

Case no. 1 of the practice regarding Ad hoc publicity

Selective information of a single print medium

Circumstances:

Company X, whose equity securities are listed on the SWX Swiss Exchange (SWX), came to the decision that in Switzerland 50 of an approximate total of 500 jobs were to be eliminated. Two weeks later, an article appeared in a Swiss daily newspaper in which details were reported on the planned personnel cutbacks. An investigation by SWX revealed that X confirmed that fact in response to an enquiry from one of the newspaper's journalists. X only informed the general public on the following day by means of a media release announcing the planned personnel cutbacks.

Considerations of the Committee of the Admission Board:

Pursuant to Art. 72 para. 1 of the Listing Rules (LR), an issuer must inform the market of any price-sensitive facts that have arisen in its sphere of activity and are not of public knowledge. Art. 72 para. 4 LR prescribes that such disclosure must be carried out so as to ensure equal treatment of all market participants to the greatest extent possible.

According to Art. 72 para. 2 LR, the issuer must provide information as soon as it has knowledge of the main points of the price-sensitive facts in question. The recipients of that information are all current and potential market participants (Art. 72 para. 1 LR). The issuer must ensure that all market participants have the opportunity in the same way and at the same time to gain knowledge of such price-sensitive facts (compare Art. 72 para. 4 LR). Selective disclosure of potentially price-sensitive facts is therefore fundamentally unjustifiable.

In the case at hand, an employee in the communications department at X provided information on the personnel cutbacks exclusively to one journalist, whereupon an article with the related content appeared the following morning. The fact that the journalist was not actively approached but instead received that information in response to his taking up contact on his own changes nothing with regard to the circumstance that selective disclosure of information took place.

The ad hoc publicity rules do not prohibit the issuer from making such statements to journalists. However, in order to ensure the equal treatment of all market participants, X on the same day and subsequent to notification of SWX (90 minutes in advance if published during trading hours) should have made the related information available to the general public via at least one electronic information system widely used by professional market participants (e.g. Reuters, Bloomberg, Telekurs) as well as one newspaper of national importance.

X violated its obligation to inform the public regarding price-sensitive facts in a manner that ensures the equal treatment of all market participants to the greatest extent possible as per Art. 72 para. 4 LR, this by its having told or, as it were, confirmed the relevant facts to a single journalist and then failing to comply with the general rules governing ad hoc publicity by neglecting to publish that information via other media sources – specifically at least one electronic information system widely used by professional market participants as well as one newspaper of national importance.

The Committee of the Admission Board therefore decided as follows:

Due to its selective information of a single print medium, X negligently violated the principle of equal treatment prescribed in Art. 72 para. 4 LR. The Committee of the Admission Board therefore issued a **sanction with related publication** against X and charged it for the costs of the related proceeding.