

Case no. 7 of the practice regarding Ad hoc publicity

Selective information

Circumstances:

Company X, whose equity securities are listed on the SWX Swiss Exchange (SWX), intended to make at 07:00 a.m. an announcement regarding its annual financial statements. The list of recipients of the media release included about one hundred addresses, among them that of the SWX. Due to a technical problem, the server containing the distribution list was blocked the entire day. It was impossible for the company to distribute the media release because it did not have access to the required fax numbers and e-mail addresses. The annual figures were presented by X's executive board at a media conference held in Zurich at 10:00 a.m. The annual report and the undistributed media release were made available to the participants from 09:45 a.m. During the course of the morning, certain media agencies contacted X by telephone to find out why the media release had not been sent yet. The company asked for the fax numbers of these agencies and immediately sent them the media release. Throughout the day, the company's media release was not transmitted to the SWX, nor did X contact the SWX.

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. 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 only to specific recipients, such as certain media representatives or analysts, does not constitute full public disclosure and is therefore fundamentally unjustifiable.

Although X planned to inform the general public simultaneously of the price-sensitive facts, the principle of equal treatment was violated in connection with the release of its annual financial statements as a result of various technical problems.

Companies whose equity rights are listed on SWX must be prepared for "catastrophe scenarios" in order to ensure that the public is correctly informed of potentially price-sensitive facts even in the event of technical problems.

Under Art. 72 para. 5 LR, the issuer must provide SWX with its planned communication no later than 90 minutes before the start of trading or the publication pursuant to para. 1 of the same Article. When, in exceptional cases, facts relating to ad hoc publicity must be published during trading hours, the issuer must inform SWX of these facts at least 90 minutes prior to their publication. This delay allows the SWX – if necessary – to arrange for a suspension of trading. In the case at hand, however, the company failed, during the entire day, to notify SWX about the announcement of potentially price-sensitive facts. This constitutes a violation also of Art. 72 para. 5 LR.

The Committee of the Admission Board therefore decided as follows:

Due to its having selectively disclosed its annual financial statements during trading hours without contacting SWX in advance, X negligently violated the principle of equal treatment prescribed in Art. 72 para. 4 LR as well as Art. 72 para. 5 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.