



TOB Circular no. 1: Buyback programmes

dated 26 February 2010

Fixed-price public offers by an issuer (**offeror**) to purchase its own listed equity securities (**securities**) are "public takeover offers" within the meaning of Art. 2 (e) of the Swiss Stock Exchange Act (**SESTA**). Public takeover offers also include public buyback programmes executed by issuing put options or at market prices. Such transactions (collectively: **buyback programmes**) are governed by the provisions of Chapter 5 of SESTA, the Ordinance of the Swiss Financial Market Supervisory Authority on Stock Exchanges and Securities Trading (**SESTO-FINMA**) and the Ordinance of the Takeover Board on Public Takeover Offers (**TOO**). [1]

Pursuant to Art. 4 (2) TOO, this Circular lays down the requirements and charges that must be satisfied for buyback programmes to be exempted from normal takeover rules. [2]

The reporting procedure (section 5.2) applies to buyback programmes that satisfy all the requirements and conditions laid down in sections 1-4 of this Circular *. The Takeover Board shall issue an order in all other cases (section 5.3). [3]

If the buyback programme is exempted under the reporting procedure, this Circular shall supersede the normal takeover rules. Where an order is made, the Board may dispense with the requirements and conditions laid down in this Circular and direct that the buyback programme must comply with any or all of the normal takeover rules. [4]

1. Common requirements for all buyback programmes

The purpose or purposes of the buyback programme shall be defined clearly and completely. [5]

The buyback programme shall extend to all classes of the offeror's listed equity securities. [6]

The implementation of the buyback programme shall not result in any material change in the control exercised over the offeror. [7]

The total volume of the buyback programme shall not exceed 10% of either the capital or voting rights as entered in the Commercial Register. [8]

The total volume of the buyback programme shall not exceed 20% of the tradable [9]



portion of the securities (**free float**) as calculated on the application submission date in accordance with the rules of the stock exchange on which the securities are listed.

As a result of implementing the buyback programme, the free float shall not fall below the minimum threshold required for listing in accordance with the rules of the stock exchange on which the securities are listed. [10]

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2. Common conditions for all buyback programmes

An equitable relationship must exist between the prices offered for different classes of securities. [11]

The offeror may not, for the purpose or purposes announced, purchase securities to which the buyback programme applies other than through the buyback programme. Securities may be purchased for other purposes and must be reported every fifth trading day. Sales of securities to which the buyback programme applies shall also be reported every fifth trading day. Chapter 8 of TOO shall otherwise apply. [12]

The offeror may not publicise a buyback programme, purchase securities or issue put options during the following periods of times (**blackout periods**): [13]

- a) as long as it postpones the publication of price-sensitive information in accordance with the rules of the stock exchange on which the securities are listed; [14]
- b) for a period of ten trading days prior to the release of financial results to the media; [15]
- c) whenever the effective date of the most recently published consolidated accounts is more than nine months ago. [16]

Exemption from the buyback programme shall not release the offeror from complying with the provisions of the Swiss Code of Obligations (CO). The Board of Directors of the offeror shall remain responsible for ensuring compliance. As a rule, the Takeover Board does not review compliance with Art. 659 CO. [17]

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3. Fixed-price offers and buyback programmes executed by issuing put options

3.1 Additional requirements

Offers may not be subject to any conditions. [18]

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The offer period must be at least ten trading days. [19]

3.2. Additional conditions

If the offeror is unable to satisfy all acceptance declarations, it must satisfy them on a pro rata basis. [20]

If during the period of the buyback programme, the offeror acquires securities at a price that exceeds the offer price, it must offer this price to all offerees. [21]

The offeror must provide confirmation to the Takeover Board that the conditions set out in paragraphs 11 to 16, 20 and 21 have been satisfied no later than three trading days after expiry of the buyback programme. [22]

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4. Buyback programmes at market price

4.1 Additional requirements

The maximum duration of the buyback programme shall be three years. [23]

4.2 Additional conditions

The offeror may purchase securities covered by the buyback programme during a blackout period as well, provided it appoints a bank or securities dealer to implement the buyback programme prior to commencement thereof. The bank or securities dealer appointed shall make independent decisions regarding data, volumes and prices, subject to the parameters stipulated by the offeror, without being influenced by the offeror or any confidential information pertaining to the offeror. The parameters shall be set by the offeror prior to the launch of the buyback programme and outside of any blackout period. Such parameters may be adjusted no more than once a month and only outside of any blackout period. [24]

The offeror may suspend the buyback programme at any time. The buyback programme may not be resumed during any blackout period. [25]

Upon termination of the buyback programme, but in any event once a year, the offeror shall appoint an audit firm (within the meaning of Art. 25 SESTA) to confirm compliance with the conditions set out in paragraphs 24 and 25. The confirmation shall specify any periods and circumstances in which the buyback programme was suspended and the dates on which the programme was adjusted. [26]

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Where the offeror is a bank or a securities dealer, the buyback programme may be executed in accordance with paragraphs 24 and 25, provided that it is implemented by a trading unit protected by Chinese walls. Compliance with these conditions shall be verified by an audit firm during the regulatory audit performed in accordance with Art. 17 of the Financial Market Audits Ordinance dated 15 October 2008. [27]

If the buyback programme covers different classes of securities, the offeror is required to place simultaneous bids for each class. [28]

On any given trading day, the offeror may not repurchase more than 25% of that security's total daily trading volume on the regular trading line traded on this line either on that trading day or on the preceding trading day. [29]

If the rules of the stock exchange on which the securities are listed permit off-exchange transactions (*block trades*), the relevant price may not exceed the last price paid on the exchange or the price last offered on the exchange by a person or entity other than the offeror. The 25% daily volume limit set out in paragraph 29 does not apply to block trades. [30]

The offeror may not enter any buy order during the opening and closing auctions, nor during the auction performed by the exchange after a "stop trading". However, buy orders entered prior to the "stop trading" may be executed. [31]

If buybacks are executed on a specific trading line on which only the offeror (or the bank or securities dealer appointed to implement the buyback programme) is permitted to post buy orders in the order book (**separate trading line**), the price offered on the separate trading line may not exceed the last price offered on the regular trading line or the last price offered prior to that by more than 5%. If these limits are exceeded in any particular transaction, the offeror shall notify the Takeover Board immediately and supply such information as may be required. [32]

The offeror shall report any purchases of securities acquired within the framework of the buyback programme every fifth trading day. Block trades shall be reported every day. Chapter 8 of TOO shall otherwise apply. There shall be no reporting requirement where all buybacks are transacted via a special trading line. [33]

Paragraphs 13 to 16, 29 to 31 and 33 do not apply to usual trading by banks and securities dealers in their own securities. [34]

The offeror shall confirm to the Takeover Board that the conditions set out in paragraphs 12 to 16 have been met. [35]



The bank or securities dealer appointed to implement the buyback programme shall confirm to the Takeover Board that the conditions set out in paragraphs 11 and 28 to 33 have been met. [36]

The confirmations required under paragraphs 35 and 36 shall be submitted no later than three trading days after expiry of the buyback programme, but not less than once a year. [37]

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5. Procedure

5.1 General exemption

Buyback programmes not exceeding 2% of the offeror's capital or voting rights are exempt from complying with the rules governing public takeover offers. Only one such buyback programme is permitted in any given financial year. The Takeover Board shall be notified no later than the date on which the buyback programme is announced. [38]

5.2 Reporting procedure

If the buyback programme is not eligible for general exemption (section 5.1), the reporting procedure shall apply, provided that the buyback programme satisfies the requirements and conditions laid down in chapters 1 to 4^{*}. [39]

The offeror shall report the buyback programme to the Takeover Board no later than five trading days before the proposed date on which the buyback advertisement is published using the applicable form (*Meldung eines Rückkaufprogramms, Annonce d'un programme de rachat*^{**}). The form shall be accompanied by the draft of the buyback announcement which must be submitted in German and French. [40]

The Secretariat of the Takeover Board shall perform a summary assessment within three trading days of receipt of these documents. If it appears that the applicable requirements have been met, the Secretariat shall confirm that it has duly taken note of the buyback programme and that no order by the Takeover Board is required. [41]

Assessments of buyback programmes under the reporting procedure shall be subject to payment of a fee. This shall be 0.5 ‰ of the total amount of the offer, but shall not exceed CHF 20,000. [42]

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5.3 Orders by the Takeover Board

The Takeover Board shall make decisions and issue orders in respect of buyback programmes, which are neither eligible for general exemption (section 5.1) nor exemption under the reporting procedure (section 5.2). [43]

In such instances, the offeror shall submit an application in addition to the applicable form (*Meldung eines Rückkaufprogramms, Annonce d'un programme de rachat*). The offeror shall in particular provide reasons for any items that deviate from the rules laid down in this Circular. The application shall be submitted to the Takeover Board no later than 20 trading days prior to the launch of the buyback programme. [44]

The Takeover Board shall be entitled to vary the requirements and conditions of this Circular. If necessary, it may direct that the buyback programme must comply with any or all of the normal rules governing public takeover offers. [45]

The buyback programme may only be launched ten trading days after the order is published. [46]

Chapter 12 of TOO shall apply. [47]

5.4 Publication of buyback programmes

The offeror shall announce the buyback programme by publishing an advertisement on its website, which shall remain online for the entire duration of the buyback programme. The advertisement shall be submitted on the same day to the Takeover Board and to at least two of the principal electronic media that provide market information (**information providers**). The advertisement shall be submitted at least 90 minutes before the start of trading on the stock exchange on which the securities are listed. The Takeover Board shall display the advertisement on its website. [48]

The minimum information to be included in the advertisement is set out in the applicable form (*Meldung eines Rückkaufprogramms, Annonce d'un programme de rachat*). The Takeover Board shall be entitled to request the inclusion of additional information. [49]

The advertisement must be made available in German and French. [50]

5.5 Amendments to buyback programmes

Amendments to buyback programmes, including any amendment to the stated purpose, shall be requested by submitting an application to the Takeover Board [51]



together with the reasons for the amendment(s). Amendments may be reviewed under the reporting procedure, provided the applicable requirements are met. In all other instances, an order shall be made by the Takeover Board.

On completion of the review process, a buyback advertisement shall be published in accordance with paragraphs 48 et seq. [52]

5.6. Termination of buyback programmes

The offeror shall publish the number of repurchased securities in each class on its website one trading day after termination of the buyback programme and supply such information to the Takeover Board and at least two information providers. The Takeover Board shall publish this information on its website. [53]

5.7. Transitional provisions

This Circular shall apply to buyback programmes for which exemption is requested after 31 May 2010. [54]

As of 1 June 2010, paragraphs 12 and 33 relating to the declaration of transactions shall apply to all buyback programmes in progress. [55]

The offeror may request earlier application of this Circular. [56]

The Swiss Takeover Board Release no. 1 regarding Equity Security Repurchases dated 28 March 2000 is hereby repealed. [57]

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* Formal correction dated 23 March 2010

** This form is only available in German and French