



TOB Circular no. 2: Liquidity in the context of takeover law

dated 26 February 2010 (Status as of 1 January 2016^{*})

1. Minimum price rules

Generally, if the minimum price rule (Art. 135, para. 2 of the Financial Markets Infrastructure Act [FMIA], Art. 42 et seq. of the FINMA Financial Market Infrastructure Ordinance [FMIO-FINMA]) applies to a public tender offer, the stock exchange price will be considered relevant in accordance with Art. 42, para. 1 and 2 FMIO-FINMA. However, if the listed equity securities which are the subject-matter of the offer are not liquid prior to the publication of the offer or the pre-announcement, Art. 42, para. 4 FMIO-FINMA requires a valuation to be conducted by a reviewing entity (Art. 128 FMIA). The reviewing entity's valuation report must indicate the valuation method used as well as the basis of the valuation. Pursuant to Art. 46 FMIO-FINMA, Art. 42, para. 2 to 4 FMIO-FINMA applies *mutatis mutandis* for determining the value of securities offered in a public exchange offer. [1]

2. SLI Swiss Leader Index securities

A security included in the SLI Swiss Leader Index of the SIX Swiss Exchange (SLI) shall be deemed liquid within the meaning of Art. 42, para. 4 FMIO-FINMA. [2]

3. Other securities

A security not included in the SLI shall be deemed liquid within the meaning of Art. 42, para. 4 FMIO-FINMA if the monthly median of the daily volume of on-exchange transactions is equal to or greater than 0.04% of the tradable portion of the relevant security (**free float**) in at least 10 of the 12 full months preceding the publication of the offer or the pre-announcement. [3]

3.1 Determination of the free float of a security

For securities listed on the SIX Swiss Exchange, the free float is determined in accordance with the rules governing the Swiss All Share Index. For securities listed on another stock exchange, the free float will be determined in accordance with the rules in effect on that exchange. [4]

If the stock exchange on which a security is listed does not have any rules determining the free float of a security, a free float of 100% will be assumed. [5]



3.2 Determination of the transaction volume of a security

The daily volume of on-exchange transactions is the volume of the transactions effected during a trading day on the primary trading line. [6]

If a security is listed on several stock exchanges, or if it is traded through several trading lines or on several stock exchanges, the total volume of all on-exchange transactions will be taken into account. [7]

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4. Transitional provisions

This Circular shall be applicable to all offers that are published or pre-announced after 31 March 2010. [8]

Circular no. 2 of the Takeover Board dated 3 September 2007 on the concept of liquidity shall be repealed. [9]

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* References to statutory and regulatory instruments have been adapted following the enactment of the Financial Markets Infrastructure Act and its implementing ordinances.