

Act leads to amendments of public takeover law

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Introduction

On January 1 2016 the Federal Council enacted the Financial Market Infrastructure Act and the Financial Market Infrastructure Ordinance. The act, which was adopted by Parliament in Summer 2015, overhauls the regulation of financial market infrastructures and derivatives trading in Switzerland in line with market developments and international standards. While the act contains the requirements for the operation of financial market infrastructures – including stock exchanges, multilateral trading facilities, central counterparties and central securities depositories – from a supervisory viewpoint, it also provides for the rules that apply in connection with trading in securities and derivatives for all financial market participants, particularly the new derivatives trading rules and the core provisions on public takeovers in Switzerland. The latter provisions were transferred from the Federal Act on Stock Exchanges and Securities Trading. This act and its implementing ordinances were therefore partly repealed at the beginning of 2016. The newly enacted Financial Market Infrastructure Ordinance contains certain implementing provisions on public takeovers – as well as provisions relating to high-frequency trading reporting duties of trading venue participants and identification requirements regarding the beneficial owner. Alongside the entry into force of the Financial Market Infrastructure Act, the revised Ordinance of the Takeover Board on Public Takeover Offers (Takeover Ordinance) became effective.

Changes to takeover rules

While the enactment of the Financial Market Infrastructure Act required the formal alignment of the Takeover Ordinance to the provisions relating to takeovers transferred to the act and its implementing ordinances, the amended Takeover Ordinance introduces substantive changes, including the abolishment of the requirement that announcements and notices relating to a public offer must be published in at least one German-language and one French-language newspaper with nationwide reach. By implementing these changes, the Takeover Board acknowledges that electronic publication has become the standard procedure for disseminating important financial information, while publication in newspapers has lost much of its importance in that respect due to the competitive advantage of electronic media with regard to speed and accessibility.

In future, electronic dissemination of the offer documents will be sufficient. Required communication or dissemination contains three elements:

- In line with past provisions, the bidder must publish the offer documents on its website or a website specifically established for the offer.
- The bidder must send the offer documents to major Swiss media, news agencies and electronic financial information providers distributing stock exchange information.
- The bidder must transmit the offer documents to the board.

Publication is completed if the full text of the respective offer document has been transmitted by email or fax to such media without receiving any error notice or out-of-office reply (for further

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details please see "[New rules for the publication of documents relating to public offers](#)").

Depending on the relevant rule, the publication of offer documents on the bidder's or the board's website will now be relevant for the calculation of certain deadlines and time limits in public takeover procedures. For example, under the new regime the time limit of five trading days for submission of the request of a qualified shareholder to become a party in the proceedings before the board will begin with the publication of the board ruling or the offer prospectus on the board's website.

Formal submissions in public takeovers

As opposed to the transmission of the offer documents to the board – where submission by email is still possible – as of January 1 2016 any formal electronic submissions in administrative proceedings before the board and the Financial Market Supervisory Authority (FINMA) must be effected by way of a recognised electronic signature in order to be valid. The requirements for electronic signatures are laid down in the Federal Act on Certification Services in the Domain of the Electronic Signature. Alternatively, it remains possible to transmit a formal submission in an administrative proceeding to the board or FINMA by fax. Under the former rules, no distinction was made between submissions relating to formal public takeover proceedings and other communications with the board or FINMA. Electronic correspondence by way of email (ie, without electronic signature) was allowed and was quite common.

Launching takeover offer

A further substantive change relates to proceedings regarding an exemption from the obligation to launch a takeover offer or a declaration that no such obligation exists – for example, in the context of an opt-out (for further details please see "[Takeover Board confirms opt-out practice](#)" and "[Continuation of past practice regarding introduction of opt-out clauses](#)"). In the past, the board of directors of the target was required to produce and publish a report in such proceedings, setting forth its view on the issue. As of January 1 2016 such requirement has been abolished and a statement from the board in a formal report is therefore no longer required. However, if the board elects to do so, it can produce and publish a report on a voluntary basis, provided that the report needs to be submitted to the board before the latter issues its decree so that it can be published along with the board's decree.

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