



Regulations of the Takeover Board

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Regulations of the Takeover Board

(Regulations - TB, R - TB)

of July 21, 1997

Unofficial translation

Approved by the Federal Banking Commission on August 11, 1997

The Commission for Public Takeover Offers (Takeover Board),

based upon Article 23 paragraph 1 of the Stock Exchange Act of March 24, 1995¹ (SESTA; hereinafter referred to as the Act),

decides:

Section 1: Activities

Art. 1 Public takeover offers

(Art. 23 para. 3, SESTA)

The Takeover Board shall ensure compliance with the provisions applicable to public takeover offers, whether the offer is voluntary or mandatory. In particular, the Takeover Board shall issue recommendations stating whether or not these provisions have been complied with in the case of each public takeover offer.

Art. 2 Ordinances and regulations

(Arts 20 para. 5, 23 para. 2, 28, 29 para. 3, 30 para. 2, 31 para. 5, 32 para. 6, SESTA)

¹ The Takeover Board shall present proposals to the Banking Commission to adopt and modify provisions of the Stock Exchange Ordinance - FBC of June 25, 1997², which concern disclosure of shareholdings and the obligation to make an offer.

² The Takeover Board shall issue the Ordinance on Public Takeover Offers (Takeover Ordinance - TB) and submit it to the Banking Commission for approval.

³ The Takeover Board shall adopt regulations and submit them to the Banking Commission for approval.

⁴ The Takeover Board may draw up circulars and opinions, in particular to inform interested parties of its practice.

Art. 3 Publications

(Art. 23 para 3, SESTA)

¹ After consultation with the Banking Commission, the Takeover Board shall publish the texts applicable to public takeover offers and to disclosure of shareholdings as well as significant decisions and recommendations in this field.

² The Takeover Board shall publish an annual report on its activities.

Section 2: Organization

Art. 4 Representation

(Art. 23 para. 1, SESTA)

The Takeover Board shall be represented by its chairman or deputy chairman, who have the power to sign individually. The power of representation may be delegated to other members or employees of the Takeover Board.

Art. 5 Headquarters and chairmanship

(Art. 23 para. 1, SESTA)

¹ The headquarters of the Takeover Board shall be in Geneva.

² The chairman of the Takeover Board shall head the secretariat. The chairman shall be responsible for the Board's relations with all third parties, including the press.

³ The deputy chairman shall exercise all the powers of the chairman if the latter is not available.

Art. 6 Employees

(Art. 23 para. 1, SESTA)

¹ The employees of the Takeover Board shall be appointed by the Takeover Board.

² They shall be hired on the basis of private law contracts.

³ They shall report to the chairman.

Art. 7 Consultation

(Art. 23 para. 1, SESTA)

The Takeover Board may consult representatives of securities dealers (especially those particularly active in the area of public takeover offers), of auditors, of Swiss listed companies, of investors and of foreign authorities with similar duties.

Art. 8 Budget

(Art. 23 para. 5, SESTA)

¹ Before the end of September each year, the chairman shall propose a draft budget for the following year to the Takeover Board.

² In particular, the Takeover Board shall determine what proportion of the chairman's overheads (secretariat, rent and office expenses) shall be included in the overheads of the Takeover Board.

³ The budget shall be approved by the Takeover Board. It shall be forwarded to the Swiss Exchange, which may comment on it within one month. In the event of disagreement, the Banking Commission shall decide.

Art. 9 Annual accounts

(Art. 23 para. 5, SESTA)

¹ The annual accounts shall be audited by an auditing firm appointed by the Takeover Board each year after consultation with the Swiss Exchange.

² The chairman shall submit the annual accounts to the Takeover Board in the spring of the following year, together with the auditor's report.

³ The annual accounts shall be approved by the Takeover Board. They shall be presented to the Swiss Exchange, which may comment on them within one month. Any comments shall be forwarded to the Banking Commission.

Art. 10 Compensation of members

(Art. 23 para. 5, SESTA)

¹ Each member of the Takeover Board shall be entitled to reimbursement of expenses and to annual compensation of 5'000 Swiss francs.

² For their participation in the delegations appointed to examine individual offers, members of the Takeover Board shall receive compensation of CHF 4'000 as the chairman of a delegation and CHF 2'000 a member. The chairman of the Takeover Board may increase these amounts according to the work done.

³ In agreement with the deputy chairman, the chairman may assign specific tasks to certain members and pay them adequate compensation.

⁴ Instead of the above payments, the chairman shall receive an annual compensation, fixed by the Takeover Board when drawing up its budget, on the proposal of the deputy chairman.

Art. 11 Resources

(Art. 23 para. 5, SESTA)

¹ Based on the annual budget, the Swiss Exchange shall pay quarterly advances to the Takeover Board.

² The Takeover Board shall levy the fees provided for in Article 23 para. 5 of the Act, in Article 62 of the Takeover Ordinance - TB of July 21, 1997³, and in Article 35 para. 6 of the Stock Exchange Ordinance - FBC of June 25, 1997⁴.

³ SR 954.195.1

⁴ SR 954.193

Depending on the fees received, the Takeover Board shall partially or wholly waive the quarterly advances due from the Swiss Exchange.

Section 3: Administrative Rules

Art. 12 Meetings

(Art. 23 paras 1 and 3, SESTA)

¹ The chairman shall convene meetings of the Takeover Board as necessary or at the request of a member.

² The place of the meeting shall be determined by the chairman in each case.

Art. 13 Decisions

(Art. 23 para. 1, SESTA)

The Takeover Board shall make its decisions at its meetings or by correspondence. Decisions shall be taken by a majority of the Board members.

Art. 14 Recommendations

(Art. 23 para. 3, SESTA)

Recommendations (Art. 1 of these Regulations and Art. 3 of the Takeover Ordinance - TB of July 21, 1997⁵) shall be adopted by a majority of the members of a delegation at its meetings or by correspondence.

Art. 15 Confidentiality

(Art. 23 para. 1, SESTA)

¹ Members and employees of the Takeover Board shall observe professional secrecy on all matters submitted to the Board, as well as on the Board's deliberations.

² Confidentiality shall not apply vis-à-vis the Banking Commission.

Art. 16 Information to the Banking Commission

(Art. 23 para. 4, SESTA)

¹ The Takeover Board shall inform the Banking Commission of the recommendations it issues.

² Where the Takeover Board grants exemptions from the Takeover Ordinance - TB of July 21, 1997⁶, it shall inform the Banking Commission in a note stating the grounds for the exemptions.

⁵ SR 954.195.1

⁶ SR 954.195.1

Art. 17 Incompatibility

(Art. 23 para. 1, SESTA)

¹ Members of the Takeover Board shall not publicly express opinions on pending or completed takeover offers.

² Members of the Takeover Board shall avoid publicly expressing a dissenting opinion on basic policy statements adopted by the Board.

³ Members of the Takeover Board shall not represent parties before the Board. They shall not give a legal opinion on matters concerning takeover offers.

⁴ Members of the Takeover Board shall not perform any advisory functions in the area of public takeover offers, other than in the course of their normal professional activities. If they exercise advisory activities, they shall inform the chairman at the latest upon commencement of proceedings before the Takeover Board.

Art. 18 Disqualification

(Art. 23 para. 1, SESTA)

¹ If any of the grounds for disqualification pursuant to Article 10 of the Federal Act on Administrative Procedure⁷ apply to a member of the Takeover Board, he must step down.

² Grounds for disqualification may exist in respect of the member himself or the company for which he works.

³ If the existence of a ground for disqualification is contested, the Banking Commission shall decide.

Section 4: Entry into Force

Art. 19

These regulations shall enter into force on January 1, 1998.

⁷ SR 172.021