

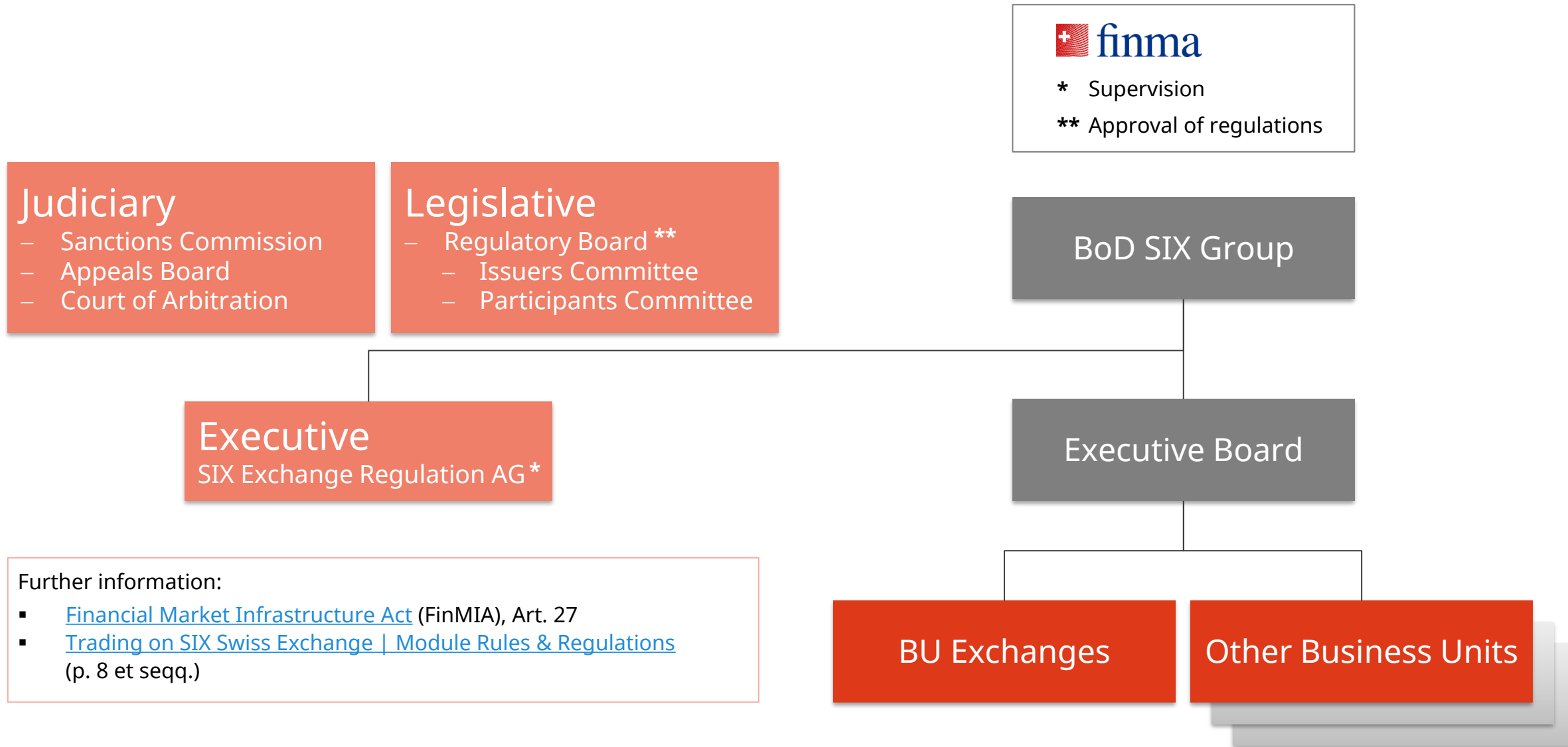
Disclosure obligations: How do companies successfully prevent failures, misfortunes and mishaps?

An introduction to the disclosure obligations and their regulatory environment

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SIX Exchange Regulation AG

Zurich, 3 December 2024

Disclosure obligations | Regulatory environment



Disclosure obligations | Why?

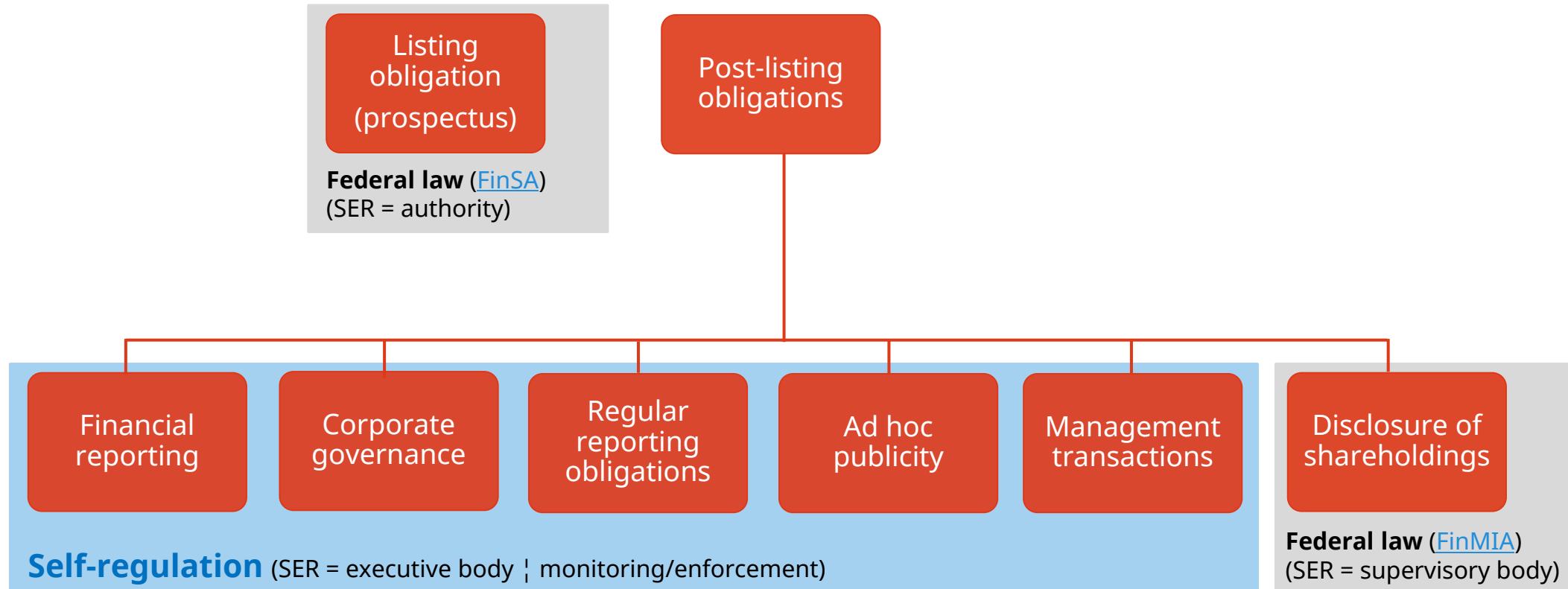
The **main purpose** of disclosure obligations is providing information to the market to ensure **transparency**.

Transparency, in turn, contributes to:

- a **correct price allocation** and therefore, an **efficient market** (efficient market theory)
- **equal treatment** of market participants
- **market integrity** (orderly and smooth trading)



Disclosure obligations | In the context of listing



Disclosure obligations | Prospectus

Art. 35 para. 1 FinSA:

*Any person in Switzerland who makes a public offer for the acquisition of securities or any person who seeks the admission of securities to trading on a trading venue [...] **must first publish a prospectus.***

Further information:

- Art. 27 et seqq. [Listing Rules](#) (LR)
- Art. 35 et seqq. [Financial Services Act](#) (FinSA)
- Art. 43 et seqq. [Financial Services Ordinance](#) (FinSO) (inc. annexes)
- [SER website](#) (Prospectus submission)

Disclosure obligations | Financial reporting

Art. 49 para. 1 LR and Art. 10 para. 1 DFR:

*The issuer is required to **publish an annual report**. This comprises the **audited annual financial statements**, in accordance with the applicable financial reporting standard, as well as the corresponding audit report. The annual report must be published [...] **within four months of the balance sheet date** [...].*

Art. 50 para. 1 LR and Art. 11 DFR:

*Issuers of listed equity securities are obliged to publish **semi-annual financial statements** [...] **within three months of the balance sheet date** for the latter [...].*

Further information:

- Art. 49 et seqq. [Listing Rules](#) (LR)
- [Directive on Financial Reporting](#) (DFR)
- [Circular No. 2](#)
- [SER website](#) (Corporate Reporting)

Disclosure obligations | Corporate governance

Art. 49 para. 2 LR and Art. 2 et seq. DCG:

*The DCG requires issuers whose equity securities have a primary listing on SIX Swiss Exchange to disclose certain **key corporate governance information**.*

Art. 9 DCG:

*An issuer **may** produce a **sustainability report** (so-called **opting in** according to Annex 1 pt. 2.03 DRRO).*

Further information:

- Art. 49 para. 2 [Listing Rules](#) (LR)
- Art. 734 et seqq. / Art. 964a et seqq. [Code of Obligations](#) (CO)
- [Directive on Information relating to Corporate Governance](#) (DCG)
- [Economiesuisse Swiss Code of Best Practice for Corporate Governance](#)
- [Guideline on the Directive on Information relating to Corporate Governance](#)
- [Directive on Regular Reporting Obligations](#) (DRRO)

Disclosure obligations | Regular reporting obligations

Art. 52 and 55 LR and DRRO:

Technical and administrative information on the listed securities must be provided to SER and, in some cases to the market participants, in a timely and appropriate manner:

- **Periodic reports**, e.g. general meeting date / invitation / resolutions, submission of financial reports, dividend
- **Extraordinary corporate events**, e.g. changes of name / address / external auditors / capital structure

*The reporting procedure varies depending on the type of listed securities (issuers of equity securities with a primary listing must use the platform **CONNEXOR® Reporting**)*

Further information:

- Art. 52 and Art. 55 [Listing Rules](#) (LR)
- [Directive on Regular Reporting Obligations](#) (DRRO)
- [Guideline on the Directive Regular Reporting Obligations](#)
- [CONNEXOR® Reporting Manual](#) / [Onboarding CONNEXOR® Reporting](#)
- [SER website](#) (Regular reporting)

Disclosure obligations | Ad hoc publicity

Art. 53 para. 1 und para. 2 LR:

«The issuer must inform the market of any **price-sensitive facts** which have arisen in **its sphere of activity**. Price-sensitive facts are facts whose disclosure is **capable of triggering a significant change in market prices**. [...] The issuer must provide notification as soon as it becomes aware of the main points of the price-sensitive fact.»

Art. 53 para. 1^{ter} LR, Art. 4 para. 2, Art. 11 and Art. 17 DAH:

Annual and interim reports are **per se price-sensitive**; all other facts are subject to the issuer's discretion.

Publication **generally** must take place **outside of the critical trading hours** ergo no later than 90 minutes before start of trading or after close of trading. In case publication outside of trading hours is unavoidable (e.g. leak etc.) SIX Exchange Regulation must be notified immediately by telephone (+41 58 399 55 05).

Further information:

- Art. 53 et seq. [Listing Rules](#) (LR)
- [Directive Ad hoc Publicity](#) (DAH)
- [Guideline on the Directive on Ad hoc Publicity](#)
- [Manual CONNEXOR® Reporting](#) / [Onboarding CONNEXOR® Reporting](#)
- [SER Website](#) (Ad hoc publicity)

Disclosure obligations | Management transactions

Art. 56 LR:

Members of the management committee and members of the BoD (and related parties) of issuers whose equity securities have a primary listing on SIX Swiss Exchange are required to *inform* their companies if they engage in *trading in equity, conversion or purchase rights* in their own company.

*The deadline for notifying the company is **two trading days** after the transaction has been concluded.*

*The company must publish the information within **three trading days**. It does this via reporting platform.*

Further information:

- Art. 56 [Listing Rules](#) (LR)
- [Directive on the Disclosure of Management Transactions](#) (DMT)
- [Guideline on the Directive on the Disclosure of Management Transactions](#)
- [Directive on Electronic Reporting and Publication Platforms](#) (DERP)
- [Reporting Platform Login](#)
- [SER Website](#) (Management transactions)

Disclosure obligations | Disclosure of shareholdings

Art. 120 FinMIA:

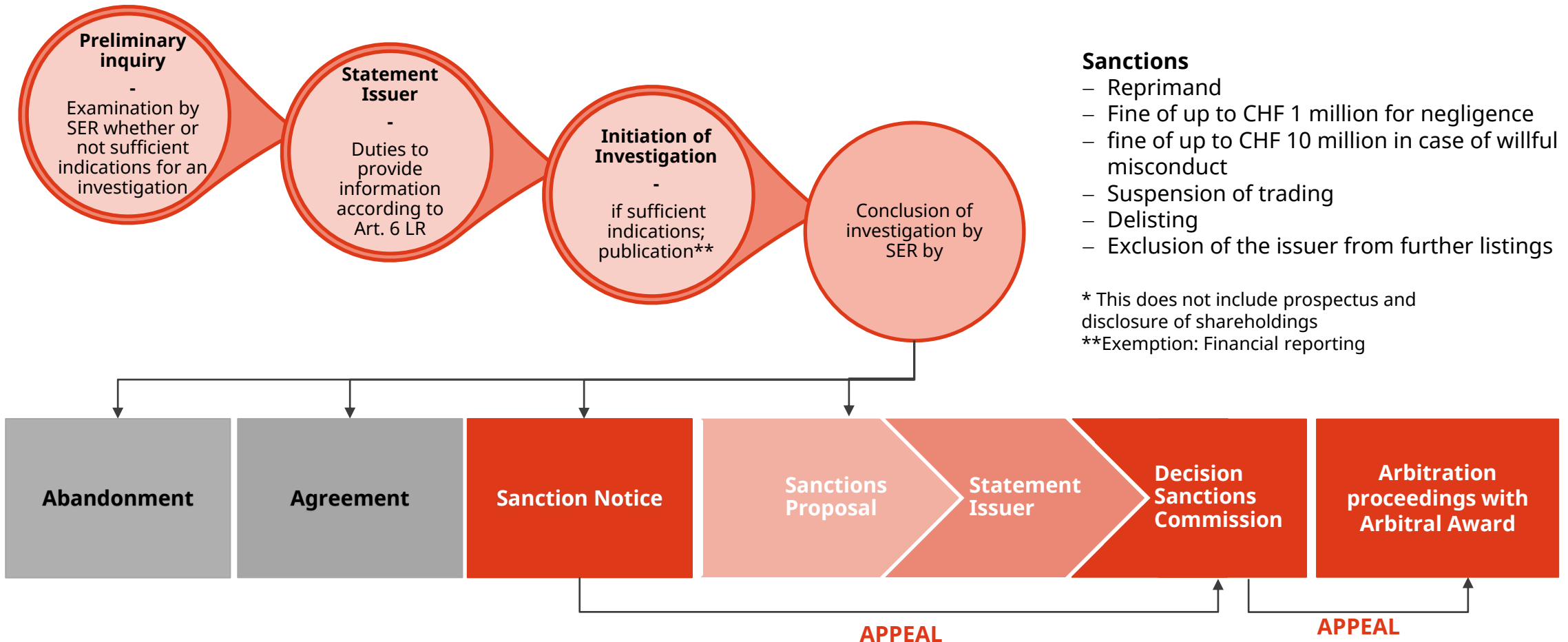
«Anyone who directly or indirectly [...] acquires or disposes of shares or acquisition or sale rights relating to shares of a company [...] whose equity securities are listed in whole or in part in Switzerland, [...] and thereby reaches, falls below or exceeds the thresholds of 3%, 5%, 10%, 15%, 20%, 25%, 33⅓%, 50% or 66⅔% of the voting rights, whether exercisable or not, must notify this to the company and to the stock exchanges on which the equity securities are listed.»

Further information:

- Art. 120 ff. [Financial Market Infrastructure Act](#) (FinMIA)
- Art. 115 ff. [Financial Market Infrastructure Ordinance](#) (FinMIO)
- [FINMA Financial Market Infrastructure Ordinance](#) (FinMIO-FINMA)
- [Rules for the Disclosure Office of SIX Swiss Exchange](#)
- [Directive on Electronic Reporting and Publication Platforms](#) (DERP)
- [SER Website](#) (Disclosure of Shareholdings)

Disclosure obligations | Enforcement procedure self-regulation

If an issuer violates the self-regulatory disclosure obligations*, the following process applies (for further information see [Rules of Procedure](#), [Rules of Arbitration](#) and [case law on the SER Website](#)):



Key takeaways | How to minimize mishaps in connection with disclosure obligations

Implementation & application of internal responsibilities and processes

business-as-usual

unforeseen circumstances

Knowledge of

Regulatory landscape of Swiss Stock Exchanges & implementation by SIX Group

Legal basis for disclosure obligations

Case Law & further sources of information (guidelines etc.)

Enforcement procedures of SIX Exchange Regulation

Thank you for your attention!

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Reporting Obligations: How Do Companies Successfully Prevent Failures, Misfortunes, and Mishaps?

Kellerhals Carrard: Capital Markets offering



Compliance

- Insider Trading Guidelines
- Management Transaction Guidelines
- Publicity Guidelines
- Internal trainings



Advice on Specific Issues

- Ad hoc announcements
- Management transactions
- Significant shareholders



SIX Proceedings

- Preliminary inquiries
- Sanction commission proceedings



Regular Reporting

- AGM Invitation
- Review of corporate governance, remuneration and ESG report
- Website disclosure



Capital Markets Transactions

- Equity Capital Markets (IPOs and capital increases)
- Debt Capital Markets (Bonds) and other financing transactions

Kellerhals Carrard: The firm & today's speakers



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6 locations in Switzerland with strong local ties



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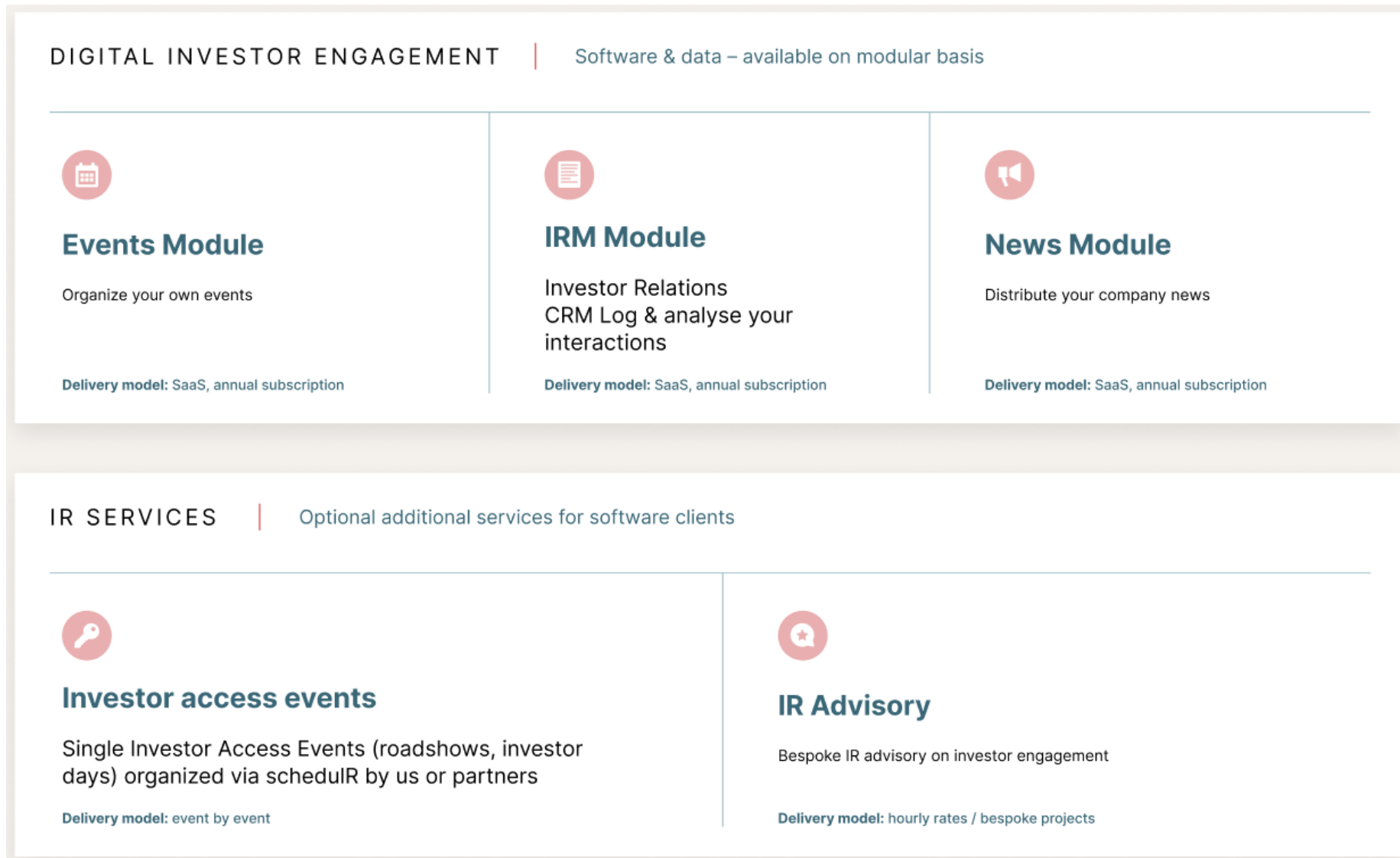
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Interaction Partners: Investor Relations and Financial Comms Software



The approach – your cases or ours, or both

We have prepared a few cases

- Homepage failure
- Problems with push emails
- Profit warning, yes or no
- Early publication by accident, scraping

For these cases we will describe the situation, preventive measures and negative outcomes.
We will cover both technical & legal aspects (relevant SIX SER decisions, general practice)

However, if you have other topics you want to dive into, we are happy to start with those

Two general principles that apply

Failing to prepare, is preparing to fail

You need to have a contingency plan BEFORE you run into problems.
This means: Think about potential problems, solutions and test them.
Improvising when it happens might be too late or unnecessary stressful

A little bit of common sense will take you quite far

Humans make mistakes, tech less though, but it is made by humans.
Your processes should anticipate mistakes and minimize the fall-out

Two examples:

Have draft versions of your ad-hoc documents protected with a password that you share via different channel.
Only put the document on the 'hot systems' after close (i.e. to check formatting, send test emails)

Case 1: Homepage down

Situation: You need to distribute ad-hoc news, but your homepage is down (e.g. DDoS attack) or you just are unable to upload the documents.

Legal assessment: Homepage is one of the mandatory distribution channels

Prevention:

- Do not be a cheapskate for hosting (otherwise you will be down with a lot of traffic).
- Your assets (files) might be hosted on a different server (reducing load, and making them accessible in the push email, which however will most likely not help with SIX SER).
- Have someone from your IT (or external partner) on standby for ad-hoc days
- Have a plan B to e.g. just put the links in a banner on the mainpage if you cannot upload to subpage.

Case 2: Problems with email push

Situation: Your push emails for ad-hoc are not going out.

Legal assessment: Push Email to subscribers and financial press (ad-hoc list) is a mandatory distribution channel

Prevention:

- Your primary technical partner should have a very robust infrastructure (e.g. active-active deployment, which means the app runs in parallel on two servers in two different geographic locations).
- Plan B – V1: Use a cheap marketing email provider (e.g. MailChimp, mailXpert, CleverReach) as a back-up solution, which requires you to have distribution lists and content ready to upload to in case of problems. If you want to be more cautious, prepare full distribution on back-up platform.
- Plan B – V2: Save the last test email, have current distributionlists ready and send (maybe in batches) from your own email. Outlook online (exchange server) can send up to 500 Emails in one go.

Case 3: Profit warning, yes or no

Situation: You get FY results and net profit is 11% above FY guidance

Legal assessment: This is one of the thornier cases, as rules are not very clear if you have to go out with it.

Prevention:

- Have a process defined that is triggered e.g. by “actual result 8% higher/lower than guidance”
- The process then e.g. will trigger information to General Counsel for legal assessment, a proper and documented evaluation of the situation and based on this a decision (again properly documented).
- Generally – and if there are not important commercial/PR arguments speaking against it – the legally safer bet is to err on the side of caution (i.e. rather have an ad-hoc where it could be argued it is a normal release).

Case 4: Unvoluntary early disclosure / scraping

Situation: You have put ad-hoc documents on a hidden place of your homepage, but someone (or a bot) has found it.

Legal assessment: Issuer is responsible for this, blaming a service provider will not work versus SIX SER.

Prevention:

- Common sense rule is easiest and most powerful one: “Do it after close”
- Bots are getting better: There is no such thing as ‘hidden’ content on your homepage. It is either there or not.
- Testing the process to ‘see if it works’ and then cancelling it again = bad idea. The bots will get you.

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