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Guidelines for institutional investors governing the exercising of participation rights in public limited companies

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Guidelines for institutional investors governing the exercising of participation rights in public limited companies

These guidelines govern the exercising of participation rights in Swiss listed companies. However, some of the principles may also be applied where appropriate as the basis for the exercising of participation rights in foreign or non-listed companies or organisations (including those with a legal form other than that of public limited company).

Guidelines for institutional investors governing the exercising of participation rights in public limited companies

Institutional investors assume certain responsibilities in the exercising of their participation rights.

The authors of the “Guidelines for institutional investors governing the exercising of participation rights in public limited companies” (“Guidelines”) have formulated the following five basic principles with a view to affirming this responsibility:

- **Institutional investors are to exercise their participation rights insofar as this is deemed appropriate and feasible in the interests of their clients.**
- **Institutional investors shall take due account of the interests of their clients when exercising their participation rights.**
- **Institutional investors shall assume responsibility for exercising the participation rights to which they are entitled.**
- **Institutional investors shall communicate the principles and processes involved in exercising their participation rights to their clients.**
- **Once a year, institutional investors shall disclose the manner in which they have exercised their participation rights.**

Notes on the “Guidelines for institutional investors governing the exercising of participation rights in public limited companies”

Preamble

Institutional investors assume certain responsibilities in the exercising of their participation rights.

Institutional investors have to be fully aware of their particular responsibility towards their clients and respect their important role in ensuring long-term, effective corporate governance of the companies in which they hold equity securities. They shall exercise their participation rights diligently and in the interests of their clients.

The authors of these Guidelines have formulated the following five basic principles with this in mind. Institutional investors who agree to abide by these Guidelines are required to either fully comply with these formulated principles or explain in a statement of accountability on their website why they deviate from one or more of them (“*comply or explain*”).

Principle 1

Institutional investors are to exercise their participation rights insofar as this is deemed appropriate and feasible in the interests of their clients.

It is deemed appropriate for institutional investors to exercise their participation rights if the associated expenditure is justifiable and reasonable from the point of view of adequately safeguarding the interests of their clients.

In particular, the exercising of participation rights includes entry in the share register as a shareholder with voting rights and the exercising of voting rights at the general meeting of shareholders.

Institutional investors are required to specify the circumstances under which loaned equity securities (“*securities lending*”) are to be recalled for the exercising of their participation rights.

Principle 2

Institutional investors shall take due account of the interests of their clients when exercising their participation rights.

Participation rights shall be exercised in the interests of clients. In exercising these rights, institutional investors should adopt a long-term and sustainable approach, unless the relevant investment guidelines stipulate to the contrary.

When exercising their participation rights, institutional investors shall take due account of the specific circumstances of each individual case and thus avoid the concept of “*one size fits all*”.

In their investment guidelines, institutional investors are required to define the manner in which they exercise their participation rights. They may form their opinions in the course of appropriate dialogue with the involved companies, and if any controversial issues arise they should attempt to resolve them by contacting the companies concerned.

Institutional investors are obliged to exercise their participation rights independently of any political criteria or instructions from third parties.

Institutional investors should avoid any conflicts of interest. In the event of unavoidable conflicts of interest they shall disclose them and take the necessary action to overcome them.

Principle 3

Institutional investors shall assume responsibility for exercising the participation rights to which they are entitled.

Institutional investors may not delegate their responsibility for their participation rights to third parties.

This does not rule out the assignment of the exercising of voting rights within the scope of an asset management mandate, as long as the exercising of voting rights complies with the specified criteria.

Institutional investors may also call on the services of proxy advisors.

Institutional investors must select their voting rights representatives and proxy advisors with sufficient care and ensure that they receive appropriate instruction and are adequately supervised. Institutional investors must carefully consider the recommendations made by their proxy advisors with a critical eye, and in particular examine their recommendations in order to identify any potential conflicts of interest. They shall ensure that the proxy advisors duly disclose any conflicts of interest and take the necessary action. If any controversial issues should arise, the proxy advisors shall pass on their recommendations in advance to the companies concerned.

Wherever possible, “*securities lending*” prior to a general meeting of shareholders should be avoided or suspended if there are any controversial items on the agenda that have to be voted on and which could be of relevance in terms of the client’s interests.

Principle 4

Institutional investors shall communicate the principles and processes involved in exercising their participation rights to their clients.

The principles and processes involved in exercising institutional investors' participation rights shall be disclosed in such a manner as to enable an effective review.

Institutional investors are obliged to define the principles governing the exercising of their participation rights and voting rights ("guidelines concerning voting rights"), as well as the process by which the decision regarding the exercising of participation rights is reached (in the form of a written policy).

The policy also has to stipulate whether and, if so, how institutional investors are to coordinate the exercising of their participation rights with other investors, and/or how they are to call on the services of proxy advisors.

Principle 5

Once a year, institutional investors shall disclose the manner in which they have exercised their participation rights.

At least once a year, institutional investors are required to issue a report (in the form of an accountability statement) summarising the participation rights they have exercised. However, they do not have to disclose details regarding voting in individual cases.

In the accountability statement, institutional investors are obliged to disclose the extent to which they may have assigned the exercising of their voting rights to asset managers or have called on the services of proxy advisors, and how the relevant relationships are structured.

Clients

Third parties who entrust institutional investors with the fiduciary management of assets, including insured parties and/or beneficiaries in the case of pension schemes.

Equity securities

Equity and book-entry securities which represent the right of participation in a company. Securities which involve participation rights (notably shares) are particularly relevant for these Guidelines.

Institutional investors

Investors who are entrusted with the mandate of holding equity securities for clients on a fiduciary basis.

Participation rights

Rights which allow the shareholders to participate in company business, notably the right to participate in and vote at the general meeting of shareholders.

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Context

Guidelines for institutional investors governing the exercising of participation rights in public limited companies

1 Objectives and purpose

The “Guidelines for institutional investors governing the exercising of participation rights in public limited companies” (hereinafter referred to as “Guidelines”) describe best practices relating to the exercising of participation rights. Other aspects of responsible investment such as appropriate dialogue between institutional investors and companies are only addressed indirectly and should in no way be prevented.

By voluntarily adopting these guidelines, institutional investors send a clear signal that they take their responsibility towards their clients seriously. In this way, they thus underscore their acceptance of their obligation to recognise and duly implement participation rights.

2 Background information

In summer 2011, *economiesuisse*, institutional investors, proxy advisors and regulatory authorities joined forces to formulate the Guidelines. This move was made in response to growing political pressure on institutional investors to exercise their rights in a more systematic manner. Alongside the “Swiss Code of Best Practice for Corporate Governance” (hereinafter referred to as “Swiss Code”), which is addressed to companies listed on the stock market, these Guidelines supplement the existing self-regulation instruments relating to good corporate governance in the area of participation rights. In this way, the Swiss economy is able to position itself among the leading financial centres in this area.

In exercising their participation rights, institutional investors such as pension funds, insurance companies and investment funds bear a great deal of responsibility. In view of this it is essential that, in the same way as listed companies, they have the necessary corporate good governance instruments at their disposal for exercising participation rights. For capacity reasons, the majority of institutional investors are unable to carry out in-depth analyses of the items on the agendas of general meetings of shareholders of all companies in which they hold shares, and they therefore call on the services of proxy advisors. This means that the latter significantly influence individual votes at the general meetings of shareholders of listed companies. It is often the case that the principles and processes according to which institutional investors exercise their participation rights, and proxy advisors make their specific recommendations, are not sufficiently communicated and disclosed. Furthermore, proxy advisors sometimes find themselves faced with conflicts of interests.

The notion that institutional investors should have their own corporate good governance instruments at their disposal for exercising participation rights is by no means new. In Switzerland, Article 49a, paragraph 2b of the Swiss Federal Ordinance on Supervision in Occupational Pension Plans has for a number of years stipulated that the governing body of an occupational pension fund must formulate regulations that are to be applied in the exercising of the rights of shareholders in the fund. In addition, Article 23, paragraph 1 of the Collective Investment Schemes Act for investment funds stipulates that membership and creditor rights associated with investments must be exercised by the fund management independently and exclusively in the interests of the investors. In their respective codes of conduct, the Association of Swiss Pension Fund Providers (ASIP) and the Swiss Funds Association (SFA) also partially address the exercising of

participation rights by institutional investors. In England, a document entitled “UK Stewardship Code” was published in July 2010 which formulates a specific code of conduct for institutional investors in the form of seven principles. Similar codes are currently in preparation in various other countries. In addition, the “Green Paper on the EU Corporate Governance Framework” published by the European Commission in 2011 and the recently published “Action Plan: European company law and corporate governance – a modern legal framework for more engaged shareholders and sustainable companies” also address these issues in detail.

The Guidelines represent a pragmatic Swiss approach. In the same way as in the Swiss Code for Swiss listed companies, in these Guidelines the best practices for institutional investors are described in the form of principles and do not specify detailed requirements. They are to be reviewed on a periodical basis and updated as necessary.

3 Voluntary adoption

The Guidelines form an integral part of the self-regulation mechanism that institutional investors and proxy advisors can abide by voluntarily if they are fundamentally in agreement with the defined principles. Even if they voluntarily adopt the cited principles, however, they still have the option of deviating from individual regulations (principle of “comply or explain”).

Although it is ultimately up to each institutional investor and proxy advisor to decide whether to voluntarily abide by the Guidelines, in order to secure their acceptance it is important that they receive broad recognition and support. On the other hand, recognition of the Guidelines offers the involved organisations an opportunity to present themselves as firm supporters of the principles of good corporate governance in the exercising of participation rights.

4 Concluding remarks

The authors hope that the investment community will acknowledge and welcome the Guidelines, since it is their own interests that are at stake, as well as those of Swiss listed companies and ultimately the smooth functioning of the market and the Swiss economy in general.

Basel/Bern/Geneva/Zurich, 21 January 2013

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