

Case no. 5 of the practice regarding Ad hoc publicity

Failure to publish immediately following an information leak

Circumstances:

Following an information leak at the company X, whose equity securities are listed on the SWX Swiss Exchange (SWX), a newspaper published the key points of a planned restructuring at X. Although X already recognised on Sunday as a result of the aforementioned article that an information leak had occurred, it failed to inform the general public of the potentially price-sensitive fact at latest prior to the start of trading on Monday morning.

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. A comprehensive restructuring of the issuer, as well as significant changes in the composition of its board of directors or at the general management level, all constitute potentially 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. However, in accordance with Art. 72 para. 3 LR, it may postpone the disclosure of such information if the new facts are based on a plan or decision of the issuer, and the dissemination of which is liable to prejudice the legitimate interests of the issuer. Art. 72 para. 4 LR stipulates that, if disclosure of the price-sensitive fact is postponed, the issuer must guarantee the complete confidentiality of such facts. Thus if confidentiality is breached in this regard, the issuer bears the responsibility to inform the public immediately, clearly and comprehensively while ensuring equal treatment of all market participants.

In the case at hand, the main points of the price-sensitive fact were known to X at latest when the restructuring plan was presented to its board of directors. This price-sensitive fact related to the restructuring plan, the dissemination of which was liable to prejudice the legitimate interests of the company. Thus X was entitled to postpone announcement under the condition that confidentiality remain ensured, which was not the case. However, if the confidentiality surrounding a price-sensitive fact is breached, the issuer must immediately inform the public of the relevant price-sensitive fact. As a result of the newspaper publication of the confidential fact, X should have informed the public immediately instead of refusing to make any comment whatsoever on the information that had appeared in the press.

The Committee of the Admission Board therefore decided as follows:

In summary, the facts of the matter are that X violated the provisions of Art. 72 LR by postponing disclosure after the occurrence of a leak, and thus not informing the general public immediately. 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.