Exchange Regulation

SIX Swiss Exchange Ltd
Sanction notice issued by
SIX Exchange Regulation
concerning X Ltd.

SER-MT II/12
SER-AHP I/12
SER-Listing I/12

Confidential

1. Statement of facts and overview of proceedings

1.1 Management transactions

1. X Ltd. (hereinafter also referred to as "X" or the "Company") is a company incorporated under Swiss law with its registered office in [City], [Canton]. The Company's registered shares are primary listed according to the main standard of SIX Swiss Exchange. X's registered shares are furthermore listed on the New York Stock Exchange, United States of America.

2. X reported on [d+21], a purchase of [number] X registered shares in the total amount of CHF […], executed by a person related to person C on [d = date of the execution of the transaction in question]. This publication was amended on [d+23].

3. On [d+24] person D, Senior Corporate Counsel of X, sent a letter to SIX Exchange Regulation by e-mail. In its letter the Company explained that the management transaction was reported through the electronic reporting platform of SIX Exchange Regulation on [d+21]. The Company stated furthermore that the reported management transaction had occurred on [d], and was related to the purchase of [number]X shares by a member of the management. The transaction was reported to X within two trading days in accordance with Art. 56 para. 2 Listing Rules (LR) by the member of the management. However, the Company admitted that it did not report the transaction to SIX Exchange Regulation within the time limit of three trading days in accordance with Art. 56 para. 5 LR. The Company clarified that it takes its reporting and compliance obligations towards SIX Exchange Regulation very seriously and, in a constant effort to uphold and improve its internal compliance, had put in place an internal reporting and compliance procedure to better ensure that such transactions will be monitored and reported in timely manner.

4. In a letter dated [date], SIX Exchange Regulation asked X for additional information regarding the internal reporting and compliance procedures of the Company, the instruction of the employees who are entrusted with the publication of management transactions and the circumstances of the late publication in the case at hand.

5. In a letter dated [date], the Company submitted written draft responses to the questions, complying with the time limit set by SIX Exchange Regulation.

6. The Company explained that according to its Procedure for Reporting Management Transactions to the US Securities and Exchange Commission (the "SEC") and SIX Swiss Exchange ("MT Procedure"), each time a member of the executive management ("management") or a member of the board of directors ("director") concludes a management transaction, he/she would notify X's office of the General Counsel of the conclusion thereof. The MT Procedure provides that the General Counsel would notify X's Reporting Counsel having responsibility for SIX Exchange Regulation reporting compliance for management transactions. Upon Reporting Counsel's receipt of notification of the management

transaction, the Reporting Counsel would determine whether such transaction is required to be reported to SIX Exchange Regulation, consulting with Swiss legal counsel as necessary. If it has been determined that the transaction is reportable to SIX Exchange Regulation, the MT Procedure provides that the transaction must be published via the SIX Exchange Regulation electronic reporting and publication platform within three trading days (using Swiss time) after the receipt by X of the conclusion of the reportable transaction.

7. The Company explained that in reviewing the most recent failure to report a management transaction in a timely manner, it had identified a risk in the fact that only one sole Reporting Counsel is in charge of the reporting of management transactions. As a result, the Company explained that it had decided to train two additional members of its legal department with regard to handling the SIX Exchange Regulation requirements for the disclosure of management transactions, and to adjust the MT Procedure in order to ensure that adequate redundancy is available should the primary Reporting Counsel be unavailable for any reason, such that the timely publication by the Company of any management transactions reported on time by the persons subject to reporting obligations is not impaired. Furthermore, the Company had engaged in additional training by its Swiss legal counsel.

8. Furthermore, according to X, its officers and directors had been informed of and were well versed in their obligations to report management transactions pursuant to the MT Procedure and the rules and requirements of SIX Exchange Regulation. Any new managers or directors that were required to report management transactions were also informed of these obligations in connection with their election or appointment as a member of the management. The Reporting Counsel were trained by X's Swiss legal counsel in the publication of reportable transactions, and the Swiss legal counsel was available to assist with any uncertainties. The Reporting Counsel were trained on the mechanics of reporting to SIX Exchange Regulation via the management transaction reporting platform.

9. X indicated that person D was Senior Corporate Counsel at X and had been designated as Reporting Counsel, who had primary responsibility for SIX Exchange Regulation and US securities law reporting compliance for management transactions. Upon the occurrence of a reportable management transaction, the executing officer or director notified person D or X's office of the General Counsel of the transaction, and person D thereafter prepared the SIX Exchange Regulation notices and uploaded the information to the SIX Exchange Regulation reporting platform. Person D had been informed of the management transaction of a person related to person C on the day on which it had been executed, i.e. [d], and, as required by the SEC and the MT Procedure, she had filed a Form 4 with the SEC which publicly disclosed this transaction on [d+2].

10. X claims that it should be taken into consideration that the filing of the Form 4 immediately notified the broader market, as it was available on the SEC's website and on the Company's website, and that it was picked up by several third-party reporting services that publicize such management transactions.

11. From the Company's point of view, person D was generally diligent in making sure that the appropriate SIX Exchange Regulation filings for management transactions were made. The Company explains that in her capacity as Reporting

Counsel she had made the required SIX Exchange Regulation filings in due time for a multitude of management transactions since the initial listing of the shares of X on the SIX Swiss Exchange. Regarding the reported transaction executed on [d], by person C, it was because of an inadvertent oversight by person D that she had failed to upload the required information to the SIX Exchange Regulation reporting platform in a timely manner, at the same time that it was publicly disclosed on Form 4 pursuant to US securities law requirements.

12. Furthermore, the Company explained that D became aware of the failure to notify the management transaction on the SIX Exchange Regulation reporting platform in a routine check of her files on [d+20], whereupon she reported the information regarding the management transaction executed on [d], by a person related to person C on the reporting platform, which was published on [d+21]. On the same date X had written to SIX Exchange Regulation to advise it of the delay that had inadvertently occurred in the disclosure of such management transaction.

13. According to X's letter dated [date], as reflected by the description of the sequence of events that occurred in relation to the case at hand, the failure to properly report the management transaction had been inadvertent and highly unfortunate, but had been not in any way related to a deliberate intention to hide or delay the disclosure of a particular management transaction. X also stated that the information regarding the transaction had indeed been communicated to the market on [d+2], via the filing of the required Form 4 with the SEC, thereby assuring an immediate disclosure of the relevant transaction to market participants. Additionally, Form 4 and other key documents filed with the SEC were automatically uploaded to X's website when they were sent to the SEC for filing. In the case of Form 4, as a result, this was publicly available within the timeframe a management transaction was required to be filed with SIX Exchange Regulation.

14. In the course of the meeting dated [date], between person H, Co-General Counsel and Corporate Secretary of X, person E (Swiss Lawyer), [law firm], and person J (U.S. Lawyer), [law firm], and SIX Exchange Regulation, X representatives accentuated again the diligence of person D. The delayed reporting of the transaction executed on [d], by a person related to person C was the result of an oversight. They emphasized the proper preparation of person D as Reporting Counsel and that as a result of this training, a number of publications had previously been made in a proper and timely manner. SIX Exchange Regulation raised the issue as to whether it would help to have a monitoring mechanism in place so that if such an omission were to reoccur, a third party would be alerted in advance that publication was required and could monitor proceedings to ensure that the transaction was reported on time. X asserted that such a mechanism would be useful, as it would potentially minimize the risk of the same error reoccurring.

15. In a letter dated [date], person E (Swiss Lawyer), [law firm] forwarded, on behalf of X , the Company's response to the letter of SIX Exchange Regulation dated [date].

16. In the letter dated [date] , X pointed out that according to the meeting in Zurich on [date], the Policy Regarding Use of Inside Information and Insider Trading

("Insider Policy") required each manager and director to pre-clear any trades with person K (Senior Vice President, Co-General Counsel and Corporate Secretary), which notice assists in complying with applicable securities laws, as well as giving X advance warning of management transactions that might be reportable.

17. Furthermore, X had arranged for additional training of their Reporting Counsel by their Swiss legal counsel. The Reporting Counsel was reminded of the importance of adhering to the filing policy. In addition, as recommended by SIX Exchange Regulation, the Company implemented another redundancy feature in order to ensure compliance with SIX Exchange Regulation rules. While a specific Reporting Counsel ("Primary Reporting Counsel") would be advised to evaluate and, as appropriate, make any required management transaction filing, another Reporting Counsel ("Secondary Reporting Counsel", together with the Primary Reporting Counsel "Reporting Counsels") would be copied in on any such instructions and would be responsible for following up with the Primary Reporting Counsel to ensure all filings are made in a timely manner. As part of this process, the Primary Reporting Counsel would notify the Secondary Reporting Counsel when any applicable management transaction filing had been made. Attached to the letter was a further revised version of the MT Procedure and a redlined version showing X's changes thereto.

18. Moreover, X explained that the General Counsel personally provided the officers and directors with copies of the policies attached and discussed their reporting obligations with them.

19. The Primary Reporting Counsel was trained by X's Swiss legal counsel on publication of reportable transactions, in particular with regard to the interpretation of the criteria set out under the Directive on the Disclosure of Management Transactions and the related commentary on the duty to notify a management transaction to SIX Exchange Regulation. The Swiss legal counsel was also available to assist with any uncertainties. The Primary Reporting Counsel was also trained on the mechanics of reporting to SIX Exchange Regulation via the management transaction reporting platform. X had also decided to provide further general training to key X personnel that interface with SIX Exchange Regulation to reinforce the various reporting obligations that arose under the SIX Exchange Regulation rules, i.e. broad-based training that did not just relate to management transactions. This would include a mandatory training session at X's offices as well as the distribution of written training materials.

20. In its letter dated [date] , X noted, further to its letter dated [date], that the failure to notify the management transaction executed by a person related to person C on [d]via the SIX Exchange Regulation reporting platform was only realized by person D in the evening of [d+20], whereupon she immediately filed the information regarding the management transaction executed by a person related to person C on [d], on the reporting platform the next morning, after having advised K of the discovery of the failure to notify. X also submitted that it should be taken into consideration that the Company wrote to SIX Exchange Regulation of its own free will to advise of the delay that had inadvertently occurred in the disclosure of such management transaction.

1.2 Ad hoc Publicity

21. On April [day], 2012, X mailed the invitation to the Annual General Meeting (AGM) held on May [day], 2012, to its shareholders. The same day, the Company filed the proxy materials with the US SEC. Further, X published a link to this filing on its website. The documents were also published on X's website the same day. Moreover, an e-mail regarding the filing with the SEC was sent by one of the Company's e-mail distribution services. SIX Exchange Regulation received the e-mail because it had subscribed itself to this distribution service.

22. On May (day), 2012, the Company sent an e-mail to SIX Exchange Regulation with the notice of X's 2012 AGM in accordance with Circular No. 1, Reporting Obligations regarding the Maintenance of Listing (CIR1), Annex 1, point 3.03 (regular reporting obligations).

23. On May [day], 2012, X published the notice and the agenda for the AGM in the Swiss Official Gazette of Commerce.

24. Amongst other things, X's board of directors proposed to the AGM an extension of the board of directors' authority to issue shares from authorized share capital and an increase in issuable authorized capital (agenda item [Nr.]). More specifically, the directors proposed an increase of the authorized capital to an amount equal to [number] shares (CHF [amount]). The proposed increase would have resulted in authorized capital in the amount of 50% of the current share capital at the time, which is the maximum permissible under Art. 651 para. 2 Swiss Code of Obligations (CO).

25. At the AGM held on May [day], 2012, the qualified majority requirement of two thirds of the present votes was not reached (Art. 704 CO). Therefore, the proposed increase of the authorized share capital was refused by the AGM. The Company published the results by filing the decisions with the SEC and by posting a weblink to such filing on X's website on the same day. On May [day], 2012, SIX Exchange Regulation received an e-mail regarding an SEC-filing (form 8-K) in connection with the results of the AGM through one of the Company's e-mail distribution services. One day later, on May [day], 2012, the Company sent an e-mail regarding the AGM's results to SIX Exchange Regulation in accordance with its regular reporting obligations (CIR1, Annex 1, point 3.04).

26. On [date], SIX Exchange Regulation contacted X by phone in regard to the negative decision of the AGM regarding the creation of authorized capital. In its letter dated [date], SIX Exchange Regulation asked X some more questions concerning the AGM's decision on agenda item [Nr]. The Company answered the questions by letter dated [date]. X stated in its letter that the results of an AGM and the amendments to the articles of association can be potentially price-sensitive in certain circumstances, but denied any potentially price-sensitivity in regard to the decision rejecting the creation of authorized capital.

1.3 Listing Rules

27. On [e+3], SIX Exchange Regulation detected that X had increased its capital by issuing [number] shares with a nominal value of CHF [nominal value] each out of authorized capital. According to SIX Exchange Regulation's information, this capital increase was registered with the Commercial Register of the [canton] on [e= date of registration of the capital increase with the Commercial Register].

28. SIX Exchange Regulation contacted person E (Swiss Lawyer) of [swiss law firm] on [e+3], in its role as recognized representative of X. Person E (Swiss Lawyer) confirmed that the capital increase became effective on [e]. He confirmed that no listing application had been filed with SIX Exchange Regulation and that he would do so as soon as possible.

29. On [e+6], SIX Exchange Regulation received the application in accordance with Art. 42 LR. SIX Exchange Regulation's decision was sent to Person E (Swiss Lawyer) on [date d+6]by e-mail and by registered post.

30. On [e+8], the capital increase took place within a shortened time period.

31. In its letter dated [date] , SIX Exchange Regulation asked X some more questions concerning the reasons for the failure to submit a listing application prior to the entry of the new shares in the Commercial Register, its contact persons responsible for liaising with the recognized representative in regards to its listing duties, the timing in this specific case, and how it intended to ensure in future that all duties under the LR and regulations are fulfilled in due time.

32. In the meeting on [date], between person H, Co-General Counsel and Corporate Secretary of X, person E (Swiss Lawyer), [Swiss law firm] , and person L, [law firm], and SIX Exchange Regulation, X representatives explained that it was due to an unfortunate oversight that the listing application regarding the capital increase was not filed with SIX Exchange Regulation. Both the Company and the recognized representative confirmed that they were aware of their duties in relation to any capital increase. Neither party contested the failure to comply with the LR in connection with the capital increase dated [e] .

33. In its letter dated [date], X explained that the failure to submit the listing application to SIX Exchange Regulation was due to an unfortunate oversight. The preparation of the transaction was started in late [month], and due to an oversight in planning, coordination and communication by legal counsel, the application was not filed with SIX Exchange Regulation in time. The Company pointed out that they rely on the advice of the recognized representative regarding any duties under the LR and regulations of SIX Exchange Regulation. Again, the Company did not contest the failure to comply with the LR and regulations.

34. X explained, that the General Counsel and the Vice President Investor Relations liaise with the recognized representative in regards to listing duties on SIX Swiss Exchange. The Company largely relies on the advice and assistance of the

recognized representative. For the future, X was considering appointing a person within X, who would be based in Europe, to assist with SIX-related matters. Also, the recognized representative had been instructed to review and coordinate all matters regarding the Company's listing duties with SIX Swiss Exchange.

1.4 Opening of an investigation

35. In a letter dated [date], SIX Exchange Regulation informed X of the opening of an investigation in connection with possible breaches of the LR and of the provisions governing ad hoc publicity and management transactions. The letter also mentioned that the public would be informed of the initiation of the investigation on [date]. Furthermore, the letter contained further questions in regard to the publication of the AGM agenda (Ad hoc publicity). The publication of the media release took place as announced on [date].

36. The Company subsequently sent a letter on [date], responding to the letter from SIX Exchange Regulation and submitting the documents required within the time limit set.

2. Findings

2.1 Applicable law and jurisdiction

37. X's shares are listed and admitted to trading according to the main standard of SIX Swiss Exchange (see section 1 above).

38. On [date], the Company signed a declaration certifying that it agreed to be bound by the LR, the provisions implementing the LR, and the Rules of Procedure (RP).

39. The requirements for maintaining listing under the LR and its implementing provisions include the requirement to disclose management transactions in accordance with Art. 56 LR, the obligation to disclose potentially price-sensitive facts in accordance with Art. 53 f. LR and the Directive on Ad hoc Publicity (DAH), the "listing by category" requirement under Ar. 18 LR, and the related requirement to submit a listing application in accordance with Art. 42 to 45 LR in conjunction with Art. 3 and 4 of the Directive on the Procedure for Equity Securities (DPES).

40. If an issuer breaches its reporting and disclosure obligations as a condition of continued listing by failing to disclose reportable facts to SIX Exchange Regulation, omits to publish information, fails to publish such information in the prescribed manner, or publishes false or misleading information, Art. 60 LR provides that one of the sanctions described in Art. 61 LR may be imposed. The relevant procedures and responsibilities are governed by the RP (Art. 59 LR). Any investigation by the executive bodies will conclude with the stay of the proceed-

ings or upon an agreement, the issue of a sanction notice or the lodging of a proposal for sanctions with the Sanction Commission (section 3.4 para. 1 RP).

41. Section 3.5 para. 2 RP provides that SIX Exchange Regulation may issue a sanction notice in respect of any violation of the provisions of the LR and the applicable implementing provisions if possible sanctions include a warning, reprimand or fine. The decision of the Sanction Commission includes inter alia a sanction (Art. 4.4 para. 1 RP). In arriving its decision, the Sanction Commission is not bound by the sanction proposals submitted by the investigation body (Art. 4.4 para. 4 RP). If an investigation is concluded with a legally enforceable sanction decision by the sanction commission or sanction notice by SIX Exchange Regulation, the fact will be made public (Art. 6.2 para. 5 RP and Art. 6.3 para. 1 RP). In addition, the legally enforceable sanction decision or sanction notice will be made available on the SIX Exchange Regulation website in anonymised form (Art. 6.2 para. 6 RP and Art. 6.3 para. 3 RP).

2.2 Breach of Art. 56 para. 5 LR (management transactions)

2.2.1 General comments

42. Pursuant to Art. 56 para. 2 LR an issuer whose equity securities have their primary listing on SIX Swiss Exchange must ensure that the members of its board of directors and its executive committee report transactions in the issuer's equity securities, or in related financial instruments, to the issuer no later than the second trading day after the reportable transaction has been concluded.

43. The members of the board of directors and of the executive committee of an issuer are obliged to report management transactions (Art. 2 para. 1 Directive on the Disclosure of Management Transactions (DMT)).

44. The reporting obligation covers inter alia equities or similar shares in an issuer (Art. 4 para. 1 numeral 1 DMT). Art. 56 para. 4 LR prescribes the information which a notification must contain.

45. Pursuant to Art. 56 para. 5 LR issuers have to report the information received by the persons subject to reporting obligations (Art. 56 para. 4 LR) to SIX Exchange Regulation within three trading days of receiving the notification itself.

2.2.2 Appropriate reporting system

46. In the case at hand, a person related to person C (person subject to the reporting obligation) purchased [number] registered shares of X in the total amount of CHF [number] on [d] . According to X's letter dated [d+24] , the transaction was reported within the deadline of two trading days, as prescribed in Art. 56 para. 2

LR, by person C to X. In contrast, X did not report the transaction to SIX Exchange Regulation in a timely manner. The transaction was only published on the electronic platform of SIX Exchange Regulation on [d+21] (amended on [d+28]), which means it was notified 18 trading days late. The Company has therefore violated Art. 56 para. 5 LR.

47. Issuers must set up an appropriate reporting system to ensure proper compliance with their obligations under Art. 56 LR and the DMT. The persons subject to reporting obligations must be adequately informed of the duties incumbent upon them with regard to the disclosure of management transactions. Issuers must also have appropriate organizational structures in place to ensure that any management transactions disclosed are published within the period prescribed.

48. Art. 56 LR requires issuers to have the necessary organizational structures and internal procedures in order to ensure that any management transactions disclosed to them are notified to SIX Exchange Regulation within the prescribed time period via the electronic reporting and publication platform. The Committee of the Admission Board also determined that issuers have a duty to properly instruct the individuals involved in their internal procedures in Decision of the Committee of the Admission Board dated January 29, 2007 [ZUL-MT VII/06] (Decision of the Committee of the Admission Board dated December 18, 2006 [ZUL-MT VI/06], point 22; Decision of the Committee of the Admission Board dated January 29, 2007 [ZUL/MT/VII/06], point 35, and Sanction Notice of SIX Exchange Regulation dated May 19, 2009 [SER-MT I/09], point 42). The duties and responsibilities relating to the relevant internal procedures must be clearly defined and assigned. In particular, the reporting and publication deadlines, which involve short timeframes, require appropriate arrangements to be put in place (Decision of the Committee of the Admission Board dated July 2, 2006 [ZUL-MT III/06], point 39).

49. In its letter dated [date] and its letter dated [date], the Company explained that each time a manager or a director concludes a management transaction, he/she would notify X's office of the General Counsel of the conclusion thereof. The MT Procedure provided that the General Counsel would notify X's Reporting Counsel having responsibility for reporting management transactions. Upon Reporting Counsel's receipt of the notification of the management transaction, the Reporting Counsel would determine whether such transaction is required to be reported pursuant to SIX Exchange Regulation. If it has been determined that the transaction is reportable to SIX Exchange Regulation, the transaction must be published via the SIX Exchange Regulation electronic reporting and publication platform within three trading days (Swiss time) of receipt by X of the notification of the transaction by the person subject to disclosure obligations to the Company. In connection with the case at hand, X has determined that reliance on one sole Reporting Counsel could potentially be a weakness in its Insider Policy. The failure to notify the management transaction on the SIX Exchange Regulation reporting platform was only realized by person D during a routine check of her files on [d+20] whereupon she uploaded the information concerning the management transaction onto the reporting platform.

50. The matter at issue in this case is whether the internal organizational structure the Company had in place at the time the transaction was executed by a person related to person C) was adequate to ensure that management transactions

were published within the period prescribed. Under the organizational structure established by the Company, a single Reporting Counsel was responsible for the publication of all management transactions. This Reporting Counsel (D) had sole responsibility for complying with the reporting requirements laid down by the SEC and SIX Exchange Regulation within the time periods specified. No monitoring procedure had been established to ensure that management transactions were published in a timely manner, which entailed the risk that management transactions would not be published on time.

51. In SIX Exchange Regulation's view, the organizational procedures in place were not sufficient to minimize the risk of failing to publish transactions within the prescribed period. X came to the same conclusion, which was why it arranged for the instruction of two additional Reporting Counsels. However, SIX Exchange Regulation considers that the real organizational failing was that a single person was responsible for ensuring that the transaction disclosed was reported on time. In addition to person D, person M and person E (Swiss Lawyer) had also been registered as users on the SIX Exchange Regulation electronic reporting and publication platform prior to the execution of the transaction that X reported late in [month] 2012 All registered users had the necessary access rights for recording management transactions in a timely manner. These individuals therefore had the necessary authorization to publish the transaction at issue within the prescribed time limit. However, the organizational structure set up by the Company failed to ensure that the individuals who had received instruction in addition to person D were alerted to the fact that the management transaction had been reported. Had person D not performed a routine check of the management transactions reported at the beginning of [month] 2012 there would presumably have been a further delay in the publication of the transaction, since no one else had been informed that the transaction had been disclosed.

52. For this reason, SIX Exchange Regulation considers that instructing two additional Reporting Counsels was not, on its own, capable of rectifying the shortcomings in X's internal reporting system. Accordingly, X added another safety feature: while a Primary Reporting Counsel will be advised to evaluate and, as appropriate, make any required management transaction filing, another Reporting Counsel will be copied in on any such instructions and will be responsible for following up with the Primary Reporting Counsel to ensure all filings are made in time. As part of this process, the Primary Reporting Counsel will notify the other Reporting Counsel when any applicable management transaction filing has been made.

53. X pointed out that it should be noted that the filing of the Form 4 with the SEC immediately notified the broader market, as it was available on the SEC’s website, on the Company’s website, and was picked up by a several third-party reporting services that publicize such management transactions.

54. As a general rule, companies that have equivalent listings of equity securities on different exchanges must comply with all the applicable requirements laid down by all the exchanges. The requirements laid down by the SEC and SIX Exchange Regulation therefore exist in parallel and independently of each other. The Company must therefore exercise the same level of care in ensuring that all the requirements are met. The purpose of publishing management transactions promptly on the SIX Exchange Regulation electronic reporting and publication

platform is, among other things, to promote the provision of information to investors. The SIX Exchange Regulation platform provides investors with efficient and convenient access to all management transactions for all issuers with a primary listing on SIX Swiss Exchange. Investors must be confident that all relevant information is available on the electronic platform. Moreover, investors cannot reasonably be required to search for relevant information in multiple locations. Publishing the transaction in question on the Company's website and in accordance with SEC rules does not replace the need to comply with the publication requirements under Art. 56 para. 5 LR.

2.2.3 Conclusion

55. In conclusion, it may be said that due to organizational shortcomings in its internal system for publishing management transactions, X is responsible for the fact that the transaction dated [d], executed by a person related to person C was published 18 days late. It is therefore in breach of Art. 56 para. 5 LR.

2.3 Breach of Art. 53 f. LR and the DAH (Ad hoc Publicity)

2.3.1 General comments

56. Pursuant to Art. 53 para. 1 LR, issuers must inform the market of any potentially price-sensitive facts that have arisen in their sphere of activity, and are not in the public domain, by issuing a press release, which must be published in accordance with the Ad hoc publicity rules (Ad hoc notice). However, disclosure must be made in such a way as to ensure the equal treatment of all market participants (Art. 53 para. 3 LR, Art. 6 DAH).

57. With regard to the timing of the publication of Ad hoc notices, issuers must provide notification as soon as they become aware of the main points of the price-sensitive fact (Art. 53 para. 2 LR; Art. 5 DAH). Companies are deemed to have knowledge of a fact once the fact is known to a person in an executive management function or a non-executive director (Decisions of the Sanction Commission dated November 30, 2010 [SaKo 2010-AHP-II/10], point 6, and dated June 28, 2012 [SaKo 2010-AHP-II/10], point 28; as well as N 93 ff. Commentary on the Directive on Ad hoc Publicity [Com. DAH]). Potentially price-sensitive information must therefore be disclosed as soon as the facts are known to the company's governing bodies (board of directors and/or executive committee; see also Decisions of the Sanction Commission dated November 30, 2010 [SaKo 2010-AHP-II/10], point 37 and dated June 28, 2012 [SaKo 2012-AhP-II/11], point 33 ff.; Sanction Notice of SER dated December 22, 2010 [SER 2010-AHP-I/10], point 27, and Case No. 4 Practice Ad hoc Publicity).

58. Art. 7 f. DAH provides that Ad hoc notices must, at the very least, be distributed to the following:

- SIX Exchange Regulation (at least 90 minutes ahead of time if published during trading hours);

- at least two electronic information systems widely used by professional market participants (e.g. Bloomberg, Reuters, Telekurs);
- at least two Swiss newspapers of national importance;
- all interested parties upon request, i.e. through the e-mail distribution service to be provided for this purpose on the issuer's website (push system, cf. Art. 8 DAH).

59. When notices are distributed, they must also be made available simultaneously on the issuer's website pursuant to Art. 7, and remain available there for a period of two years (pull system; Art. 9 DAH; N 129 Com. DAH).

60. All market participants should have equal access to potentially price-sensitive facts at the same time. Selectively notifying certain investors is contrary to the principle of equal treatment of participants (Art. 53 para. 3 LR, Art. 6 DAH; see also Case No. 6 Practice Ad hoc Publicity, Decisions of the Committee of the Admission Board dated November 1, 2004 [ZUL-AHP-II/04], point 26 ff., dated January 7, 2005 [ZUL-AHP-IV/04], point 15 ff., and dated March 23, 2005 [ZUL-AHP-IV/05], point 13 ff.). Market participants should be able to take note of potentially price-sensitive information under the same conditions and at the same time.

2.3.2 AGM agenda

61. Pursuant to Art. 700 CO companies domiciled in Switzerland must call their AGM no later than 20 days prior to the date of the meeting. The items to be transacted and the relevant motions must be set out in the notice convening the meeting. Where a company has listed equity securities on SIX Swiss Exchange AG, the notice convening the meeting, including the agenda items, must be submitted to SIX Exchange Regulation in accordance with regular reporting obligations (Art. 55 LR in conjunction with CR1, Annex 1, point 3.03).

62. If any or all of the items on the agenda fall into the category of potentially price-sensitive facts, such items must be published in accordance with the Ad hoc publicity rules (Art. 53 f. LR in conjunction with DAH). If the board of directors decides the potentially price-sensitive items on the agenda shortly before the notice convening the AGM is due to be sent, the notice including the agenda may either be published by way of an Ad hoc notice, or the company may publish a separate press release disclosing the potentially price-sensitive agenda item (see also N 102 Com. DAH). If the board of directors decides to include price-sensitive information on the agenda some time in advance of calling the AGM, the company must not wait until it sends out the notice convening the AGM, but must publish an Ad hoc notice immediately, unless the specific conditions for postponing disclosure are met, as set out in Art. 54 LR (see also point 22 above).

63. Although any resolution concerning the relevant agenda item must be passed by the AGM, as the company's highest corporate body (Art. 698 para. 1 CO), the issuer is not permitted to wait until the AGM has made a decision regarding the potentially price-sensitive motion put forward by the board of directors before

disclosing that motion in accordance with Ad hoc publicity rules. If the motion put forward to the AGM by the board of directors is price-sensitive the publication of this motion is normally the breaking news for market participants, because in the case of listed companies the AGM normally follows the motion put forward by the board of directors (N 102 Com. DAH; Decision of SIX Exchange Regulation dated December 22, 2010 [SER 2010-AHP-I/10], point 67 ff.; see point 76 f. below).

64. In the present case the board of directors proposed to the AGM that authorized capital should be created up to an amount equal to [number] shares (CHF [amount]). This would have corresponded to an amount equal to 50% of the current share capital, representing a substantial increase in the Company's share capital. The board of directors would have been entitled to eliminate the subscription rights of current shareholders (Art. 652b para. 2 CO). The new shares would have been used specifically for the purposes of business acquisitions, employee equity plans and other corporate purposes. If the AGM had approved the measure, significant dilution would have occurred as a result, affecting both voting rights and dividend. It must therefore be concluded that the board of directors' proposal for the creation of authorized capital constituted potentially price-sensitive information.

65. The lack of certainty at the time the authorized capital is created as to whether the share capital will actually be increased makes no difference to this assessment. The board of directors has discretion to determine whether and to what extent it will exercise the authority conferred on it by the AGM to increase the share capital. Therefore, investors must allow for the likelihood that the share capital will in fact be increased up to the limit for authorized capital approved by the AGM.

66. The fact that the Company previously have had authorized capital does not invalidate the finding that the board of directors' proposal to create new authorized capital constitutes price-sensitive information. Whenever authorized capital is established, this will cause substantial dilution to existing shareholders once the capital increase is carried out. This will apply in particular in the event of an increase – as in this case – of up to 50% of the share capital registered in the Commercial Register, which is the maximum permitted by Swiss law.

67. With regard to the Company's comments regarding price movements see point 81 below.

68. As noted above (see point 63), the fact that authorized capital must be approved by the AGM (Art. 651 ff. CO) does not rule out the potential price sensitivity of the relevant agenda item. Agenda items put forward by boards of directors of large public limited companies, for example, will generally be approved. This also applies in respect of AGM resolutions, which – as in this case – must be decided by a qualified majority as prescribed by law (Art. 704 para. 1 no. 4 CO). In X's case, for example, the AGM invariably approved the creation of authorized capital up to the statutory limit in previous years.

69. It follows from the above that the agenda item concerning authorized capital involved potentially price-sensitive information which should have been disclosed in accordance with Ad hoc publicity rules (Art. 7 ff. DAH; see above point 58 ff.).

70. According to the Company the AGM agenda and the proxy documents were sent to the shareholders on April [day], 2012. On the same day X filed the proxy documents with the SEC which published them on its website. However, as the Company itself concedes, it did not send the documents in accordance with Art. 7 ff. DAH: the notice was not distributed to all the parties required to receive Ad hoc notices under the rules. For example, the notice was not sent to two Swiss newspapers of national importance or to the two electronic information service providers as prescribed by the rules. Because it had registered for one of the Company's e-mail distribution services, SIX Exchange Regulation received an e-mail on April [day], 2012, containing the information that the Company had made a filing with the SEC. Aside from the fact that the announcement of the SEC filing did not satisfy the Ad hoc publicity requirements for disclosure of price-sensitive information, an Ad hoc notice ought to have been submitted directly to the SIX Exchange Regulation team e-mail address or by fax. Neither were the relevant documents published on the Company's website at this time (pull service).

71. SIX Exchange Regulation only received the notice convening the AGM and the relevant agenda items two weeks later when this was sent by the Company while discharging its regular reporting obligations (Art. 55 LR in conjunction with CIR1, Annex 1, point 3.03). The Company did not, in addition, send any notice to this effect to the SIX Exchange Regulation e-mail address or fax number prescribed for Ad hoc notices. The notice convening the AGM, including the agenda items, was published in the Swiss Official Gazette of Commerce on May [day], 2012.

72. This means that the information was not received simultaneously by all prescribed recipients of Ad hoc notices. Instead, the information was disclosed to some parties in advance, while others did not receive the information at all. This amounted to selective prenotification of market participants, which is contrary to the principle of equal treatment (Art. 6 DAH); see also the Decision of the Sanction Commission dated November 26, 2009 [SaKo 2009-AHP II/09], point 16, and N 112 Com. DAH).

73. This conclusion is not altered by the Company's argument that it published the notice convening the AGM and the agenda in accordance with the applicable provisions of the CO and CIR1 (see point 61 above). The company law provisions of the CO, the requirements for maintaining listing laid down in CIR1 and the Ad hoc publicity requirements exist in parallel and independently of each other (cf. CIR1, point 1). Complying with one set of rules does not exempt issuers from compliance with the other sets of rules.

74. In a decision dated December 8, 2011 (SaKo-AHP-I/11), the Sanction Commission held (point 13) that merely publishing information in the Swiss Official Gazette of Commerce and on the issuer's website did not constitute disclosure in accordance with Ad hoc publicity rules. At the time, the Sanction Commission determined, in accordance with established practice, that disclosure

had been made on a selective basis in breach of Art. 53 para. 3 LR and Art. 6 DAH on the grounds that the notice had not been sent to all the recipients prescribed under Art. 7 DAH.

75. In summary, it has to be asserted that X breached Art. 53 LR in conjunction with Art. 6 ff. DAH by failing to publish agenda item [Nr.] regarding the creation of authorized capital in accordance with the rules on Ad hoc publicity, and with respect to several aspects of these rules. X ought to have disclosed this agenda item in accordance with Ad hoc publicity rules not later than the time of publication of the agenda.

2.3.3 Resolution of the AGM

76. As noted in point 64 ff., the proposed creation of authorized capital involved price-sensitive information within the meaning of Art. 53 LR. If the relevant agenda item had been published in advance in compliance with Ad hoc publicity rules, had not been highly controversial prior to the meeting, and had been approved by the AGM, the Company would probably not have been obliged to disclose this in accordance with Ad hoc publicity rules (see N 67 Com. DAH). The announcement of the motion put forward to the AGM by the board of directors normally is breaking news and therefore price-sensitive. Therefore, any resolution adopted by the AGM in favor of a proposal is no longer considered to be potentially price-sensitive, as the AGM's of listed companies routinely approve motions put forward by the board of directors (N 102 Com. DAH; see also point 63 above).

77. The situation would be different if, by way of exception, the AGM did not approve the motion put forward by the board of directors, as happened in this case (s. above point 25; N 67 Com. DAH). According to the Company, it was prior to the AGM not under the impression that there was any controversy surrounding the agenda item. It can normally be assumed that market participants expect AGM's to approve motions put forward by the board of directors. That the AGM resolved not to authorize the board of directors to create authorized share capital by a substantial amount, i.e. 50%, is a matter of considerable importance to investors. In denying the motion, the AGM prevented the anticipated dilution of share capital. In addition, the negative decision by the AGM demonstrates that a large proportion of investors, contrary to expectations, were not in agreement with the board of directors on this issue. The resolution passed on this subject by the AGM therefore qualifies as potentially price-sensitive information.

78. In the comments submitted on [date], the Company claimed that the negative decision by the AGM had no significant adverse consequences for X, as the issuer had sufficient treasury shares and cash resources to fund company acquisitions and satisfy claims under employee equity schemes. However, contrary to the submissions of the Company, this does not mean that any decision not to create authorized capital would be immaterial to investors. Rather, the AGM's decision to reject the motion essentially prevents dilution because the allotment of treasury shares to employees would not have any such implications. Although the membership rights attaching to the Company's own shares would be suspended in accordance with Art. 659a para. 1 CO, shareholders must expect the Company to reissue its own shares. In addition, the proportion of the Company's own shares held is not generally permitted to exceed 10% of the Company's share capital (Art. 659 para. 1 CO). Furthermore, authorized capital

may not exceed 50% of the capital registered in the Commercial Register (Art. 651 para. 2 CO); this threshold is therefore significantly higher than the threshold laid down in Art. 659 para. 1 CO. In the present case, the motion put to the AGM by the board of directors was thus for an increase up to the maximum permitted by law.

79. X also put forward the argument that it did not make any great effort, prior to the AGM, to encourage shareholders to look favorably upon the agenda item concerned. Although this might suggest that the creation of new authorized capital was a minor matter for senior management, it does not automatically imply that the creation of authorized capital would also have been immaterial to investors. This is also borne out by the AGM's decision to deny the motion. If the shareholders did not consider the agenda item to be a problem, it is likely that the required majority would have approved the motion. X itself submitted that it was mainly foreign investors who appeared to be skeptical about the board of directors' proposal, since they would have been unfamiliar with Swiss company law. Moreover, the creation of authorized capital must have had some importance for the board of directors, or it would probably not have included this as an item on the agenda.

80. The Company further submits that the vote on the motion in question fell only just short of the qualified majority required and that a significant proportion of the shareholders voting at the AGM gave their consent to the creation of authorized capital (62% votes in favor). Although this is true, this does not alter the fact that the number of shareholders approving the motion was insufficient, so that, unlike in previous years, the proposal to establish authorized capital therefore failed.

81. The Company also points out that there was barely any change in the share price either at the time the AGM was called or after the negative decision by the AGM became known. If the information is capable of causing a significant change in the price, that is sufficient for the potential price-sensitivity. Since the potential for price-sensitivity is the sole basis, it is immaterial whether the publication of the potentially price-sensitive information actually affects the price (Decision by the Disciplinary Commission dated May 15, 2002 [DK/AHP/I/02], point 2.2; Decisions by the Committee of the Admission Board dated November 1, 2004 [ZUL/AHP/II/04], point 13, and [ZUL/AHP/III/04], point 11, dated January 7, 2005 [ZUL/AHP/IV/04], point 12; dated March 23, 2005 [ZUL/AHP/I/05], point 13, and [ZUL/AHP/IV/05], point 11, and dated January 23, 2007 [ZUL/AHP/IV/06], point 9; Decision by the Sanction Commission dated November 13, 2007 [SaKo/AHP/IV/07], point 5). In addition, there are no simple, technical criteria, such as the extent of a price fluctuation or transaction volumes, that can be used to assess how likely a fact is to have a substantial influence on the price (Decisions by the Committee of the Admission Board dated January 7, 2005 [ZUL/AHP/IV/04], point 12). As X stated itself, the assessment of potential price-sensitivity is made ex ante, not ex post. It is not possible to predict with total accuracy how market participants will behave (see also Decision by the Committee of the Admission Board dated November 1, 2004 [ZUL/AHP/II/04], point 13; Decisions by the Sanction Commission dated July 30, 2007 [SaKo/AHP/I/07], point 11, and dated January 31, 2008 [SaKo-AHP-VI/07], point 4; N 89, 90 and 92 Comm. DAH).

82. It follows from the above that the AGM's rejection of the creation of conditional capital must be classified as potentially price-sensitive. Accordingly, the AGM's decision ought to have been disclosed in accordance with Art. 6 ff. DAH.

83. Potentially price-sensitive information should generally be disclosed by way of an Ad hoc notice once the information is known to a member of the board of directors or executive committee (see point 22 above). In the present case, the potentially price-sensitive information was known to the relevant persons as soon as the results of the vote were announced at the AGM. Because potentially price-sensitive information that is made public in an AGM is no longer confidential by definition, an Ad hoc notice disclosing such information must be published immediately (see Sanction Notice of SIX Exchange Regulation dated December 22, 2010 [SER 2010-AHP-I/10], point 73, and N 124 f., 196 Com. DAH). It is also necessary to contact SIX Exchange Regulation in advance where publication is due to take place during critical trading hours (this is known as the "90-minutes rule"; Art. 7 and Art. 12 para. 2 DAH, see also N 153 ff. Com. DAH).

84. X's AGM began on May [day], 2012 at [time]. It concluded at [time + 45 min.]. The vote on the agenda item regarding the authorized capital was recorded between [time + 30 min.] and [time + 40 min.]. Several hours later the Company filed the resolutions of the AGM with the SEC and published a link to its filing on its website. On [date], the Company sent an e-mail to SIX Exchange Regulation informing it of the AGM results in compliance with its regular reporting obligations (CIR1, Annex 1, point 3.04). In breach of the rules, X did not submit the required press release to two Swiss newspapers or to two electronic information systems. SIX Exchange Regulation was informed by the SEC filing through the e-mail distribution service, as occurred on publication of the agenda. The Company failed to publish any Ad hoc notice regarding the AGM's rejection of the creation of authorized capital in accordance with applicable rules (cf. Art. 7 ff. DAH; see also point 70 ff.).

85. As the relevant AGM resolution concerned a potentially price-sensitive fact, the Company ought to have published an Ad hoc notice immediately after the resolution was passed. Instead, the Company only published the AGM results on its website and only filed the results with the SEC, informing interested third parties by e-mail of the SEC filing. This amounts to selective notification of market participants and is therefore contrary to the principle of equal treatment. Accordingly, X failed to comply with Art. 53 LR in conjunction with Art. 6 DAH, and has therefore breached applicable SIX Swiss Exchange AG rules.

2.4 Breach of Art. 18 LR, Art. 42 to 45 LR and Art. 3 and 4 Directive on the Procedure for Equity Securities (DPES)

2.4.1 General comments

86. In accordance with Art.18 LR, the listing must comprise all issued securities in the same category, thus resulting in the obligation to apply for the listing of the new shares in connection with an ordinary or authorized capital increase in accordance with Arts. 42 to 45 LR in conjunction with Art. 3 and 4 DPES.

87. In accordance with Art. 4 DPES, listing applications must be submitted to the Regulatory Board of SIX Swiss Exchange no later than 20 exchange days prior to the intended first listing date of new shares issued in connection with a capital increase. The listing of the new shares has to take place immediately after the corresponding entry in the Commercial Register. Thus, the listing application for new shares must be submitted to SIX Exchange Regulation 20 exchange days prior to the entry of the new shares into the Commercial Register at the latest.

88. The capital of X was increased by the issuance of [number] shares with a nominal value of [nominal value] each out of authorized capital on [e]. X or its recognized representative did not file a listing application. Only after SIX Exchange Regulation approached the recognized representative, person E (Swiss Lawyer) of [Swiss law firm], on [e+3], was it detected that the application for the listing of the new shares had been overlooked. The recognized representative filed the listing application on [e+6], and the listing of the new shares took place on [e+8], within a shortened time period.

2.4.2 Filing of Listing applications

89. The purpose of requiring issuers to list all securities by category is to provide a clear indication of the Company's actual share capital, thus ensuring that investors have a transparent view of the issuer. Any capital increase must therefore be recorded in the Exchange's systems immediately after the shares are legally created (entry in the Commercial Register). For this purpose it is essential that issuers promptly submit an application for the listing of the newly created shares to SIX Exchange Regulation through their recognized representative. If the application is not submitted on time or is submitted late, there is the potential for investors to make decisions based on incorrect assumptions. Investors must be able to rely at all times on the information on which their decisions to buy or sell securities are based. In addition, index calculations are based, among other things, on a Company's current share capital, with any inaccuracy in the share capital reported potentially resulting in miscalculations. Index calculations are also very important to market participants, enabling them to make calculations for derivatives and collective investment schemes, and also, ultimately, to the Takeover Board.

90. The recognized representative has a duty to submit applications for listing within the prescribed deadlines and in the prescribed form. The recognized representative is responsible for ensuring that applications are received on time by SIX Exchange Regulation. In discharging this duty, the recognized representative must rely on information provided by the issuer. It is therefore essential for issuers to inform recognized representatives promptly of any material transactions (in respect of which a listing application is required). If, for good cause, it is not possible to meet the prescribed deadlines, issuers are permitted under Art. 7 LR to request exemptions from specific stock exchange rules, provided that legitimate reasons can be shown. The recognized representative must also be informed in that capacity of any such action taken and of the relevant procedures. Responsibility for submitting an application on time and in the required form ordinarily lies with the issuer, as only the issuer, as the counterparty of SIX Swiss

Exchange, is bound to comply with the applicable rules and implementing provisions.

2.4.3 Conclusion

91. In the present case, the issuer failed to ensure that the required application for listing was submitted within the prescribed timeframes. The issuer attributes this omission to a series of unfortunate events and the fact that the matter had simply been overlooked.

2.5 Severity of the breaches, degree of fault and impact of the sanction

92. Art. 61 para. 2 LR provides that in determining the sanction to be imposed, due consideration must be given, in particular, to the severity of the breach and the degree of fault. When setting the level of fines, the competent body will also take the impact of the sanction on the party concerned into account.

2.5.1 Severity of the breaches

2.5.1.1 Management transactions

93. The purpose of disclosing management transactions is, among other things, to promote the provision of information to investors (Art. 56 para. 1 LR). This purpose may only be accomplished if the market is informed of the reportable transactions within the prescribed time limits (see also Decision of the Committee of the Admission Board dated July 2, 2006 [ZUL-MT III/06] point. 41). Late disclosures render worthless, or at least substantially undermine, the value of the information disclosed (Decision of the Sanction Commission dated November 30, 2007 [SaKo/MT/III/07] point 10). The delay at issue in this case was 18 trading days, which substantially reduced the value of the information disclosed.

94. In view of these factors, we conclude that the breach in question is moderately serious in nature.

2.5.1.2 Ad hoc Publicity

95. The Company published inter alia both the agenda and the AGM resolutions on its website. It also sent the agenda to the shareholders and published this in the Swiss Official Gazette of Commerce. However, the information was not published in accordance with the Ad hoc publicity rules. Although this amounts to selective prenotification of market participants, which is not permitted, it should be acknowledged that the information was at least partially distributed. In view of this, the failure to comply with Ad hoc publicity rules must be defined as a minor breach of Art. 53 LR and Art. 5 ff. DAH.

2.5.2.3 Listing

96. The purpose of the obligation to file a listing application for capital increases is, among other things, to ensure market transparency and to inform investors about capital transactions which have a potential influence on the price of the issuers' shares. SIX Exchange Regulation has to verify in the listing process, that all publication obligations according to Art. 42 et seq. LR are fulfilled. Based on the verification of the listing application, a decision according to Art. 47 LR can be rendered. Late or missing applications and the late or missing listing of new shares, resulting in an incorrect data feed, might cause trading problems and might lead to an incorrect calculation of indices and therefore mislead market participants. The issuer is responsible for the filing of listing applications in due time by its recognized representative. The failure to submit a listing application within the time period specified in the LR, such as that at issue in this case, caused misinformation in the market, which could potentially impact on investment decisions and result in index miscalculations.

97. In view of these factors, we conclude that the breach of Art. 18 LR, Art. 42 to 45 LR and Art. 3 and 4 DPES is moderately serious in nature.

2.5.2.4 Final determination

98. In summary, X is held to have committed breaches of the management transaction rules (one instance of breach), ad hoc publicity rules (two instances of breach) and the LR (one instance of breach).

99. It should be noted that the Company committed a series of breaches against various stock exchange rules. Although the breaches, taken individually, cannot be regarded as serious in and of themselves, X's conduct cannot be considered a minor matter when the breaches are taken in aggregate. A further aggravating factor is that X has breached the rules in a number of different aspects. It is hard to avoid the impression in general that the Company had difficulty in complying with the requirements for maintaining listing.

2.5.2 Degree of fault

2.5.2.1 General remarks

100. A sanction under Art. 61 LR may be imposed if a Company is held to be in breach of the provisions of the LR, whether such breach was committed intentionally or through negligence.

101. Anyone who knowingly and willfully commits a breach of the relevant rule is deemed to have acted with intent. An issuer is deemed to have acted with conditional intent if it did not directly intend to breach its regulatory duties, but at the very least is alerted to the possibility of a breach occurring, and accepts the risk that such a breach may occur.

102. An issuer is generally deemed to have acted negligently if, through culpable carelessness, it has failed to consider or take account of the consequences of its actions. The essential condition for a breach of the duty of care to apply is the foreseeability of the outcome. The main elements of the sequence of events leading to the outcome must be foreseeable (Decision of the Committee of the Admission Board dated September 4, 2006 [ZUL-MT IV/06], point 34]).

103. It should be noted that the matter at issue here is the imposition of a sanction against a legal entity rather than individuals. A sanction must be imposed if it is held that the Company failed to take all necessary and reasonable organizational measures to prevent a breach of the obligations incumbent upon it under the LR. The degree of fault must therefore be assessed according to largely objective criteria. Any acts performed by individuals or executive bodies on behalf of the Company must be imputed to the Company (Decision of the Sanction Commission dated November 30, 2007 [SaKo/MT/III/07], point 9).

104. By reason of their duty of care, all issuers are expected to familiarize themselves with stock exchange rules, any relevant commentaries, and the established practices of the judicial bodies and SIX Exchange Regulation and to act in accordance with such rules, commentaries and practices. Companies also have the option to contact SIX Exchange Regulation staff if they have any questions. Any breach of the rules and regulations must normally raise a presumption of negligence on the part of the issuer in failing to discharge its duty.

2.5.2.2 Management transactions

105. Issuers must have appropriate organizational structures in place to enable them to discharge their obligations under Art. 56 LR at any time. This includes, in particular, setting up procedures to ensure that any information regarding reportable transactions, which is provided by persons subject to reporting obligations, is disclosed to SIX Exchange Regulation within three trading days in accordance with Art. 56 para. 5 LR.

106. Where an issuer has assigned responsibility for discharging all of the Company's obligations in relation to Art. 56 LR to a single individual, and has not, for example, established any monitoring mechanisms to ensure that the tight deadlines under Art. 56 para. 5 LR are met, that issuer has failed to take all necessary and reasonable organizational measures to prevent a breach of the obligations incumbent upon it under the LR. This must also be the case given that X failed on a previous occasion in [month] 2011 to send a report within the time period specified in Art. 56 para. 5 LR, even though the report was only submitted approximately one hour late. This omission is emphasized further by the fact that X is also required to file reports to the relevant US authorities, presumably based on the same set of circumstances as those applying under Art. 56 LR. The short timeframes for filing reports, as provided in Art. 56 para. 5 LR, may therefore be material due to the time difference between Europe and the United States of America, especially given that a single individual was responsible for administering all the relevant requirements.

107. The Company could have foreseen that the deadlines specified in Art. 56 para. 5 LR would not be met in the absence of any monitoring mechanisms. A breach of the rules could have been avoided if the Company had established additional monitoring mechanisms. Such a measure would ensure, for example, that a second Reporting Counsel would be informed of any disclosures received from persons subject to reporting obligations, as now required following the breach at issue, and that this second Reporting Counsel would be under an obligation to verify that the other Reporting Counsel discloses the required information to SIX Exchange Regulation within the deadline specified in Art. 56 para. 5 LR.

108. The breach of Art. 56 LR was therefore committed through negligence.

2.5.2.3 Ad hoc Publicity

109. In the matter to be determined here, there is no evidence to suggest, as stated in point 101 f., that the Company breached the rules by acting with intent or conditional intent.

110. Issuers are required to ensure - inter alia under Art. 53 LR - that they comply with their obligation to disclose information to current and prospective market participants and to SIX Exchange Regulation. They have a duty to ensure that Ad hoc notices are duly published in accordance with the rules.

111. With regard to the timing of the publication of Ad hoc notices, companies must provide notification as soon as they become aware of the main points of the potentially price-sensitive fact (Art. 53 para. 2 LR, Art. 5 DAH). Ad hoc notices must be distributed widely, which is why the rules require issuers to send Ad hoc notices to specified recipients. Market participants should have the ability, simultaneously, to take potentially price-sensitive facts into consideration. One of the aims of the Ad hoc publicity rules is to rapidly reduce information advantages (N 4 f. Com. DAH). Issuers are expected to be aware of these requirements. As part of their duty of care, issuers are required to assess whether different regulatory areas are potentially impacted by a particular event. As a result, companies cannot rely on the fact that they complied with the provisions of company legislation and satisfied regular reporting requirements for the purposes of compliance with Ad hoc publicity rules. The various rules exist in parallel and independently of each other (cf. CIR1, point 1). The same applies in respect of compliance with the rules of other stock exchanges: where a company is listed on two exchanges, compliance with the rules of one exchange does not exempt the company from complying with the rules of the other exchange. X ought to have been aware of this (s. above point 54).

112. It is clear from the above that X breached the applicable Ad hoc publicity rules in negligently failing to disclose either the proposal to create new authorized capital or the AGM's resolution rejecting the proposal, as required by the Ad hoc publicity rules.

2.5.2.4 Listing

113. Issuers are required to ensure that their recognized representative submits any application for the listing of new shares to SIX Exchange Regulation on time. This is the only way to ensure that investors are promptly informed about the creation of new shares, allowing them to make investment decisions on the basis of accurate information.

114. The issuer failed to submit an application for the listing of new shares through its recognized representative. An application was only submitted in response to a request by SIX Exchange Regulation, which caused a delay in the listing of the new shares.

115. There is no evidence to suggest in this case that the Company acted with intent or conditional intent. In light of the foregoing, the failure to comply with the "listing by category" requirement laid down in Art. 18 LR and the breach of Art. 42 to 45 LR in conjunction with Art. 3 and 4 DPES was committed through negligence.

2.5.3 Determination of the sanction

116. It may be said in favor of the Company that as a result of these proceedings it decided to appoint additional employees, who are based in Switzerland, to monitor compliance with stock exchange rules.

117. The Company should be given credit for the fact that from the outset it was very responsive to the suggestions put forward by SIX Exchange Regulation with regard to improving its internal system for the publication of management transactions, and was prepared to implement these suggestions immediately . It should also be borne in mind that X contacted SIX Exchange Regulation on its own initiative regarding the late publication of the transaction by a person related to person C.

118. No sanction has been imposed against X in the last three years for failing to discharge its obligations under the LR or any related implementing rules.

119. In assessing the impact of the sanction, due consideration must be given, in particular, to the company’s financial resources. The same fine is likely to impact more heavily on companies with more limited economic resources than those with greater financial capacity. Among other things, financial ratios may be used to determine financial capacity, earnings before interest and taxes (EBIT), net earnings, cash flow generated from operations, cash and cash equivalents, or shareholders' equity (Decisions of the Sanction Commission, dated 8 December, 2011 [SaKo 2011-AhP-I/11], point 37, and dated 28. June, 2012 [SaKo 2011-AHP-II/11], point 63 f.).

120. In order to ensure that the sanction is commensurate with the issuer's actual financial capacity, it may be necessary to consider a group’s consolidated

financial ratios, where appropriate, not just the figures of a single holding company in isolation.

121. In this case, the issuer reports net cash provided by operating activities of [number] for the 2010 financial year (restated financial statements) and [number] for the 2011 financial year, operating income of [number] for 2010 and [number] for 2011, income before income taxes of [number] in 2010 and [number] in 2011, net loss of [number] for 2010 and net income of [number] in 2011. Net loss attributable to X was [number] in 2010, while net income attributable to X was reported as [number] in 2011. Although the Company recorded a net loss in 2010, this does not constitute evidence - not least owing to the prior year and subsequent year results - that the impact of the sanction would be very great, given that the loss was attributable to exceptional circumstances related to tax. The impact of any sanction on the Company must therefore be described as **low**.

122. In cases of negligence, which is deemed to apply here, both in relation to the breaches of management transaction disclosure rules (see point 94 above), the ad hoc publicity rules (see point 95 above), and in relation to the breach the listing rules (see point 96 ff. above), a fine of up to CHF 1,000,000 may be imposed (Art. 61 para. 1 LR). Even the maximum fine would not unduly burden the Company in view of its profits and total assets, as described above, and the limited impact that such a sanction would have as a result. This must apply, a fortiori, if the fine imposed was just a fraction of the maximum amount.

2.6 Overall assessment and imposition of sanction

123. Possible sanctions include a reprimand or fine, where, as previously mentioned, a ceiling of CHF 1,000,000 applies in cases of negligence (Art. 61 para. 1 LR).

124. In determining the sanction to be imposed, the competent body will take into consideration, in particular, the severity of the breach and the degree of fault; when setting the level of fines, the competent body will also take the impact of the sanction on the party concerned into account (Art. 61 para. 2 LR).

125. All instances of breaches of the applicable rules involved negligence (see points 108, 112, 115).

126. It should also be borne in mind that the Company indicated on its own initiative that it intended to take measures (e.g. in terms of human resources) in order to prevent any future breaches of stock market rules (point 116 f. above).

127. Having regard to the impact of the sanction on the Company, which is deemed to be low in this case, a fine of CHF […], representing a fraction of the maximum of CHF 1,000,000 that may be imposed, would seem appropriate (point 119 ff. above).

128. In calculating the penalty, any prior sanctions imposed in the last three years must also be taken into account (section 2.6 para. 4 RP). In this instance, no sanctions were imposed against the Company in this period.

129. In view of the breaches of the LR and having regard to the totality of the circumstances, SIX Exchange Regulation requests the imposition of a fine of **CHF […]** against the Company in accordance with Art. 61 para. 1 subpara. 2 LR. If an investigation is concluded with a legally enforceable sanction notice, the fact will be made public (Art. 6.2 para. 5 RP). The sanction notice will generally be available on the SIX Exchange Regulation website in anonymised form (Art. 6.2 para. 6).

2.7 Costs

130. Section 9.8 of the List of Charges dated July 7, 2012 provides that if sanction proceedings are required, the applicable costs shall be determined on the basis of expenditure incurred.

131. In this case, X Ltd. is ordered to pay costs of CHF […] which would seem reasonable and justified in this matter, having regard to the expenditure required in respect of previous proceedings.

2.8 Sanction notice

SIX Exchange Regulation hereby issues the following sanction notice**:**

1. It is held that X Ltd. has breached Art. 56 LR governing management transactions by publishing the management transaction of the person related to person C 18 trading days late.
2. It is held that X Ltd. has breached the provisions governing Ad hoc publicity, in particular Art. 53 LR and Art. 6 ff. DAH, by not sending notices regarding the agenda item concerning authorized capital for the AGM of May [day], 2012 and regarding the resolution of the AGM concerning such item to all prescribed recipients.
3. It is held that X Ltd. has breached Art. 18 LR, Arts. 42 to 45 LR and Art. 3 and 4 DPES by not filing a listing application within the given deadlines.
4. X Ltd. is ordered to pay a fine of CHF […].
5. X Ltd. is ordered to pay costs of CHF […].
6. If an investigation is concluded with a legally enforceable sanction notice, the fact will be made public (Art. 6.2 para. 5 RP). The sanction notice will generally be available on the SIX Exchange Regulation website in anonymised form (Art. 6.2 para. 6).

[instruction on the right to appeal]