

Case no. 8 of the practice regarding Ad hoc publicity

Failure to inform SWX in advance

Circumstances:

Company X, whose equity securities are listed on the SWX Swiss Exchange (SWX), issued between 3:57 and 4:08 p.m. a press release to various media concerning its annual financial results. It could be ascertained from the press release that the company's profit stood markedly higher than previously announced earnings estimates. SWX received the release at 3:59 p.m. via fax.

At 5:01 p.m., SWX received a message from the company in which it stated that the issuance of the announcement published already an hour earlier had actually been scheduled for release only in the early morning of the next day. However, due to an error by the distribution company (a service provider), the press release had been issued already that afternoon.

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 provide SWX with its planned communication no later than 90 minutes before the start of trading or the publication (Art. 72 para. 5 LR). This delay allows the SWX – if necessary – to arrange for a suspension of trading.

In the case at hand, the aforementioned error on the part of the provider caused the press release to be issued to the media and SWX simultaneously during continuous trading. Thus the obligation to inform SWX in advance was violated.

Under Art. 72 LR, the issuer must inform the market of price-sensitive facts, however issuers are free to commission third parties to assist them in fulfilling their reporting obligations. Nevertheless, they must bear accountability for those parties' actions as if they were their own.

In the case at hand, it can be determined that X, had it acted the same as its provider, also would have been culpable for a negligent violation of its ad hoc publicity obligations. Hence, even though X cannot be deemed at fault in this regard, it must bear full accountability for the negligent manner of its provider.

The Committee of the Admission Board therefore decided as follows:

By having failed to provide SWX with information in advance, X negligently violated Art. 72 para. 5 LR. As a consequence, the Committee of the Admission Board issued a **reprimand** against X and charged it for the costs of the related proceeding.