

# Case no. 2 of the practice regarding Ad hoc publicity

## Unwarranted delay and selective information

### **Circumstances:**

When company X, whose equity securities are listed on the SWX Swiss Exchange (SWX), became aware that it could no longer with certainty achieve its previously announced earnings targets for the current financial year, it failed to publish immediately a profit warning. Moreover, during the week prior to the ultimate announcement of the profit warning, X revealed to several representatives of financial institutions within the framework of its normal contact with analysts that its revenues were likely to come in lower than expectations.

### **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. 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. A postponement of the disclosure of such information is only permissible if the new facts are based on a plan or decision of the issuer and dissemination of the relevant information is liable to prejudice the legitimate interests of the issuer. In the case of such a postponement, the issuer must guarantee the complete confidentiality of those facts (Art. 72 para. 3 LR).

Hence it is not permissible to withhold information concerning an extraordinary event that does not have its origin in a plan or decision of the issuer. This applies even if the unfavourable announcement has an impact on the legitimate interests of the company. In the case at hand it is a matter of deteriorating annual revenues, an event that by no means is based on a decision by the company but instead occurred "counter to plan". A postponement of the announcement is therefore out of the question already for that reason alone. Because the requirements of Art. 72 para. 2 points 1 and 2 LR must be fulfilled cumulatively, it is unnecessary to even examine whether the dissemination of the price-sensitive fact is liable to prejudice the legitimate interests of the issuer.

The issuer must ensure that disclosure is carried out in a manner such that all market participants have the opportunity in the same way and at the same time to take note of the price-sensitive facts (compare Art. 72 para. 4 LR). The public has a right to be informed fairly, i.e. both in terms of time and content. In particular, it must be clearly stated in this connection that the selective dissemination of price-sensitive facts subject to the disclosure obligation under Art. 72 para. 1 LR is fundamentally not justifiable. This also applies especially in terms of disclosures made to financial analysts and business journalists. An exception is only then justifiable if, prior to or simultaneous with the disclosure of price-sensitive facts, the related information is published via at least one electronic information system used by professional market participants (e.g. Reuters, Bloomberg, Telekurs) as well as one newspaper of national importance (see ref. no. 17 of Admission Board Circular No. 2, dated 2 November 1998).

### **The Committee of the Admission Board therefore decided as follows:**

In summary, the facts of the matter are that on one hand the company unjustifiably postponed the announcement of its profit warning and, on the other, selectively disclosed to various financial analysts price-sensitive facts of relevance to ad hoc publicity. The company therefore culpably breached its obligations under the provisions of Art. 72 para. 2 LR. As a consequence, the Committee of the Admission Board issued a **sanction with related publication** against X and charged it for the costs of the related proceeding.