SANCTIONS COMMISSION

Decision

Procedure No. SaKo VII/2023

SIX Exchange Regulation AG
Hardturmstrasse 201
8021 Zürich
vs.

X. ___
[Address]

represented by
[Legal representatives], [Address]

The Sanctions commission (**SaKo**) - [...] (Chairman), [...], [...], [...] (Secretary) - decided on 10 August 2023 as follows:

I. **X. ___ negligently violated the applicable rules on ad hoc publicity and thereby its obligations pursuant to Art. 53 LR by failing to distribute the ad hoc announcement dated 22 August 20XX in accordance with Art. 7 et seqq. DAH and consequently to comply with Art. 6 DAH.**

II. **X. ___ is ordered to pay a fine in the amount of CHF 100'000.**

III. **X. ___ is ordered to bear the cost of the present proceedings in the amount of CHF [...] incurred by SER and the additional costs incurred by the Sanctions commission in the amount of CHF [...]. The total costs to be borne by X. ___ amount to CHF [...].**

IV. **Once the sanction decision has become legally binding, it will be made available in anonymized form on the website of SIX Exchange Regulation Ltd. Furthermore, the conclusion of the proceedings will be communicated to the public in a media release, with the names of the parties mentioned in the same way as when the file was submitted to the Sanction Commission.**

An appeal can be filed against this decision according to Art. 5.3 al. 2 LOC within 20 trading days after being served with this decision. Arbitration proceedings will be instituted upon delivery of a written notice of arbitration against the other party to the lower instance, i.e. the Sanctions commission ([...]) according to Art. 2.1 Rules of Arbitration.

Considerations

1. Procedure

In accordance with Art. 53 Listing Rules (LR) in conjunction with the Directive on Ad hoc Publicity (DAH), SIX Exchange Regulation AG (SER) oversees the correct publication of press releases containing price-sensitive facts (so called 'ad hoc announcements').
As a reaction to the press release of X. ___ entitled "[Title]" published on 23 August 20XX (CEST), SER initiated a preliminary inquiry in accordance with the Rules of Procedure (RP) concerning a possible violation of the rules regarding ad hoc publicity.
X. ___ responded timely to the preliminary inquiry letter dated [Date] by letter dated [Date].
After having considered all the evidence, SER concluded that there were sufficient indications suggesting a violation of the rules on ad hoc publicity. Therefore, on [Date], SER initiated an investigation in the sense of Art. 3.3 para. 1 RP. In addition, the issuer was informed in writing, that an investigation generally concludes with the abandonment of the proceedings or upon an agreement, the issue of a sanction notice or the submission of a proposal for sanctions with SaKo (Art. 3.4 para. 1 RP).
SIX Exchange Regulation Ltd. (thereafter SER) submitted a sanction proposal dated [Date] against X. ___ to the SIX Sanction Commission (thereafter SaKo) on [Date].
The proposal was accompanied by the responding statement of [Legal representative], [Address], on behalf of X. ___, dated [Date].
On [Date], the Sanction Commission acknowledged receipt of the sanction proposal SER vs. X. ___ (including X. ___'s statement of [Date]).
With the confirmation of the receipt of the file, the Sanction Commission asked both parties whether supplementary statements on the sanction application or the company's statement would be submitted. SER requested time for a supplementary statement.
SaKo fixed the deadlines for the statement of positions for SER to [Date] and for X. ___ to [Date]. Both parties responded within the deadlines set.
On [Date], the composition of the delegation was notified to the parties. No request to abstain was raised.
The delegation decided on the case in its meeting of 10 August 2023.

2. Findings

2.1. Formal Findings

X. ___ is a company incorporated under the laws of [Country] with its registered office in [Place]. The company's registered shares are listed in the [Regulatory Standard] of SIX Swiss Exchange AG. On [Date], X. ___ signed the Declaration of Consent and

thereby accepted to be bound by the stock exchange regulations, the LR, the additional rules, implementing provisions and the RP in their latest version.
The violation of the LR, any additional regulations thereto or any implementing provisions thereof, may be sanctioned with one or more of sanctions listed in Art. 61 LR (Art. 60 LR). Competent to decide upon sanction proposals submitted by SER is SaKo (Art. 3.4 para. 1 and Art. 4 RP).

2.2. Material Findings

2.2.1. Facts of the matter

The relevant time in [Country A] is indicated in the following by CEST (Central European Summer Time) and in the [Country B] by ET (Eastern Time).
On 23 August 20XX, at 03.01 a.m. CEST, X. ___ transmitted its ad hoc announcement designated "[Title]" to SER by using the online platform Connexor Reporting. The PDF file sent via Connexor Reporting dated 22 August 20XX. According to the information provided in the Connexor Reporting form, X. ___ intended to publish the ad hoc announcement on 23 August 20XX at 03.05 CEST. Furthermore, in the Connexor reporting form X. ___ confirmed that the ad hoc announcement has been/will be published as follows (i) at least two electronic information systems widely used by professional market participants (e.g. Bloomberg, Reuters, SIX Financial Information) (Art. 7 DAH), (ii) at least two Swiss media (printed or electronic) of national importance (Art. 7 DAH), (iii) E-Mail distribution (push system) (Art. 8 DAH), and (iv) Issuer's Website (pull system) (Art. 9 DAH).
According to the information provided by X. ___ in its answer to the preliminary inquiry letter dated [Date], the ad hoc announcement was then filed with BusinessWire at 09.18 p.m. (ET) on 22 August 20XX (i.e., at 03.18 a.m. CEST on 23 August 20XX) and distributed to the market participants. This included at least two electronic information systems widely used by professional market participants (i.e., Bloomberg and Thomson Reuters) and at least two Swiss media of national importance (i.e., AWP Finanznachrichten and Morning Star). The ad hoc announcement was posted on X. ___'s website in the directory for ad hoc announcements at 09.18 p.m. (ET) on 22 August 20XX (i.e., 03.18 a.m. CEST on 23 August 20XX).
However, until the beginning of the critical trading hours (07.30 a.m. CEST), SER did not receive the ad hoc announcement via the email address with which SER is registered with X. ___ to receive the newsletter pursuant to Art. 8 DAH (push system).
On 23 August 20XX, at 07.45 a.m. (CEST), SER tried unsuccessfully to contact X. ___ by telephone. Five minutes later, SER was called back by X. ___. SER informed X. ___ about the missing ad hoc announcement via push system and requested a proof, that the email distribution list (push system) had been served correctly. X. ___ promised a call after clarification of the situation.
On 23 August 20XX, at 08.13 a.m. (CEST), SER was contacted again by X. ___. On this telephone call, X. ___ informed SER that the email distribution list (push system) had

not been served. At SER's request, X. ___ promised a call-back as soon as the push system could be operated.
On 23 August 20XX, at 10.13 a.m. (CEST), SER received a call from X. ___. X. ___ informed SER that X. ___ was now able to operate the push system.
On 23 August 20XX, at 10.56 a.m. (CEST), SER informed X. ___ by telephone that the push system could be operated without suspending trading in the shares.
On 23 August 20XX, at 11.25 a.m. (CEST), X. ___ finally served the push system and SER received the ad hoc announcement via the email address with which SER is registered with X. ___ to receive the newsletter pursuant to Art. 8 DAH (push system).
X. ___ has commissioned [External Service Provider] to handle the digital system for its push system. After having been requested by X. ___, [External Service Provider] investigated the delayed generation of the above-mentioned ad hoc announcement. [External Service Provider] outlined the typical process behind email alerts for purpose of publication. [External Service Provider] explained that usually an email alert is immediately generated after publication of a press release, once it is uploaded to X. ___'s IRWS. Thereafter, a report is generated confirming the email alert was sent, who received the alert, and who failed to receive the alert. [External Service Provider] further explained that there are two instances where this email alert is manually turned off. The first is if the client notifies [External Service Provider] to turn off an email alert and the second instance is if the update is backdated.
[External Service Provider] went on to explain that they had previously been instructed by X. ___ to update the earnings press release publication on X. ___'s website for X. ___'s Q1 20XX earnings. On this update, the person responsible turned off the email alert generating system. [External Service Provider] believes that this is the likely cause that the email alert was not automatically generated.
As a result of the above-described events X. ___ implemented via [External Service Provider] steps to prevent such errors and missteps. X. ___, referring to the events described above, takes the position that the acknowledged delay is caused by a human error by [External Service Provider].

2.2.2. Rules regarding Ad hoc Publicity

X. ___ classified the press release titled "[Title]" as "Ad hoc announcement pursuant to Art. 53 LR" meaning that the facts included in the press release were qualified as price-sensitive by X. ___. This qualification is undisputed.
Price-sensitive facts must be disclosed via Ad hoc announcement in accordance with the DAH (Art. 53 LR). The notification by means of an Ad hoc announcement is necessary to ensure that all market participants have the same opportunity to become aware of the price-sensitive fact, the so-called principle of equal treatment (Art. 6 DAH). To make sure that all market participants have the same opportunity to become aware of a price-sensitive fact, Art. 7 DAH defines that Ad hoc announcements have to be distributed at least to:

- SIX Exchange Regulation AG ("SIX Exchange Regulation") pursuant to Art. 12 et seqq. DAH (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, SIX Financial Information);
- at least two Swiss media (printed or electronic) of national importance; and
- all interested parties upon request (Art. 8 DAH).

Further, Art. 8 para. 1 DAH specifies that issuers "must provide a service on its website that allows interested parties to receive, via e-mail distribution, free and timely notification of Ad hoc announcements (push system)". In other words, issuers are obliged to distribute ad hoc announcements via push system and said distribution must occur simultaneously to all addressees (Art. 10 para. 2 DAH). Finally, and simultaneously to the distribution in accordance with Art. 7 DAH, each Ad hoc announcement has also to be uploaded to the issuer's website (Art. 9 DAH).
According to Art. 10 para 1 DAH, the issuer may decide at its own discretion whether to fulfil its disclosure obligations itself within the context of ad hoc publicity or instruct a third party to do so. In either case, the issuer remains fully responsible for the proper fulfilment of its obligations (Art. 10 para 2 DAH).
X. ___ published and distributed the ad hoc announcement to SER, two electronic information systems widely used by professional market participants and two Swiss media of national importance on 23 August 20XX at 03.18 a.m. (CEST). Further, the ad hoc announcement was also uploaded on the issuer's website at 03.18 a.m. CEST.
The push system, however, was only operated after intervention of SER at 11.25 a.m. CEST, more than eight hours later and during trading hours. Therefore, SER states that "X. ___ *failed to comply with Art. 7 DAH in connection with Art. 8 DAH and Art. 10 para. 2 DAH. Consequently, X. ___ also failed to comply with Art. 6 DAH according to SER. In addition, SER sees that the issuer also failed to identify the delayed distribution via push system and to contact SER in a timely manner that the publication of the ad hoc announcement in accordance with the rules is not possible [Decision of Sanction Commission of 29. November 2022 (SaKo IV/2022), number 36]. In addition, the issuer did not have taken enough measures ("fallback scenario") to be able to publish the ad hoc announcement independently and quickly*".
X. ___ explains that "the push system operated by [External Service Provider], however and contrary to the protocol, did not successfully function for the client X. ___ due to a human error within [External Service Provider]. ...However, in the case at hand, an employee of [External Service Provider] manually turned off the email alert generating system .... This human error resulted in the push system not being sent, in particular to the email address with which SER is registered with X. ___ to receive ad hoc announcements.
... Without this one-time human error by an external very reputed third-party service provider, the push system would have been successfully activated and sent at 03.18 a.m. CEST on August 23, 20XX, as part of the Ad Hoc Announcement Process. ...
X. ___'s cooperative and proactive behaviour is not correctly portrayed in the Sanctions

Proposal. ...
It should also be made clearer that steps were implemented, both on X. ___'s and [External Service Provider]'s side to prevent such human error from ever occurring again due to a new procedure introduced, as described by [External Service Provider] and restated as follows:
- If the press release has already crossed, the alert will have already been sent and so there will not be a need to turn off the alert, as there is no risk that a second email alert be sent automatically as any such sending must be manually generated. The responsible employee within [External Service Provider]'s support team (their "client success manager") has also been notified that they do not need to modify the email alert when this occurs;
- If the press release email alert is modified, [External Service Provider] will note it externally to X. ___ via email. This new process change is now noted in [External Service Provider]'s internal client notes, which any one individual from [External Service Provider] with access and authorization to publishing updates to X. ___'s investor relations website is required to read".
SaKo acknowledges that detailed procedures had been in place and that corrective measures have been taken since the incident.
SaKo notes that X. ___ acknowledges the sequence of the facts and does not dispute that the push system was not operated as provided for in the rules on ad hoc publicity. X. ___ attributes the failure to a one-time human error that happened within the third party [External Service Provider].
SaKo concurs with SER that the communication via the push system did not function as requested by Art. 7 DAH and that this misfunction was not detected by the Company but by SER only. Internal clarifications by X. ___ and [External Service Provider] have been made after the information by SER only. These facts are not contested by the Company neither.
SaKo notes that X. ___ does not provide an explanation why the malfunction of the push system was not detected by the Company itself but by an external party only. For example, the malfunction could have been easily detected if a responsible person of X. ___ would have been on the distribution list of the push system (like SER). This is a common practice in listed companies to ensure full compliance with the obligations according to Art. 7 DAH. It is unclear whether such simple control mechanism was established as part of the measures taken after the incident to enable the Company to detect any malfunction of the push alert by own means.

3. Sanction

In establishing the relevant facts for this sanction proposal, SER declares to have considered both the exculpatory and inculpatory facts with equal care. All facts and information that serve to determine the facts of the case are subject to free evaluation and are deemed to be evidence (Art. 3.1 para. 1-2 RP). In drafting the sanction

proposal, SER claims to have evaluated all facts presented by X. ___ even if not explicitly referred to in the sanction proposal.
X. ___ requests SaKo to reject SIX Exchange Regulation AG's sanctions proposal concerning ad hoc publicity and to close the SIX Exchange Regulation AG's investigation with no sanction being imposed on X. ___.
As the sponsor of the Swiss Exchange, SIX is obliged to issue regulations on the admission of securities to trading, on the listing of securities, to monitor compliance with the regulations and to take the sanctions provided for in the contract in the event of violations (Art. 35 FinMIA). Closing a case of violation of the rules on ad hoc publicity without sanction would be against the legal obligations of SIX. Therefore, X. ___'s request to close the investigation with no sanction being imposed, must be **rejected**.
Such violations are persecuted with the sanctions defined in Art. 61 LR. The sanctions listed therein may be imposed cumulatively. Art. 61 para. 2 LR states that in determining the sanction to be imposed, due consideration must be given to the severity of the breach and to the degree of fault. In cases where the issuer shall be sanctioned with a fine, the impact of the sanction on the party concerned has also to be considered when setting the amount of the fine.
X. ___ holds that Art. 61 para. 1 ciph. 2 LR is invalid and adds:
"A contractual penalty, which is provided for in Art. 160 CO, can for example be included in contractual agreements and in articles of association. In such cases, and according to Art. 163 para. 1 CO, "[t]he parties are free to determine the amount of the contractual penalty'', which is in line with the parties' contractual freedom. According to the Swiss Supreme Court, a contractual penalty is however only valid if the amount is fixed or at least determinable. For instance, in a decision dated October 9, 2012, the Swiss Supreme Court deemed the fine foreseen by the Anti-Doping Rules of the Union Cycliste Internationale in case of an anti-doping violation determinable as it amounted to the net annual income of the cyclist. Further, the Swiss Supreme Court was also clear that a contractual penalty is not valid if one party can fix it unilaterally. However, the parties may determine a calculation method or transfer the power to set the amount of the fine to an objective third party.
Therefore, in our case, on the hand, a fine should be fixed or at least determinable in order to be considered as valid. Yet Art. 61 para. 1 ciph. 2 LR solely foresees the upper limit of a fine and makes its amount dependent on three criteria: severity of the breach, degree of fault, and the company's sensitivity to sanction (Art. 61 para. 2 LR). These three criteria, and especially the latter (allowing the sanction's amount to be increased to determine the "appropriate" amount), leave a great power of discretion (limited only by the prohibition of arbitrariness) to SER and SaKo. In fact, no calculation method has been determined between the contractual parties, X. ___ and SIX Group AG.
Further, on the other hand, neither SER nor SaKo are objective third parties, as they both are regulatory bodies of SIX Group AG according to ciph. 1.2 of the Regulatory Bodies Organisation Rules (RBOR).

Therefore, there is a lack of foreseeability regarding the determinability of the amount of the fine and it is, in fact, SER or SaKo -- i.e., not an objective third party -- who unilaterally determines the amount of the fine according to its own assessment.
As a consequence, and according to the principles set out by the Swiss Supreme Court established above, the fine foreseen in Art. 61 para. 1 ciph. 2 LR shall be deemed invalid."
SER responds to this argument as follows:
"The issuer refers to the Decision of the Swiss Supreme Court (BGE 119 II 162). The case decided by the Swiss Supreme Court, concerned a contractual penalty that was to be applied on the basis of an employment contract. In contrast to the present case, not even the breaches that led to the claim of the contractual penalty were agreed upon [by the respective parties]. Furthermore, there was also no agreement with respect to the amount of the contractual penalty. ...
Contrary to the issuer's unfounded statements, both the violations that lead to a sanction and the modalities for assessing the amount of the sanction are clearly defined (Art. 59 et seqq. LR). In addition, the maximum level of sanctions is explicitly set (Art. 61 para. 1 LR). ...
In view of the unambiguous rules in the regulations and the case law specifically relating to the push system, it had to be clear to the issuer from the outset how such misconduct would be qualified and what the consequences would be. ....
Pursuant to Art. 27 para. 1 of the Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatves Trading (FinMIA), the establishment of an own regulatory and supervisory organization is a licensing requirement for the operation of a stock exchange. The regulatory and supervisory tasks delegated to the trading venue must be carried out by independent bodies (Art. 27 para. 2 FinMIA). In accordance with Art. 27 para. 4 FinMIA, the Regulatory Bodies of the SIX Group's trading venues specified the constitution, structure and remit of the Regulatory Bodies and their position with respect to SIX Group and within the Group in the RBOR. FINMA has approved the RBOR and the Federal Administrative Court has recently confirmed the current setup (BVGE 2021 IV/1).
As a self-regulated and independent body, SER regulates and monitors the SIX Swiss Exchange. SER reports to the Chairman of the Board of Directors of SIX Group AG (Art. 1.3 RBOR and Art. 1.2 para. 4 RP). Also, SaKo is an independent body, whereby Art. 1.3 Para. 4 RBOR provides that the Regulatory Bodies all hold the same status as each other in terms of the powers they exercise. An individual may belong to only one of the Regulatory Bodies and only one of the judiciary boards (such as the Appeals Board, SaKo or the Board of Arbitration) at any given time."
X. ___ responds: "... In the case of Art. 61 para. 1 Nr. 2 LR, such a calculation by an external party (actually, by any other entity or person than SER or SaKo) would not be possible since there is no described method to be followed to determine the amount of the fine. Indeed, it solely foresees the upper limit of the potential fine and its amount depends on three criteria who each leave a great power of discretion to SER

and SaKo: severity of the breach, degree of fault and the company's sensitivity to sanction. With regard to the latter, which should only be considered when setting the amount of the fine, SaKo recognized in a recent decision that it does not rely on a mathematical formula but is rather used as an order of magnitude (“Grössenordnungen”). SaKo admits in this regard that it has a discretionary power ("eine gewisse Ermessensfreiheit"), limited only by the prohibition of arbitrariness. It follows that SER and SaKo unilaterally fix the amount of the contractual penalty and that the issuer cannot precisely foresee the amount of the fine in the absence of a calculation method.
The contractual penalty set out in Art. 61 para. 1 ciph. 2 LR should therefore be considered invalid unless the parties have transferred the power to set the amount of the fine to a third party. This reasoning follows the argumentation of the Swiss Supreme Court regarding a case, in which a contractual penalty was formulated with an upper limit as well ("up to CHF 100 per day). In this case, the Swiss Supreme Court interpreted that, by using this wording for the contractual penalty, the parties delegated the fixation of the level of the fine to a third party (in casu the tribunal). However, nor SER nor SaKo can be characterized as a third independent party, because they are regulatory bodies of the SIX Group AG, which is X. ___'s contractual counterparty. ... FINMA's approval of RBOR therefore does not guarantee the independence of SER nor of SaKo. ...
Like the CAS and the IOC10, the regulatory bodies and the SER have strong organic and economic ties with the SIX Group AG.”
SaKo notes with a certain surprise that the validity of Art. 61 LR is challenged only now, despite it corresponds to long standing rules that have both been confirmed by the Parliament (when transforming the former Stock Exchange Law into the FinMIA) as well as by the Federal Court (most recently on 24 May 2023). The validity of the sanction regime as such was never challenged not even in the most recent cases.
SaKo carefully considers all arguments of both parties. However, those of SER correspond more to the legal situation regarding self-regulation in the field of a stock exchange in Switzerland. As far as the arguments of X. ___ are concerned, it must be noted:

- Contrary to the cases quoted by the issuer, there is a legal obligation for the stock exchange to impose sanctions to enforce the stock exchange rules. The contractual freedom is limited by this legal guidance. Further, applicable rules, legal structures and members of the respective bodies are approved and controlled by the Swiss Financial Market Authorities. No such surveillance exists in the field of the cases quoted by the Issuer.
- Apart of a ceiling for fines, there is a substantial case law. Both parties know the criteria to be applied and can assess the way these are handled in practice. However, applying a fixed formula would hinder to adapt a fine to the concrete case. In such a situation, SaKo would not be able to deviate from the Sanction Proposal and to lower the fine in situations where this might be more

appropriate. The practice proofs that SaKo often fixes a sanction substantially different from the proposal considering the concrete situation and circumstances.

- X. ___ has accepted the stock exchange rules including Art. 61 LR without any reservation. Background and case law were foreseeable at the time of acceptance. This corresponds to a valid transfer of power to fix the contractual fines as it is provided for in the quoted decisions of the Federal Court of Justice.
- Although SaKo is part of the enforcement structure of SIX – as it is customary in a system of self-regulation –, SaKo must and does act independently. The relation to the SIX Group is limited to the election process and to the administrative handling.
- There is no discussion with the SIX Group on substantive matters of a case to be decided. SaKo's decisions are not influenced by other bodies of SIX. There is no special discussion in specific cases with any other body or instance of the SIX Group. SER as claimant and a company as defendant are treated equally. SaKo carefully watches that both parties have the same rights. This corresponds to the legal obligation of SaKo to act as an independent instance.
- Further, any party can demand a recusal of a member of the delegation deciding on the case. No such request has been made in the current case.
- Both parties can introduce an arbitration procedure. The arbitration panel renders judgement on the merits of the case and with full cognition in regard to all requests from the parties.

Considering the legal framework, SaKo **rejects** X. ___'s request to determine that Art. 61 para. 1 ciph. 2 LR is invalid.

3.1. Degree of fault

3.1.1. Commission of the breach

The LR require issuers to ensure compliance with the LR, additional rules and related implementing provisions always. In the present case, it should be noted that the issue at stake is the sanctioning of a legal entity and not of a natural person. Accordingly, the assessment of fault is carried out according to largely objective standards. The conduct of the natural persons or bodies acting on behalf of the issuer are attributed to the issuer (as fixed in a long standing case law, see decisions of the Sanction Commissions of 14 April 2015 [SaKo 2015-AhP-I/15], number 19; of 30 July 2010 [SaKo 2010-CG-II/10/SaKo 2010-MP-I/10], number 13; sanction notice of SIX Exchange Regulation AG of 12 August 2013 [SER-KTR-FOR-I/13], number 28; of 4 February 2013 [SER-MT II/12/SER-AHP I/12/SER-Listing I/12], number 103).

Anyone who violates the relevant provision consciously acts intentionally. An issuer acts with conditional intent, if it does not directly intend to violate an obligation, but at least accepts the likelihood of a violation (see decisions of SaKo of 28 June 2012 [SaKo 2012-AHP-II/11], number 46; sanction notice of SIX Exchange Regulation AG of 11

October 2013 [SER-AHP-I/13], number 48; of 12 August 2013 [SER-KTR-FOR-I/13], number 26; of 4 February 2013 [SER-MT II/12/SER-AHP I/12/SER-Listing I/12], number 101).
In the assessment of the degree of fault, the constant and long-standing practice is to expect from listed companies' full compliance with stock exchange regulations without further ado. The responsible employee must be familiar with the relevant regulations, including the applicable accounting standard, comments and practice of the stock exchange bodies (see decisions of the Sanction Commission of 14 April 2015 [SaKo 2015-AHP-I/15], number 26; of 13 August 2013 [SaKo 2013-AHP-I/12], number 37). Because of the issuer's duty of care, every issuer is expected to be familiar with the applicable stock exchange rules, commentaries, guidelines and practice of the judicial bodies. Any breach of the rules and regulations must raise a presumption of negligence of the issuer in failing to discharge its duty of care (see sanction notice of SIX Exchange Regulation of 11 October 2013 [SER-AHP-I/13], number 49; of 4 February 2013 [SER-MT II/12/SER-AHP I/12/SER-Listing I/12], number 104).
X. ___ acknowledges that "for listed companies facing a potential sanction based on the LR, objective criteria shall be applied. The issuer shall be sanctioned if it can be found in breach of not having taken all necessary and reasonable organizational measures to prevent a breach of the obligations incumbent upon it under the LR, as an average and diligent issuer would have taken in the same situation.
In the case at hand, the push notification, which is the publication channel for all interested parties upon request, did not occur simultaneously with the Ad Hoc Announcement due to a non-recurring human error. ... However, X. ___ has taken all reasonable organizational measures to prevent a violation of the LR obligations. Indeed, as explained above, X. ___ delegated the disclosure obligations to [External Service Provider], a best-in-class company providing actionable intelligence, ever-evolving technologies, and industry-leading client service and partnering with many public companies, including many companies listed in [Country]. Furthermore, [External Service Provider] has a platform that allows its clients to connect with the [External Service Provider] team 24/7, including through a hotline, therefore eliminating any risk that could be due to time difference. Finally, the push system is fully automated and during its entire relationship with X. ___, [External Service Provider] has never experienced any issue with the delivery of its services in compliance with the ad hoc publicity rules. ..."
X. ___ requests SaKo "to determine in the closing of the SIX Exchange Regulation AG's investigation that X. ___ has not negligently violated the applicable rules on ad hoc publicity and thereby its obligations pursuant to Art. 53 LR by failing to distribute the ad hoc announcement dated August 22, 20XX in accordance with Art. 7 et seqq. DAH and consequently did not violate Art. 6 DAH."
SaKo notes that according to Art. 10 para. 2 DAH the issuer remains fully responsible for the proper fulfilment of its obligations. In particular, the issuer must ensure simultaneous distribution of ad hoc announcements to all addressees. X. ___ failed to

distribute the emails via push system on time. It must also be considered that X. ___ did not discover the failure of the push system during the process. SER had to point out to X. ___ that no email had been received via push system. However, it is not the role of SER to be the "watchdog" in the compliance system of an issuer. After the failure was brought to X. ___'s attention, X. ___ was not able to correct the error immediately and publish the ad hoc announcement independently, which is why the process of identifying the problem with [External Service Provider] delayed the resolution of the issue.

SaKo agrees that X. ___ was entitled to delegate the execution of the push system to a third party. However, X. ___ failed to establish an own effective control mechanism to detect a failure of the system timely. This could have easily been done and without costs by registering a responsible person within X. ___ as recipient of push notifications. Such a control mechanism must be part of a up to date compliance system and is customary practice for listed companies. It would have enabled X. ___ to react fast to the failure of the push notification. Therefore, SaKo **does not agree with** X. ___ that "*the issuer had taken all necessary and reasonable organizational measures to prevent a breach of the obligations incumbent upon it under the LR*". A more efficient organizational structure can be expected from an issuer that claims that "*it is extremely important for* X. ___ *to be first in class in all regulatory compliance matters*".

SaKo acknowledges that the reason for the failure of the push notification had to be enquired. However, such analysis could have been done parallel or after resending the ad hoc announcement. This could have happened immediately after the notification of the failure by SER. Therefore, SaKo does not agree that "*X. ___ distributed the Ad Hoc Announcement through the push system as soon as possible once aware that it had not already been*".

SaKo decides that X. ___ **violated negligently its obligations pursuant to Art. 53 LR by failing to distribute the ad hoc announcement dated 22 August 20XX in accordance with Art. 7 et seqq. DAH and consequently to comply with Art. 6 DAH** due to failing to establish an efficient control mechanism to detect potential failures of the push notification timely and by own means.

However, it appears apparent that X. ___ did not violate the provisions intentionally.

3.1.2. Behaviour after the breach, in the proceedings and in previous years

X. ___ did not discover the error that the push system failed to be served. After being informed by SER, X. ___ was cooperative and acted in consultation with SER.

However, after X. ___ was notified by SER of the failure of the push system, X. ___ did not immediately distribute the ad hoc announcement but waited until the third party [External Service Provider] finished its internal investigation.

During the preliminary inquiry, X. ___ informed SER that "the necessary organizational and technical measures in order to prevent similar violations in the future have been implemented".

There is **no entry for X. ___ in the sanctions register** that needs to be considered as aggravating factor in the assessment of the sanction.
The Company complains in its statement that “the formulation of the SER media release informing the public on the opening of the investigation already had - and continues to have - a big impact on investors and related investors relations. The opening of SER's investigation was so relayed that it was even picked up by proxy advisers when preparing advisers' reports months after the release of SER's press communication”. SaKo notes that the media communication by SER must remain fact based and succinct. Any further communication and explanation must be made by an issuer in the context of its customary investor relations. It is not the role of SER to provide detailed arguments for such media communication.

3.2. Severity of the breach

The purpose of ad hoc publicity is to ensure that issuers provide the public with true, clear and complete information on price-sensitive events arising in the course of their business. The compliance with the rules on ad hoc publicity is essential for the functioning of a marketplace as it is designed to ensure equal treatment of market participants and transparency (DAH Guideline para 6 et seq.; Decision of Sanction Commission of 28 June 2012 [SaKo 2012-AHP-II/11], number 56). Therefore, a violation of the rules on ad hoc publicity is generally considered to be severe (Decision of Sanction Commission of 2 August 2019 [SaKo 2019-AHP-I/19], number 61).
To ensure equal treatment of market participants Art. 7 et seqq. DAH sets out the minimum distribution requirements. These take due account of the fact that the rules on ad hoc publicity are designed to safeguard the interests and the equal treatment of a reasonable market participant. The term “reasonable market participant” comprises both institutional and private, international and national investors. Against this background, it is essential that all addressees set out in Art. 7 DAH are served simultaneously with ad hoc announcements. Only then, the principle of equal treatment is complied with (Art. 6 DAH). In other words, to ensure that all market participants (institutional and private, international and national investors) have the same opportunity to become aware of price-sensitive facts, it is crucial to comply with Art. 7 DAH in full and to distribute the ad hoc announcement accordingly through all channels.
A closer look at the means of distribution leads SER to the conclusion “that the push system is the only means designed to guarantee an immediate notification (to the interested parties) of the released ad hoc announcement without having to rely on third parties”. According to SER, this is especially crucial not only for interested private international investors which might not have access to Swiss medias, but also for those who have access to Swiss medias, as (generally speaking) there is no guarantee if and when the ad hoc announcement distributed to the media will actually be published by them. Therefore, given that SER does not distribute ad hoc announcements and that

electronic information systems are generally used by institutional investors only, the push system is in the eyes of SER the only source of information where interested private investors get notified of a new ad hoc announcement. For this reason, it is important that subscribers to the push system can rely on the fact that they get notified as soon as an ad hoc announcement is published.
X. ___ argues, that “SER or SaKo must have the beneficiary of such rule in mind, which are … "reasonable market participants". … Keeping this definition in mind, it is unrealistic to say that, in the current era of social media, any reasonable market participant (Swiss, international, private or institutional), … would have to rely only on the push system to be informed of such ad hoc announcement. De facto, no such impact can be deemed to have occurred in practice since the Ad Hoc Announcement was properly published via the Swiss disclosure wire circuit ….”
For SaKo it is essential that all communication channels provided for in the rules must be properly served in parallel. There is no room for speculation who relies more on which channel. Art. 7 DAH is not a menu to select from, but each communication channel must be served likewise. SIX is legally obliged to enforce these rules, as approved by FINMA.
Therefore, SaKo confirms that the failure to simultaneously distribute the ad hoc announcement via push system violates in general the principle of equal treatment. However, SaKo appreciates that, the media release had in fact been broadly distributed in the current case despite the failure of the push distribution. Thus, the impact on the market is more a loss of trust in communication channels but shall not be overstated as far as the concrete damage for market participants is concerned.
SaKo decided a quite similar case on 29 November 2022 (SaKo IV/2022). As then, SaKo regards in the current case the **violation as serious** but not as severe.

3.3. Impact of a sanction on the party concerned

X. ___ requests that “the nature of the proposed sanction should be reconsidered to be in adequation with the breach qualifying as a "minor case". … The investigation should be closed with, at the utmost, a reprimand. … Hence the proposed sanction is dual and comprises (i) the sanction itself, vigorously contested here, but also (ii) the publication of a sanction by a regulator and its media relay impacting X. ___'s reputation on an international scale … Keeping this reality in mind, the naming and shaming that accompanies the publication of a sanction by a regulator already has the most deterring effect and appears all the more sufficient to fulfil the purpose of penalizing the misstep and preventing future breaches.”
SaKo **does not agree** with X. ___ that the current case is “*a minor case*”. As explained above, there was a serious lack in the compliance system. X. ___ did not discover the error on its own but had to be alerted by SER. The incident damaged the trust that all communication channels set forth in Art. 7 DAH are served in parallel to ensure the equal treatment of market participants.

Taken into account the severity of the breach and the degree of fault, **SER considers a fine to be the appropriate sanction** in accordance with Art. 61 LR.
In this context it should be noted that in recent years it has become clear that it is necessary to impose stronger sanctions for violations of the rules of the Exchange. The Financial Market Surveillance Authority expects that Stock Exchanges in Switzerland enforce all applicable rules with strict measures. SaKo already warned earlier that it tends to raise the fines for breaches compared to the practice of earlier years, so prior levels of fines do not automatically set the standard for its current practice. The purpose is not only to penalize the past, but also to prevent breaches of the rules in the future. The sanction should in fact have a preventive effect [SAKO 2016 – SER 29/15]: "*in recent years it has become clear that it is necessary to impose stronger sanctions for violations of the rules of the Exchange. SaKo therefore is tending to raise the fines for breaches compared to the practice of earlier years … The sanction should have a preventive effect.”*. This policy was confirmed e.g. in the decisions SaKo 026/19, 051/21, 061/21, I/2022 (not yet entered into force) or II/2022 taking steps to impose higher sanctions in respect of a preventive effect. Effective sanctions are an important element to ensure the credibility of a self-regulation system as well.
When quantifying the sanction amount the sensitivity to sanctions must be taken into account. To assess the sensitivity to sanctions, the economic performance of the issuer is considered. An issuer with a lower economic performance will tend to be hit harder by the same fine than a company with a comparatively higher economic performance. For the determination of these fines, economic key figures can be taken into consideration, e.g. EBIT, net income, operating cash flow, cash and cash equivalents or equity (see decisions of SaKo of 28 June 2012 [SaKo 2012-AHP-II/11], number 63 et seq. and of 8 December 2011 [SaKo 2011-AHP-I/11, SaKo 2011-CG-I/11], number 37).
X. ___’s net income for the financial years [Year] and [Year -1] amounted to [Amount] and [Amount]. Cash and cash equivalents amounted to [Amount] and [Amount]. The cash flows from operating activities were [Amount] and [Amount] while total equity and liabilities stood at [Amount] and [Amount], respectively.
X. ___ states that “this conclusion is drawn after examining solely the financial position and results of X. ___ and the impact of the proposed fine on the financial situation of the Company, hence completely disregarding any reputational damage that the sanction …. Keeping this reality in mind, X. ___'s sensitivity to sanctions should be considered as high all the more than X. ___ has never been sanctioned before and actually would like to keep a clean record”.
SaKo sees no reason to treat X. ___ differently from other listed companies as far as the sensitivity to sanctions is concerned. The argument is even less convincing as the reputational damage would happen irrespective whether a reprimand or a different amount of a fine would be imposed. “Name and shame” is an integral part of the sanction system and as such not an issue of sensitivity to sanctions.

In view of the above, the **financial sensitivity** to sanctions of the Company is considered by SaKo to be **low**.

3.4. Determination of the Sanction

In determining the sanction, SaKo follows the guideline of Art. 61 LR as well as the practice in similar cases. As mentioned above, SaKo decided a quite similar case on 29 November 2022 (SaKo IV/2022). In the precedent case, the Company detected the error on its own and was smaller than the Issuer in the current case. Further, extraordinary technical factors were present. Therefore, SaKo understands that SER proposed a substantial higher sanction for X. ___ as this corresponds to a more formal calculation. However, SaKo applies some discretionary power in favour of the Company as the purpose of the sanction can be achieved despite a somewhat lower sanction in the current case.
Considering all the relevant factors for determining the sanction, SaKo considers a **fine of CHF 100'000 as appropriate**. This fine is at the lower end of the scale.

4. Publication of the Decision of the Sanctions commission

X. ___ states that "SER press releases can have an impact on the stock price as investors rely on the information given by SER, a trustworthy source. ... It is therefore important that sufficient details of the case at hand be given in order for investors to capture the "light breach" due to the system failure and the diligence with which X. ___ reacted. The Company is aware that SaKo has stated in a precedent that "the RP [Rules of Procedure] do not provide for a negotiation on the extent of the communication as such". Nevertheless, the Rules of Procedure do not prevent the contractual parties to discuss the communication. Therefore, X. ___ would like to be consulted on the content of the communication publishing the decision of SaKo."
The correct information of market participants is a core element of proper functioning of the market. This is one of the reasons why SaKo considers the violation of the rules relating to ad hoc publicity generally as serious.
The media communication by SER on behalf of SaKo must be factual and not enter detailed motivation.
SaKo holds that the reputational exposure of X. ___ is not different from other listed companies and sees no reason to deviate from the constant practice. In order of a full information of the public, a media release concerning the closure of the case will be published by SER on behalf of SaKo once the decision entered into force. This media release will include the name of the Company as it was the case at the opening of the procedure. This media release will focus on the main facts of the case and notably the core of the decision but will not include a detailed motivation. Including more details as requested by X. ___ would go far beyond the usual extent in such cases. Further, the wording requested by X. ___ does not fully reflect the findings of SaKo. Therefore, SaKo **rejects** this request. The full text of the decision including all findings will be published

separately in anonymised form. However, X. ___ is free to publish an own communication in parallel.
Therefore, the public will be informed in accordance with the provision of Art. 6 RP. The Company will be notified of the communication with a short pre-notice to prepare its own communication. The Company may raise awareness concerning factual errors. However, SaKo will not enter a discussion on the text beyond the correction of factual errors.

5. Costs

In case of sanction proceedings, charges are determined based on the expenditure incurred adopting an hourly rate of CHF [...] per person according to Art. 3.7 in connection with Art. 4.1 of the List of Charges Regulatory Bodies (LOC). In the present case, charges incurred by SER to date amount to CHF [...].
The costs of SaKo are set to CHF [...] taking into account the time that the members of the delegation had to devote for the case.
SER requests that all costs shall be borne by X. ___. X. ___ requests that SER shall be ordered to bear the costs.
SaKo states that X. ___ has caused the current procedure. SER was in any case obliged to open an investigation as not all information channels according to Art. 7 DAH have been served simultaneously. Therefore, X. ___ is responsible for all related costs. This would even be the case if no sanction would be imposed. None of X. ___'s statements included any specific reason why the costs of the procedure caused by the Company should be borne by SER. Therefore, SaKo **rejects** the procedural motion of X. ___ **as unfounded**.
The **total costs** charged to X. ___ are of CHF [...].

Zurich, [Date]

[...]
President

[...]
Secretary