

Case no. 3 of the practice regarding Ad hoc publicity

Selective information of journalists

Circumstances:

Company X, whose equity securities are listed on the SWX Swiss Exchange (SWX), announced after the close of trading that its quarterly earnings significantly exceeded the forecasts it had previously made. Already during the course of the afternoon, X forwarded the results to specific journalists with the annotation “under strict embargo till 17:30, Swiss time”.

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.

This principle of equal treatment is violated if ad hoc announcements are forwarded to specific journalists ahead of time and include a blocking period for publication. The more people who have knowledge of a potentially price-sensitive fact, the greater the threat that an information leak can occur. Specific attention must be paid to the fact that – even if all members of the media who have received a given ad hoc release during trading hours comply with the blocking period – there is nonetheless a considerable number of individuals at their editorial desks who already have knowledge of the given price-sensitive facts ahead of the general public.

Ad hoc facts are to be published without delay, but whenever possible outside of critical trading hours. In concrete terms, this means that publication should, whenever possible, be made after 5:30 pm or, as the case may be, prior to 7:30 am. In exceptional cases where ad hoc facts must be made public during trading hours, SWX must be informed at least 90 minutes prior to publication (Art. 72 para. 5 LR). By so doing, SWX has the possibility in exceptional circumstances to suspend trading in the related securities.

The Committee of the Admission Board has ruled that providing journalists with advance notice of potentially price-sensitive facts during trading hours, even if the announcement is accompanied by a blocking period for publication, constitutes a violation of the principle of equal treatment as set forth in Art. 72 para. 4 LR. Moreover, Art. 72 para. 5 LR is violated if a price-sensitive fact that, on an exceptional basis, must be made public during trading hours is not submitted to the SWX at least 90 minutes prior to publication.

The Committee of the Admission Board therefore decided as follows:

Due to its selective information of specific journalists and failure to notify SWX in advance, X negligently violated Art. 72 para. 4 and 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.