant to section I of the Regulations of the Takeover Board of 30 October 2015, approved by the FINMA on 2 December 2015 and in force since 1 January 2016 (AS 2015 5335).

⁴ Instead of remuneration at the foregoing rates, the President shall receive an annual salary of 130,000 Swiss francs, plus reimbursement of his or her expenses.

⁵ The remuneration paid in accordance with paragraphs 1, 2 and 4 may be adjusted for the next term of office by the Plenary Board to take account of inflation.

⁶ The President may, in consultation with the Vice-President, allocate special duties to certain members and pay them appropriate remuneration for these duties.

Article 14 Financing
(Article 126, paragraph 5, FMIA)¹²

¹ On the basis of the annual budget, SIX Swiss Exchange AG shall make quarterly advances to the Takeover Board.

² The Takeover Board shall charge the fees provided for in Article 126, paragraph 5 FMIA, and in the Article 114 – 116 of the Financial Market Infrastructure Ordinance of 25 November 2015¹³. The Takeover Board shall exempt SIX Swiss Exchange AG fully or in part from its duty to pay quarterly advances, provided the fees received so permit.¹⁴

Section 4: Supplementary provisions

Article 15 Headquarters

The Takeover Board has its headquarters in Zurich.

Article 16 Specialised professional skills

The Takeover Board may consult professional experts and representatives of Swiss issuers, investors, securities traders, audit companies, and of foreign authorities that exercise a corresponding function.

Article 17 Official secrecy

Members and the staff of the Secretariat of the Takeover Board shall be bound by official secrecy with regard to all matters submitted to the Takeover Board and with regard to the deliberations of the Takeover Board.

Article 18 Incompatibility
(Article 126, paragraph 1, FMIA)¹⁵

¹ Members of the Takeover Board shall not express their opinion in public on pending or concluded public offers.

² Members of the Takeover Board shall avoid expressing dissenting views in public on basic policy decisions of the Takeover Board.

³ Members of the Takeover Board shall not represent any parties before the Takeover Board and shall not carry out any consulting activities in connection with public offers.

¹² Version pursuant to section I of the Regulations of the Takeover Board of 30 October 2015, approved by the FINMA on 2 December 2015 and in force since 1 January 2016 (AS 2015 5335).

¹³ SR 958.11.

¹⁴ Version pursuant to section I of the Regulations of the Takeover Board of 30 October 2015, approved by the FINMA on 2 December 2015 and in force since 1 January 2016 (AS 2015 5335).

¹⁵ Version pursuant to section I of the Regulations of the Takeover Board of 30 October 2015, approved by the FINMA on 2 December 2015 and in force since 1 January 2016 (AS 2015 5335).

Section 5: Final provisions

Article 19 Repeal of current legislation

The Regulations of the Takeover Board dated 21 July 1997¹⁶ are herewith repealed.

Article 20 Entry into force

These Regulations enter into force on 1 January 2009.

21 August 2008

Takeover Board
President: Luc Thévenoz

¹⁶ [AS 1997 2080, 1999 1234]