

Finding solutions is our mission. Advising clients is our passion.

The law firms of meyerlustenberger, Zurich and Lachenal & Le Fort, Geneva have joined forces and resources by merging their offices in Zurich, Geneva, Zug, Lausanne and Brussels to form Meyerlustenberger Lachenal. The merger is effective April 2012. The new firm has 85 lawyers and ranks as one of the largest law firms in Switzerland.

The Corporate & Finance department of Meyerlustenberger Lachenal advises sophisticated clients in a wide range of business law issues within Switzerland, cross border and globally, support them in business negotiations, complex transactions and critical situations and represent their interest before administrative authorities.

With offices in Zurich, Geneva, Zug and Lausanne, Meyerlustenberger Lachenal is present in the key business centers in Switzerland.

Our Corporate | M&A practice group offers comprehensive legal services in the areas of

- acquisitions & disposal of privately held companies (national and cross-border)
- public tender offers and takeover defense support
- spin-offs, mergers and restructurings
- equity and debt capital market issues, including IPOs and private placements
- private equity and venture capital transactions
- corporate governance, incorporations and corporate housekeeping
- reorganizations and workouts
- acquisition finance and financing transactions

Contacts

Zurich:

Dr. Alexander Vogel, alexander.vogel@mll-legal.com

Dr. Christoph Heiz, christoph.heiz@mll-legal.com

Andrea Sieber, andrea.sieber@mll-legal.com

Geneva:

Alain Le Fort, alain.le.fort@mll-legal.com

Christophe Rapin, christophe.rapin@mll-legal.com

Still attractive

Alexander Vogel, Christoph Heiz and Andrea Sieber of Meyerlustenberger Lachenal detail the economic and legislative environment for takeovers in Switzerland

Private M&A transactions are governed by the Swiss Code of Obligations, primarily the section on purchase agreements. If acquisition structures, either pre-sale or within the framework of the transaction, provide for a merger, de-merger, or a spin-off by way of asset transfers or bulk sales transactions, the provisions of the Swiss Merger Act apply, which contain detailed rules for each of these procedures.

The acquisitions of interests in listed companies are on the other hand governed by the Swiss Act on Stock Exchanges and Securities Trading (Sesta) and its implementing ordinances providing for rules applicable to both friendly and hostile public offers. Such rules have been significantly amended in the last years and are subject to further proposed amendments in crucial points.

In addition, the Federal Act on Cartels and Other Restraints of Competition (Antitrust Act) and similar antitrust regulation of any other jurisdiction the parties involved in the M&A transaction are active in, need to be taken into consideration, particularly if the consolidated turnover of each of the parties involved in the transaction is significant.

To the extent an acquisition is financed by the issuance of securities or the transaction structure otherwise provides for additional securities to be issued, the relevant provisions of Swiss corporate law dealing with the obligation to prepare a prospectus and the technicalities of a capital increase (all provided for in the Swiss Code of Obligations) have to be complied with. If the issuer is listed on a Swiss stock exchange, the listing rules of such stock exchange – either SIX Swiss Exchange or BX Berne Exchange – will also apply.

Significant M&A transactions over the past year

The first two quarters of 2011 showed a further stabilisation of the recovery in M&A transactions experienced in 2010 with the number of transactions increasing significantly in the first quarter while deal volumes remained flat. A strong second quarter in 2011 showed also an increase in terms of deal volume since several large transactions were recorded in the second quarter. The third and fourth quarters showed further signs of improvement, even though market confidence was negatively impacted by the vague outlook and visibility in the different industries (see for detailed statistical figures: Menz/Eschenmoser, *M&A Review 2011*, p. 554-559, and Ernst & Young, *Mergers & Acquisitions Quarterly Switzerland*, Third and Fourth Quarter 2011).

Overall, 2011 showed an increase in the number of Swiss M&A transactions with total volume declining, notwithstanding a number of high-profile transactions which pushed the total up considerably. In particular during the second half of 2012, the number of larger transactions declined, while the number of smaller transactions increased.

With regard to cross-border takeovers or sales by Swiss companies, among the significant deals in 2011 can be mentioned the acquisition of Aker Drilling, an offshore drilling contractor, for \$3.4 billion by Transocean in Q3; the acquisition of German Süd-Chemie by Clariant, a Swiss speciality chemical company, for \$2.5 billion; Nestlé's acquisition of a 60% equity stake in the Chinese sweets producer Hsu Fu Chi for \$1.75 billion; Meyer Burger's public offer on Roth & Rau, a German solar equipment producer for \$400 million; and the sale of pharmaceutical company Pharmasset by Roche Venture Fund and others to Gilead Sciences for approximately \$11 billion.

Large inbound transactions included the acquisition of Nycomed SICAR, a Swiss-based pharmaceutical company, by Japanese Takeda Pharmaceutical for approximately \$13.7 billion; the acquisition of Synthes by Johnson & Johnson for \$21 billion; Group Bruxelles' acquisition of an equity interest in Imerys, a leading company in extraction and processing of industrial minerals, valued at \$1.6 billion, in March 2011; the acquisition of Rabobank's 46% shareholding in Bank Sarasin & Cie by Safra

“Swiss-based companies seem to remain attractive targets for foreign acquirers due to their healthy financials”

Group for \$1.1 billion; the acquisition of Transatlantic Holdings, a leading company in the reinsurance sector by Swiss Allied World Assurance Company Holdings for \$4.2 billion; and the acquisition of Orange Switzerland, a mobile telecommunications provider, by Apax Partners for \$2.1 billion.

As in the previous year, cross-border transactions were influenced by the strength of the Swiss franc, which made acquisitions by foreign acquirers in Switzerland expensive. Nevertheless, Swiss-based companies seem to remain attractive targets for foreign acquirers due to their healthy financials, worldwide footprint and market position as well as their innovations and technologies. Conversely, the high Swiss outbound M&A deal flow was clearly influenced by the weakness of the euro and the US dollar as well as the importance to secure high growth opportunities in emerging markets. Further, Swiss-based companies dependent on exports and therefore exposed to the strong Swiss franc keep looking to expand their sourcing and/or production base to countries in the eurozone or US dollar-dominated areas in Asia in order to partially hedge their currency exposure.

The few transactions relating to Swiss acquirers of Swiss listed target companies included ABB's acquisition of Newave Energy Holding, a producer of uninterrupted power supply for SFr170 million (\$186.6 million); the offer of Artemis Beteiligungen III for Feintool International Holding, an equipment producer; the offer of M.R.S.I. Medical Research, Services & Investments for the shares of Genolier Swiss Medical Network, a network of private hospitals; and the public offer of Axpo Holding on EGL, an energy trading company.

“In future review bodies, may require more time for the analysis of complex cases”

Public takeovers

Public tender offers on issuers listed on an exchange in Switzerland are governed by Sesta. In certain instances, mainly in the case of a listed issuer spin-off of a non-listed company, an offer on the latter's shares is – even though not listed – nevertheless subject to the provisions of Sesta (see, for example, the Hammer Retex transaction in 2009 or the earlier Eichhof/Heineken or Mövenpick/Clair Finanz Holding transactions). Pure merger transactions, conversely, are not subject to the provisions of Sesta, but to those of the Swiss Merger Act. An exception applies if one of the merging companies acquires before the effective date of the merger a controlling stake of the other merging company, thereby triggering the obligation to submit a public offer according to Sesta.

In that case, however, the Takeover Board, while requesting compliance of the merger documentation and to the extent applicable, the terms of the merger, with the requirements provided for in Sesta and the ordinance on public takeovers, allows the acquirer to postpone the offer and instead complete the merger with the consequence that the obligation to submit a public offer lapses due to the absorption of (usually) the target company (see the Hiestand transaction, for example), provided however, that if the merger fails, the acquirer will be obliged by the Takeover Board to follow through with its public offer.

Sesta defines when a purchaser is required to make a mandatory offer for all outstanding equity securities of a target company. This is the case if an acquirer directly or indirectly controls more than 33.3% of the company's voting rights whether exercisable or not. Exceptions



About the author

Alexander Vogel is a partner and heads MLL's corporate and finance department. He regularly advises companies and financial institutions on cross-border mergers and acquisitions, public takeovers, acquisition finance, corporate governance and corporate real estate transactions. Vogel graduated from the University of St Gallen and obtained a Master of Laws from Northwestern University School of Law. He is a member of the Swiss and New York Bar and is a notary public (civil law).

Contact information

Dr Alexander Vogel
Meyerlustenberger Lachenal

Forchstrasse 452
P.O. Box 1432
CH-8032 Zurich
T: +41 44 396 91 91
F: +41 44 396 91 92
W: www.mll-legal.ch



About the author

Christoph Heiz is a partner and heads MLL's capital market group. He regularly advises companies and financial institutions on capital market transactions, stock exchange law, public takeovers, investment funds and corporate finance. Heiz studied law at the University of Zurich and obtained a Master of Laws from the University of Pennsylvania. He is a member of the Swiss Bar.

Contact information

Dr Christoph Heiz
Meyerlustenberger Lachenal

Forchstrasse 452
P.O. Box 1432
CH-8032 Zurich
T: +41 44 396 91 91
F: +41 44 396 91 92
W: www.mll-legal.ch

apply if the target had increased this threshold in its articles of incorporation to up to 49% (opting up) or if the latter contain an opting out-clause.

Furthermore, once a public offer has been pre-announced, the board of the target is no longer permitted to take any defensive measures that could have the effect of significantly altering the assets or liabilities of the target but has to submit such measures to the shareholders' meeting for approval.

Compliance with the rules provided for in Sesta is supervised by the Takeover Board which issues binding administrative orders in the form of binding decrees. Any decision of the Takeover Board can be brought to the Financial Market Supervisory Authority (Finma) for review. Against decisions of Finma any party can make an appeal to the Federal Administrative Court whose decisions are final.

Recent legislative changes

Since the Swiss legislator enacted the Financial Market Supervision Act (Finmasa) providing for an amended regulatory framework that entered into force as per January 1 2009, shareholders holding 2% or more of the voting rights of the target company, have the possibility to request the status of a party in the proceedings before the Takeover Board and thus under the current rules, also shareholders can request to participate in the proceedings before the Takeover Board and submit objections or requests to the latter and/or appeal against a decree issued by the Takeover Board.

Such right of participation is given to shareholders, holding in the aggregate 2% or more of the voting rights of the target whether exercisable or not (so called qualified shareholders). In order to qualify for admission to the proceedings, such qualified shareholders must hold their qualifying stake already at the time of the publication of the pre-announcement (if any) or the offer itself and keep holding at least 2% of the voting securities throughout the offer period in order not to lose their standing.

It is unclear under the new legislation, however, whether a qualified shareholder will lose its standing if it keeps holding its shares during the offering period but accepts the offer during the extended offer period (which allows shareholders that have

not accepted the offer during the offer period to accept it, once it is clear that a previously conditional offer becomes unconditional).

Such delays may also have considerable disadvantages for the target company, since itself, its management and work force, customers, suppliers and so on do not know for an extended period whether the intended transaction will be completed as planned or if an uninvited third party will enter the scene and launch a competing (hostile) offer, trying to profit from the fact that the target has put itself in play.

This question had to be addressed by the Federal Administrative Court – the highest court in takeover matters since the enactment of the amended regulatory framework – in a recent landmark decision. The factual background of the decision was as follows: In May 2009, SIX Swiss Exchange-listed Quadrant became the target of a friendly public takeover offer launched by Aquamit, an Amsterdam investment vehicle held by four members of the board and/or management (and at the same time shareholders) of Quadrant and Mitsubishi Plastics.

When preparing the public offer, Quadrant's management group and Mitsubishi Plastics had entered into a framework agreement and a joint venture agreement. Under the terms of these agreements, Mitsubishi Plastics agreed to provide financing to Aquamit and to grant founders' rights and management options to Quadrant's management group. Mitsubishi Plastics and the members of the management each held 50% of Aquamit. In order to implement the offer, the latter entered into a transaction agreement with Quadrant.

After Aquamit announced its public takeover offer for the shares of Quadrant at a price of SFr86 a share, Sarasin Investmentfonds, a minority shareholder of Quadrant, challenged the decision of the Takeover Board regarding the approval of the offer and requested, primarily, an increase of the actual offer price. It claimed that, among other things, the valuation of the additional benefits granted by Mitsubishi Plastics to Quadrant's management in connection with the offer was not performed properly. Sarasin's claim was rejected both by the Takeover Board and the Finma.

Sarasin filed an appeal with the Federal

Administrative Court. The Federal Administrative Court had first to determine whether Sarasin was entitled to appeal against the Finma decision, as Sarasin tendered most of its shares to Aquamit and thus no longer held 2% of the voting rights in Quadrant, as required under the provisions of Sesta, providing for a minimum shareholding of 2% to become and remain a party to the takeover proceeding before Takeover Board and Finma. The court ruled that such provisions did not apply to the proceedings before it, since the latter are governed by the Federal Administrative Procedure Act, which provides no 2% minimum shareholding requirement. Furthermore, Article 29a of the Constitution provides a constitutionally guaranteed right to access to courts. As a result, the court held that prerequisites to appeal should not be interpreted narrowly and thus that the 2% minimum shareholding requirement did not apply.

Scope of review body report

According to Sesta, before publication, the offeror must submit the offer to an auditing company, or to a securities dealer or investment bank accredited by Finma for review, which must primarily examine whether the public takeover offer and its valuation complies with the provisions of the takeover regulations and the implementing rules. The Federal Administrative Court ruled that the review body fulfils a public task and must adopt a neutral position. The review body is an extended arm of the Takeover Board and may not protect the interests of the offeror. Additionally, the court held that the review body should always examine which specific benefits are exchanged by the parties involved in a public offer or its related transactions.

The agreements between the offeror and other parties of the transaction are not only to be analysed as a whole on a high-level basis to determine whether the parties obligations and benefits are balanced or if there is an additional value for a party that is also a shareholder. Instead, each material benefit to either party, and each component thereof, must be carefully assessed and valued. In the case at hand, the Federal Administrative Court found that the review body had assumed without good reasons that the performances between the parties were balanced, as it based its assessment of



About the author

Andrea Sieber is a partner and member of MLL's M&A/corporate group. She regularly advises companies and financial institutions on cross-border mergers and acquisitions, public takeovers, banking and finance, corporate governance and international business transactions. Sieber graduated from the University of St Gallen and obtained a Master of Laws from University of California, Davis, School of Law. She is a member of the Swiss Bar.

Contact information

Andrea Sieber

Meyerlustenberger Lachenal

Forchstrasse 452
P.O. Box 1432
CH-8032 Zurich
T: +41 44 396 91 91
F: +41 44 396 91 92
W: www.mll-legal.ch

the “other material benefits” on false facts, incorrect legal assumptions or implausible or incomprehensible considerations.

The court confirmed that the Takeover Board and Finma must not carry out an investigation to determine the facts themselves and may, in principle, rely on the facts established by the review body as well as on their assessment of the offer. The Takeover Board (and Finma) must, however, verify that the review body’s assessment has been carried out thoroughly and comprehensively. They must, in particular, examine whether the review body’s calculations and explanations with respect to the valuation of the other material benefits in the sense of the provisions of the Finma Stock Exchange Ordinance are “transparent, plausible and comprehensible”.

As a result, the Federal Administrative Court revoked the Finma decision and certain parts of the Takeover Board decisions. Thus, among other things, the Takeover Board must reassess certain “material benefits” and the adequacy of the offer price.

Sarasin requested that the offer price be increased for all Quadrant shares. The court held that the decision of the Finma as prior instance could not be contested with force and effect for all shareholders. Thus, the decisions were revoked only to the extent that Sarasin was concerned. For all the other shareholders involved, the Takeover Board and Finma decisions had come into full force and effect.

Impact on transaction planning

Under the new rules, shareholders can not only participate in the proceedings before the Takeover Board and submit objections or requests, but also have the option of appealing against a decree issued by the Takeover Board. In view of these new rights granted to qualified shareholders, the offeror has had to comply with a mandatory cooling-off period (usually 10 stock exchange days). Furthermore, due to the possibility of an appeal, the terms of the offer and the offer documents will be published with only a preliminary approval of the Takeover Board, since qualified shareholders may file an objection with the Takeover Board. This might cause the Takeover Board to reconsider its approval, or the approval decision may be appealed to Finma.

Thus, qualifying shareholders have the possibility to delay a friendly takeover transaction considerably, as the cooling-off period will be extended in most cases in which a qualified shareholder files an objection or an appeal. Therefore, the offer period does not start until the Takeover Board – or, in case of an appeal, Finma – has issued its decision. As a result of the delay, the transaction risks for both the offeror and the target company may increase considerably.

The offeror, risks being bound to its offer – and thus be exposed to market risks – for a much longer period than anticipated. This in turn increases the offeror’s costs and makes financing more difficult to obtain. It may be beneficial for the offeror to approach the appealing shareholder and try to offer better terms in exchange for a withdrawal of the legal challenges.

The Quadrant case illustrates these consequences very effectively. Almost three years after the offer was launched, a final decision is yet to be taken. In particular, according to the latest published decisions by the

“Finma will have the authority to declare a suspension of voting rights”

Takeover Board and Finma, it seems to be a challenging task for the offeror to find a new review body which is willing to assess the issues raised by the Federal Administrative Court. The Quadrant decision answered several elementary questions on Swiss public takeover law, but some of the court’s conclusions give rise to further questions.

The Federal Administrative Court raised the question of whether shareholders which were not entitled to appeal before the Takeover Board and the Finma due to the 2% shareholding requirement, would be entitled to appeal before the Federal Administrative Court nonetheless. However, the court concluded that this question did not need to be answered in relation to the case at hand. Thus, it is unclear whether shareholders which do not meet the 2% requirement would ever have access to a court. Considering that the Quadrant decision applies only to the appealing shareholders, it could be the case in future that all shareholders except those which hold less than 2% of the shares can benefit from the result of a contested decision.

To compensate for the effect of this on shareholders that do not meet the 2% shareholding requirement, one solution could be to expand the definition of persons qualifying as shareholders which meet the 2% shareholding requirement. According to the prevailing view among commentators, only single shareholders holding 2% or more of the shares are allowed to appeal; groups of shareholders holding an aggregate of 2% or more of the shares cannot appeal. Therefore, a solution could be to allow shareholders to act as a group. Nonetheless, it must not be forgotten that, generally speaking, the interests of the shareholders of the offeree company are protected by law and such protection is supposed to be ensured by the review body and the review by the Takeover Board. Thus, even where there is no possibility for the shareholders which do not meet the 2% threshold to file an appeal, their interests are still looked after.

However, as discussed above, according to Quadrant, the offeror need not pay the increased offer price resulting from an appeal to the non-appealing shareholders if the Federal Administrative Court comes to the conclusion that the offer price should be increased. This interpretation does not correspond to the aims of the legislation on stock exchanges and listed securities as, among other things, it fails to take the principle of equal treatment of all investors into account. Further, it might remove the incentive for an offeror to find an extra-procedural settlement with the appealing shareholder by offering better terms – thereby respecting the best price rule – to all shareholders in exchange for the withdrawal of the legal challenges.

Analysing the reasoning of the court regarding the review body (ie, the accredited audit firm or investment bank) reviewing and confirming compliance of the offer with the regulatory framework, it becomes clear that the requirements for the contents of the report by the review body have become more stringent. The conclusions must be thoroughly explained, thereby increasing the workload and level of detail regarding the review and assessment by the review body.

As a result, in future review bodies and the Takeover Board may require more time for the analysis of complex cases, resulting in higher costs. In the case at hand, how-

ever, it could well be that the Takeover Board arrives at the same conclusion as before, since the review body has been left with considerable leeway to apply its judgement regarding the assessment. If the review body abides with the increased demands, the Takeover Board can accept the assessment and evaluation. In light of Quadrant, future offerors would be well advised to use the most simple transaction structures possible in order to avoid the increasingly costly and time consuming processes involved with legal challenges from shareholders.

Opting out

Sesta provides for a mandatory offer obligation in the event that a shareholder or a group of shareholders acting in concert exceeds a threshold of 33.3% of the voting rights in a company listed on the stock exchange. All EU member states have also introduced such an obligation based on the EU Takeovers Directive (2004/25/EC) (which also provides for a mandatory bid threshold of 33.3%), although many of them provide for a mandatory bid threshold of 30%. Switzerland, however, is the only country which provides for an opting-out mechanism (whereby the shareholders of a listed company can choose to opt out from the mandatory offer obligation).

This is possible, among other things, when an opting-out clause has been included in the articles of association. Sesta differentiates between the introduction of an opting-out clause before and after the listing of shares on the stock exchange. A company may at any time – even after listing – adopt such a provision in its articles of association, provided that this does not prejudice the interests of the shareholders within the relevant provisions of the Swiss Code of Obligations. Once such a clause has been validly introduced, any acquirer is generally exempt from the mandatory offer obligation for an unlimited period – irrespective of the reasons for exceeding the threshold.

The Takeover Board's latest decision on this matter regarding LEM Holding highlights the Board's recent interpretation of the rules when such an opting-out provision is introduced after the company has already been listed on the stock exchange. This expands even further the practice of the board, which had already been relaxed in two 2010 cases. In the LEM case, two shareholders (one of them at the same time a board member) announced their intention to increase their participation in the company thereby (likely) exceeding the 33.3% threshold. The shareholders therefore requested the introduction of an opting-out clause into the articles of association.

On June 2010 the LEM shareholders' meeting approved the introduction of the opting-out clause

by 71% of the voting rights represented (whereby the shareholders requesting the opting out held 39.84% of the votes represented). The board of directors recommended that the motion be rejected as it was not in the shareholders' interests, and thus informed the shareholders of the implications and consequences of introducing such an opting-out clause. A year later, the two shareholders that requested the opting out announced that they held 32.3% of the voting rights in the company and filed a request to confirm the validity of the opting-out clause adopted in the shareholders' meeting with the Takeover Board, as they wanted to be exempt from the mandatory offer obligation when increasing their participation in LEM above the 33.3% threshold.

The Takeover Board confirmed that the introduction of an opting-out clause is valid as long as it does not prejudice the interests of the shareholders within the meaning of the provisions of applicable Swiss corporate law. Such a clause is, in particular, considered to be invalid if it is either selective in a formal sense (the person that is to benefit from the opting-out clause is specifically mentioned in the clause) or in a material sense (the opting-out clause has been introduced in view of an upcoming transaction or for the benefit of a specific person and is thus, in its consequence, selective). If an opting-out clause is introduced five years ahead of a transaction that will benefit from the opting-out clause, it is assumed that the introduction of the opting-out clause is not selective in a material sense, however.

Additionally, an opting-out clause which is selective in a formal or material sense is not invalid if the opting-out does not prejudice the shareholders' interests. In the case at hand, the opting-out clause was selective in a material sense as it was clearly introduced for the benefit of the significant shareholders. In addition, less than five years had passed since its introduction. The significant shareholders were about to exceed the threshold that triggers the mandatory offer obligation due to the planned increase of their participation in the company, and thus benefited from the opting-out clause as they would be exempt from the mandatory offer obligation.

When the Takeover Board analysed the validity of the introduction of the opting-out clause, however, it did not rely on the applicable provisions of corporate law as a basis for its analysis, and thus did not review whether the introduction of the opting-out clause prejudiced the interests of the other shareholders. Instead, the Takeover Board argued that the shareholders were fully aware of the consequences of the introduction of such an opting-out clause as they were fully informed by the members of the board of directors that they should reject its introduction.

Nonetheless, a majority of the shareholders approved the introduction of the opting-out clause. Since the minority shareholders had the opportunity to contest the decision of the majority shareholders before the civil courts within two months of passing the resolution and no shareholder contested the resolution, the Takeover Board concluded that the shareholders had approved the introduction of the opting-out clause, even though they were fully aware of its implications and consequences. Therefore, the resolution was validly passed and the opting-out clause had been validly introduced in the articles of association.

The Takeover Board ordered the board of directors to issue a statement on its assessment on the introduction of the opting-out clause. Although the board of directors had initially recommended that the shareholders reject the introduction of the opting-out clause, it reversed its position after the shareholders' vote. Thereafter, it was of the opinion that the introduction of the opting-out clause was valid, since the shareholders had been sufficiently informed of the implications and consequences of the clause. Further, a majority of the shareholders approved its introduction and LEM had benefited from a stable shareholder base in the previous years, which led to the successful development of the company. Therefore, the opting-out clause was validly introduced and the significant shareholders were not subject to the mandatory offer obligation.

Further proposed changes

On August 31 2011 the Federal Council adopted a proposal to amend Sesta. The amendments proposed to the Parliament contain on the one hand an expanded and tightened criminal offence of insider trading. Further, the bill would introduce certain alterations with regards to the disclosure of holdings in companies listed in Switzerland and public takeovers and the abolition of the so-called control premium in the case of public offers.

Finma will have the authority in cases of justified suspicion of a breach of the disclosure obligation to declare a suspension of voting rights and a ban on additional purchases for affected market participants until the disclosure obligation is fulfilled or it is established that no disclosure obligation exists. If a breach of the disclosure obligation is detected, Finma can, among other measures, confiscate the profits derived from any violating transactions.

The Takeover Board will also have the authority to declare a suspension of voting rights and a ban on additional purchases as precautionary measures in the case of sufficient indications of failure to observe the obligation to make an offer and the threshold for shareholders to participate in the proceedings before the Takeover Board and appeal its decisions will be raised from 2% to 3%.