

# Case no. 6 of the practice regarding Ad hoc publicity

## Selective information of business partners

### **Circumstances:**

The board of directors of X, the equity securities of which are listed on the SWX Swiss Exchange (SWX), resolved to eliminate 700 jobs. In personal telephone conversations that took place during trading hours, X informed various business partners about the relevant decisions. A public announcement of the job reductions was not made until that evening, i.e. after the close of trading.

### **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 communication measures of an issuer must take into account the aim of transparency and equal opportunity for all market participants. Listed companies are obligated not only towards their shareholders and employees, but also towards the general public, which has a right to receive fair, i.e. timely and relevant, information. In particular, it must be clearly stated in this connection that the selective dissemination of price-sensitive facts subject to the disclosure obligation under Art. 72 para. 1 LR is fundamentally not justifiable.

During trading hours, X selectively informed business partners about potentially price-sensitive facts, whereas the general public was not informed until after the close of trading. X cannot be reproached for having informed key business partners prior to making a public announcement; rather it is the timing of those disclosures that represents the grounds for the reproach. The business partners were informed between 5:00 and 5:30 pm (i.e. during trading hours). Art. 72 para. 4 LR does not prohibit important business partners from being informed of price-sensitive facts before the public as long as such a communication occurs outside trading hours and does not give the business partners an advantage over the public. Staggered disclosure of a possibly price-sensitive fact is no reason for censure if at the start of trading on the next trading day all market participants are aware of the fact. However, X selectively disclosed information to business partners prior to close of trading, thereby giving them an advantage over the general public, which was informed only after the close of trading. Accordingly, the ex ante disclosure of this information to business partners prior to the close of trading is a clear violation of the principle of equal treatment set out under Art. 72 para. 4 LR.

### **The Committee of the Admission Board therefore decided as follows:**

It has been determined that X neglected its duty to inform the public of price-sensitive facts and to ensure equal treatment of market participants pursuant to Art. 72 para. 4 LR by giving business partners advance information on a potentially price-sensitive fact during trading hours. 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.