



Practice of the Disclosure Office of BX Swiss Ltd., Nr. 2/2022 of 10 March 2022

Facilitated disclosure for foreign collective investment schemes not authorized for public distribution

Recommendation of the Disclosure Office of BX Swiss Ltd. of 21 December 2021

In connection with an application for easing provisions from, or exemption to the reporting and disclosure obligation according to Art. 123 para. 2 FinMIA and Art. 26 para. 1 FinMIO-FINMA of an asset management group, whose associated companies managed various collective investment schemes, the Disclosure Office (OLS) had to deal with the question, whether in the case of foreign collective investment schemes not authorized for public distribution, the reporting of the directly involved group entities could be waived in favor of a consolidated report made directly by the group parent company (Art. 18 para. 4 FinMIO-FINMA).

Regarding the reasons why the applicant should be allowed to omit information on the group entities directly holding the collective investment schemes, the applicant essentially stated that an automated system for monitoring and reporting shareholdings was to be used within the group. The system would aim to reduce manual intervention and errors in the reporting process. However, the system would not have the functionality to monitor changes in information outside the thresholds, such as names, addresses and the formation of the group, in particular the information on direct participants. According to the applicant, this monitoring and reporting process involves a high manual administrative burden, which increases the risk of overlooking non-threshold disclosures.

Furthermore, the applicant clarified that the group and its affiliated companies had no interest in acquiring equity securities in order to exercise significant influence over the management of the issuer.

In the case of a disclosure notification, both the beneficial owner and the direct holders of the positions concerned must be disclosed (Art. 22 para. 3 FinMIO-FINMA). Exemptions to or easing provisions of the reporting and disclosure obligation may be granted, provided there is good cause for doing so (Art. 26 para. 1 FinMIO-FINMA).

The OLS concluded that the potential multiplicity of possible direct participants and notifications according to Art. 16 para. 2 FinMIO-FINMA, could have an overall negative impact on transparency. Transparency would not be increased by a large number of notifications without substantial content, especially if no thresholds were triggered, making their added value questionable. Furthermore, a large number of notifications would mean a high administrative burden not only for the applicant but also for the issuers of the equity securities concerned. Finally, disclosure notifications that include many direct participants would be quite extensive and could have a negative impact on the clarity of disclosure notifications.

For these reasons, the OLS concluded that the applicant can be granted the requested easing provision from or exemption to the reporting obligation. The OLS attached to the recommendation the condition that, upon request by third parties, the applicant must inform them, even without proof



of interest, which of the group's entities has a direct interest in the shares according to Art. 22 para. 1 let. e and para. 3 FinMIO-FINMA.

It is necessary to check in each individual case whether the conditions for easing provisions or exemptions in the aforementioned sense are met.