



Directive on the Conflicts of Interest of Members and Employees of the Takeover Board

of 14 June 2012 (Status as of 1 January 2016*)

1. Objective

[1] The members and employees of the Swiss Takeover Board (Takeover Board) ensure that they perform their duties for the Takeover Board without conflicts of interest. They gain no benefit from confidential information they have acquired in the course of their work for the Takeover Board.

[2] According to Article 126 of the Financial Markets Infrastructure Act, the Takeover Board is composed of "*expert representatives of securities dealers, listed companies and investors.*" The directive regarding conflicts of interest reflects the fact that the members pursue other professional activities which qualify them for their appointment by Swiss Financial Surveillance Authority (FINMA).

[3] The members and employees of the Takeover Board are free to hold financial investments. Subject to section 5, they can always acquire or sell financial assets.

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2. Personal Scope

[4] This Directive applies to the members of the Takeover Board, its legal counsels and all other persons with whom an employment relationship exists (employees).

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3. Definitions

[5] In relation to a proceeding of the Takeover Board, the offeror, the offeree company, people acting in concert with these, and every qualified shareholder who participates in the process all qualify as parties.

[6] Spouses, registered partners, cohabiting partners, persons living in the same household, and legal entities, trusts and other asset structures under the significant influence of such persons are all considered to be related parties of a member or employee of the Takeover Board.



[7] All corporations, partnerships, foundations, occupational pensions, all collective investment vehicles, public law institutions or trusts are considered to be enterprises. Public sector entities are not considered to be enterprises.

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4. Handling of Confidential Information

[8] The members and employees of the Takeover Board are subject to the terms of all transactions submitted to the Takeover Board (Art. 320 of the Swiss Penal Code) and as regards the deliberations of the Takeover Board to official secrecy (Art. 17 Regulations of the Takeover Board).

[9] Official secrecy is a commitment to great care and to a strict separation of information on matters that are submitted to the Takeover Board. Members are informed of confidential facts only as necessary for their activities in a committee or necessary for other purposes, particularly for activities in plenary sessions.

[10] At least once a year, each member submits a list of companies in respect of which a conflict of interest exists or could arise to the Secretariat.

[11] A member may be requested to participate in a committee if none of the parties listed with the Secretariat as entailing conflicts of interest for him or her are involved. From that moment on, the member is considered as having access to confidential information; the timing of the request is recorded.

[12] After the member has checked whether a conflict of interest exists, he or she confirms or declines participation. In cases of doubt, the President is consulted.

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5. Prohibition of the Use of Confidential Information for Private Benefit

[13] Without prejudice to Article 161 of the Penal Code, it is forbidden for members and employees to gain, either for themselves or for a third party, an advantage, financial or otherwise, by exploiting confidential information that they have encountered in the course of their duties.

[14] This prohibition shall not apply to transactions executed by a representative authorised to manage the financial assets of a member or employee or a person closely associated with either of these, provided that:



- [15] a) the contract provides for discretionary asset management;
- [16] b) the objectives of asset management and their possible adaptation are expressed in writing;
- [17] c) it is forbidden that the person authorising the representative gives instructions or recommendations concerning selection, sale or hedging of specific securities, collective investments in undiversified equities or related derivative instruments issued or that the representative accepts such;
- [18] d) in the event of a breach of condition c), the representative is obliged to inform the President immediately;
- [19] e) in February of each year, the representative certifies in writing to the President that he or she has received no instructions, recommendations or suggestions as described in condition c; the representative explicitly states if and when the investment objectives have been adjusted.

[20] Each member and employee of the Takeover Board informs the President of the identity of the person or persons charged with the management of financial assets and provides him or her with an original of the contract terms, which include conditions a) to e).

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6. Conflicts of Interest

[21] A member or an employee declines to act in a transaction if he or she is involved in a conflict of interest, that is, if he or she has a personal interest in a transaction or if his or her participation in the decision-making in connection with a transaction may give rise to a serious appearance of a conflict of interest.

[22] A member or employee is presumed to have a personal interest in a transaction if:

- [23] a) he or she or a person close to him or her is a member of the board or management of a party or is employed by a party;
- [24] b) he or she or a person close to him or her has a close personal relationship with a member of the board or management or a major shareholder of a party;
- [25] c) he or she or a person close to him or her has a significant business relationship with a party or has done so in the recent past;
- [26] d) other circumstances occur that interfere or appear to interfere with his or her independence.

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[27] A personal interest in a transaction is presumed if a member or employee or a person close to him or her has one of the following:

[28] i) equity securities of a party,

[29] ii) Investments in diversified collective investment schemes with a significant investment in equity securities of a party,

[30] iii) derivatives which relate to (i) or (ii),

[31] whose value (or any combination of these in total) is greater than 5% of his or her taxable assets.

[32] No personal interest is presumed in a transaction due to financial assets held or managed by an enterprise where a member or an employee, being a member of the board, director, partner or employee of a company, has no influence on the decisions concerning selection, sale or hedging (hedge) of investments.

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7. Audit

[33] If it is suspected that this directive has been violated, the President may, with the approval of the Vice President, arrange an investigation. The investigation is to be performed by a company suitable for this purpose. The member or employee concerned is actively involved in establishing the facts, grants access to relevant documents and releases third parties from professional confidentiality.

[34] In the event that the President is affected or otherwise hindered, the vice president decides. The Commission shall decide about any investigation against the President.

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8. Final Provisions

[35] This directive shall enter into force on 10 July 2012. The internal directive of 30 April 2004 regarding share ownership and trading activities is canceled.

[36] The members will transmit the documents described in ref 10 and 20 for the first time within three months of this directive coming into force.

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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.