

Case no. 4 of the practice regarding Ad hoc publicity

Failure to announce a profit collapse in a timely manner

Circumstances:

Company X, whose equity securities are listed on the SWX Swiss Exchange (SWX), suffered a massive first-half profit collapse (80% lower profit than in the comparable prior-year period). X announced these figures only in early September on the occasion of its media conference for presentation of first-half results, even though in mid-August its board of directors already had the preliminary numbers at its disposal and in late August was aware of the definitive figures.

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. Price sensitive facts are deemed to be new facts that are likely to result in substantial movements in the price of its securities. Publication of financial figures is fundamentally associated with the disclosure of price-sensitive facts.

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. At latest by the end of August when the final figures were presented to the board of directors, the company was aware of the potentially price-sensitive facts and should not have waited to announce its six-month figures until the previously determined publication date. Adhering to a previously announced publication date does not represent legal grounds for postponing the disclosure of price-sensitive facts. As per Art. 72 para. 2 LR, the disclosure of such information may only be postponed if the new facts are based on a plan or decision of the issuer, which is not the case when the matter pertains to a profit collapse.

The Committee of the Admission Board has ruled that a breach of Art. 72 para. 2 LR has been committed if an issuer fails to disclose to the public preliminary figures that point to a significant drop in earnings and therefore constitute a fact in the sense of Art. 72 LR. Art. 72 para. 2 LR is also deemed to have been breached if officers of the company in question have learned of the definitive figures but, without justification, nonetheless postpone for several days the publication of such facts until the previously announced publication date.

The Committee of the Admission Board therefore decided as follows:

Due to its having failed to disclose the profit collapse in a timely manner, X negligently violated 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.