Decision

in the procedure SaKo I/2023

SIX Exchange Regulation AG (SER)
Hardturmstrasse 201
CH-8021 Zurich

vs.

X. ___
[Address]

On 31 March 2023, the Sanctions Commission (SaKo) – […] (Chairman), […] (Member), […] (Member), […] (Secretary) – decided as follows:

Decision

1. The Sanction Commissions (SaKo) has determined that X. ___ intentionally violated the applicable rules on ad hoc publicity and thereby its obligations pursuant to Art. 53 of the Listing Rules (LR) by failing to provide information in a timely manner about the refusal of Person A. ___ to accept his election as a member and vice-chairman of the Board of Directors (BoD) of X. ___ by means of an ad hoc announcement as soon as it became aware of Person A. ___'s decision in accordance with Art. 5 of the Directive on Ad hoc Publicity (DAH).
2. Furthermore, SaKo has determined that X. ___ violated with gross negligence the applicable rules on ad hoc publicity and thereby its obligations pursuant to Art. 53 LR by failing to properly disclose price-sensitive facts on [Date a], [Date b], [Date c], [Date d], [Date e], and [Date f], and, as a consequence, failed to comply with Art. 6 DAH.
3. X. ___ is ordered to pay a fine in the amount of CHF 125,000.
4. X. ___ is ordered to bear the cost of SER for these proceedings in the amount of CHF […], and the additional costs incurred by SaKo in the amount of CHF […]. The total costs to be covered by X. ___ amount to CHF […].
5. Once the sanction decision has become legally binding, it will be made available in anonymised form on the SER website. 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 SaKo.

An appeal can be filed against this decision according to Art. 5.3 para. 2 LR within 20 trading days of this decision being served. Arbitration proceedings shall 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 of the Rules of Arbitration.

Reasons for the decision

1. Introduction and overview of proceedings

1. X. ___ (**X. ___, Company or Issuer**) is a [...] company that develops drug products and was listed in [Date].
2. In accordance with Art. 51 LR in connection with Art. 6 of the Directive on Ad hoc Publicity (DAH), SIX Exchange Regulation AG (SER) oversees the correct publication of media releases containing price-sensitive facts (so called 'ad hoc announcements').
3. In casu, SER initiated a preliminary inquiry against X. ___ in accordance with the Rules of Procedure (RP) concerning a possible violation of the rules regarding ad hoc publicity. X. ___ responded timely to SER's preliminary inquiry letters.
4. 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 accordance with Art. 3.3 para. 1 RP. X. ___ responded in a timely manner by letter dated [Date]. On [Date], SER sent X. ___ a second letter of inquiry regarding possible violations in connection with the ongoing investigation. X. ___ responded timely by letter dated [Date].
5. X. ___ pleaded to enter into an agreement with SER. According to Art. 2.10 para. 2 RP, agreements are permissible in trivial cases or if they would allow the public to be informed more rapidly or more fully than would be the case with sanctions proceedings concluded in the regular manner. If the party concerned has committed the violation intentionally, no agreement is permitted. In the current case, SER determined that the multiple and possible violations of the stock exchange regulations were not trivial. Furthermore, SER considered some of X. ___'s violations to have occurred intentionally, which makes an agreement inadmissible.
6. X. ___ refutes that they acted intentionally: "*X. ___ acted negligently but not intentionally*". This argument will be addressed below.
7. SaKo agrees with SER that an agreement was not possible in this case and that SER was correct to pursue the investigation and to submit a formal sanction proposal.
8. The case deals with various incidents and events that occurred during a prolonged observation period (Month/Year to Month/Year +2 Years). During this period, SER identified and analysed a pattern of communication at X. ___, that violated the rules on ad hoc publicity.
9. The investigation was ultimately expanded to further issues regarding X. ___'s behaviour in terms of corporate communication. The observation period mentioned, the involvement of a third-party X. ___ and its [...] reference, and the expansion of the investigation extended the duration of the investigation.
10. On [Date], SER submitted a sanction proposal to SaKo dated [Date], including the response of the Company dated [Date].
11. SaKo confirmed receipt of the file on [Date] and granted both parties the opportunity to file further observations, which they did not use.

12. The parties were notified of the composition of the delegation for the decision on [Date] and no request for recusal was filed.
13. The delegation deliberated on the sanction proposal and made its decision on 31 March 2023.

2. Findings

2.1. Formal findings

14. The Company's registered shares are listed in the [Regulatory standard] of SIX Swiss Exchange Ltd (SIX). In [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.
15. The violation of the LR, any additional regulations thereto or any implementing provisions thereof may be sanctioned with one or more of the sanctions listed in Art. 60 and Art. 61 LR. SaKo is the competent body for deciding upon sanction proposals submitted by SER (Art. 3.4 and Art. 4 RP).
16. In this case, the LR and the DAH in their respective versions are applicable. On 1 July 2021, the revised provisions of the LR and the DAH entered into force, introducing, inter alia, the obligation to classify ad hoc announcements as such ("flagging").

2.2. Material findings

2.2.1. Facts of the matter

17. In establishing the relevant facts for this sanction decision, SaKo considered both the exculpatory and inculpatory facts with equal care. All information that serves to determine the facts of the case is subject to free evaluation and deemed to be evidence (Art. 3.1 para. 1 et seq. RP).
18. A review of the partnership between X. ___ and Company Y. ___ (formerly [Name]) (**Company Y.** ___) and the role played by the latter in the development of [Product Name] (also known as [Product Name] or [Product Name]), a drug candidate developed to cure [...], is essential for a better understanding of the events.
19. X. ___ is a relatively small [...] company that has only focused on a few potential drugs over the years. [Circumstance] boosted X. ___'s drug candidate [Product Name] ([Product Name], [Product Name]) as it was seen as a potential cure for [...]. The development of [...] and hopes related to [Product Name] ([Product Name], [Product Name]) had a crucial impact on X. ___'s share price. The share price increased from CHF [...] in mid-[Month/Year] to CHF [...] by the end of [Month/Year] (+6,000%).
20. To speed development and take advantage of momentum, X. ___ signed a Collaboration Agreement with Company Y. ___ on [Date] (the "**Collaboration Agreement**). Company Y. ___ is a [...] company headquartered in [Place] and listed on the [...]. According to the terms of the Collaboration Agreement, X. ___ would fund research and development, and Company Y. ___ would provide the documentation related to the drug candidate mentioned above. As Company Y. ___ is (was) the information holder regarding [Product Name] ([Product Name], [Product Name]), especially concerning

clinical studies, study results, admission applications, and granted or declined authority admissions, X. ___ is (was) dependent on its collaboration partner when it comes (came) to the development of [Product Name] ([Product Name], [Product Name]) and related information.

2.2.1.1. Person A. ___: Election as vice-chairman of the Board of Directors

21. At 6.50 a.m. CET on [Date], X. ___ published a media release and announced that it would propose Person A. ___ as a new member of the BoD and as vice-chairman of the BoD at the upcoming Annual General Meeting of [Date original AGM] (AGM Year). Person A. ___ is the founder and CEO of Company Y. ___ and was therefore regarded as a key person for X. ___'s plans in connection with the development of [Product Name] and accessing the important [...] market.

22. X. ___ later had to postpone the AGM [Year] from [Date original AGM] to [Date AGM] and informed the market via a media release on [Date], 10.07 p.m. CET. The agenda remained unchanged.

23. With the media release dated [Date AGM +3 Days] and published at 7.11 a.m. CET, X. ___ announced that all proposals made at the AGM [Year] had been approved. In this media release, X. ___ welcomed Person A. ___ to the BoD as a new member ("[...]"*)* without any reservation, although his formal acceptance was still missing.

24. Despite his election at the AGM [Year], Person A. ___ refused to accept the nomination as a member of the BoD due to various reasons, including: (i) a lack of directors' and officers' liability insurance coverage on the part of X. ___, (ii) a lack of invitations to attend board meetings as a member of the BoD; (iii) an ongoing investigation by SIX (preliminary inquiry by SER); and (iv) advice from his legal counsel not to take office, a decision of which X. ___ had been duly informed. On [Date AGM +47 Days], Person A. ___ explicitly advised X. ___ by e-mail to inform its shareholders and SIX that he refused to accept the nomination as a new member of the BoD (*"[...] Please be advised that in light of your current approach to governance and compliance, I cannot join the board of X. ___. Please advise the shareholders and SIX within 24 hours. Good luck, Person A. ___")*.

25. At this stage, X. ___ did not inform the market or its shareholders of the non-acceptance of Person A. ___. Only once shareholders began to complain and ask why Person A. ___ was not mentioned as a member of the BoD in X. ___'s documentation, and why he was not registered in the commercial register, did the BoD of X. ___ discuss the incident via e-mail, notably on [Date AGM +115 Days].

26. On [Date AGM +115 Days], Person B. ___, CFO of X. ___, alerted the BoD that due to the election of Person A. ___ at the AGM [Year] the market currently believed that he was a member of the BoD, and that the non-acceptance of the election by Person A. ___ "*should have [been] announced to SIX and with a PR*" the day of Person A. ___'s refusal. He suggested that this information be included in the media release announcing the Extraordinary General Meeting to be held on [Date AGM +153 Days] (**EGM Year**). Person C. ___ and Person D. ___, Chairman and (then) member of the BoD, respectively, agreed to the proposal to wait until [Date AGM +154 Days] and to combine the announcement regarding Person A. ___ with the information regarding the results of the [Year] EGM. It was also suggested that the information concerning Person A. ___ be

placed "*in small print at the bottom of the EGM Invitation [recte: results]*". Moreover, X. ___ expressed the "*hope*" that SER would "*not notice*".

27. At 7.03 a.m. CET on [Date AGM +129 Days], X. ___ published a media release announcing the **EGM [Year]**.

28. After the conclusion of the EGM [Year] on [Date AGM +153 Days] X. ___ shared the media release scheduled for publication the following day with Person A. ___ and sought his approval for the wording regarding the non-acceptance of his election as member of the BoD. Person A. ___ replied by e-mail the same day, stating that he understood X. ___'s intent to announce their position. He did not, however, give his explicit approval.

29. At 7.03 a.m. CET on [Date AGM +154 Days], X. ___ published a media release announcing the results of the EGM [Year]. In the middle of the media release, at the bottom of the passage about the election of Person E. ___ as a new member of the BoD, X. ___ announced that "*Person A. ___ did not accept his nomination […]*".

2.2.1.2. Failure to properly distribute price-sensitive facts

2.2.1.2.1. Incidents on [Date a] and [Date a +5 Days]

30. At 10.01 p.m. CET on [Date a], Company Y. ___ published the media release "[Title]". At 7.00 a.m. CET on [Date a +5 Days], X. ___ published the media release "[Title]", affirming that its collaboration partner Company Y. ___ initiated […] clinical trial. Even if the titles of the media releases differ, the content is congruent. On [Date a -1 Day], X. ___'s share price closed at CHF […]. The trading volume was […]. On [Date], X. ___'s share price closed at CHF […] (-6.25% compared to the previous day). The trading volume was […].

2.2.1.2.2. Incidents on [Date b] and [Date b +1 Day]

31. At 2.13 p.m. CET on [Date b] Company Y. ___ published the media release "[Title]". At 7.04 a.m. CET on [Date b] X. ___ published the media release "[Title (unrelated content)]". At 7.04 a.m. CET on [Date b +1 Day], X. ___ published the media release "[Title]." Even if the titles of the media releases differ, the content is congruent. On [Date b -1 Day], X. ___'s share price closed at CHF […]. The trading volume was […]. On [Date], X. ___'s share price closed at CHF […] (-40.38% compared to the previous day). The trading volume was […]. This event was widely covered by the Swiss financial media.

2.2.1.2.3. Incidents on [Date c] and [Date c +1 Day]

32. At 1.52 p.m. CET on [Date c] Company Y. ___ published the media release "[Title]". At 7.04 a.m. CET on [Date c +1 Day] X. ___ published the media release "[Title]". Even if the titles of the media releases differ, the content is congruent. On [Date c -3 Days (last prior trading date)], X. ___'s share price closed at CHF […]. The trading volume was […]. On [Date c], X. ___'s share price closed at CHF […] (+21.07% compared to the previous day). The trading volume was […].

2.2.1.2.4. Incidents on [Date d] and [Date d +1 Day]

33. At 12.48 p.m. CET on [Date d], Company Y. ___ published the media release "[Title]". On [Date d +1 Day], X. ___ published the media release "[Title]" which was flagged as an ad hoc announcement pursuant to Art. 53 LR. Even if the titles of the media releases differ,

the content is congruent. On [Date d -1 Day], X. ___'s share price closed at CHF […]. The trading volume was […]. On [Date d], X. ___'s share price closed at CHF […] (+19.78% compared to the previous day). The trading volume was […].

2.2.1.2.5. Incidents on [Date e] and [Date e +1 Day]

34. At 12.48 p.m. CET on [Date e], Company Y. ___ published the media release "[Title]". At 7.04 a.m. CET on [Date e +1 Day], X. ___ published the media release "[Title]", which was flagged as ad hoc announcement pursuant to Art. 53 LR. Even if the titles of the media releases differ, the content is congruent. On [Date e -1 Day], X. ___'s share price closed at CHF […]. The trading volume was […]. On [Date e], X. ___'s share price closed at CHF […] (+37.5% compared to the previous day). The trading volume was […].

2.2.1.2.6. Incidents on [Date f] and [Date f +3 Days]

35. At 1.23 p.m. CET on [Date f], Company Y. ___ published the media release "[Title]". On [Date f +3 Days], X. ___ published the media release "[Title]", which was flagged as an ad hoc announcement pursuant to Art. 53 LR. Even if the titles of the media releases differ, the content is congruent. On [Date f -1 Day], X. ___'s share price closed at CHF […]. The trading volume was […]. On [Date f], X. ___'s share price closed at CHF […] (-8.21% compared to the previous day). The trading volume was […].

2.2.1.2.7. Collaboration Agreement

36. During the investigation, X. ___ stated that Company Y. ___ repeatedly and wilfully engaged in behaviour that compromised X. ___'s ability to adhere to the ad hoc disclosure obligations under SIX regulations. Even though Company Y. ___ knew that X. ___ is a publicly listed company in Switzerland regulated by SIX, Company Y. ___ had, according to X. ___, repeatedly failed to comply with their Collaboration Agreement, which stipulates inter alia coordinated disclosures in line with SIX regulations. According to X. ___, various attempts were made to compel Company Y. ___ to comply with X. ___'s requirements (i.e., legal letters and personal communications), yet none of these attempts was successful. X. ___ listed examples of its attempts to compel Company Y. ___ to comply with the Collaboration Agreement. According to X. ___, all attempts have been disregarded.

37. X. ___ is of the opinion that Company Y. ___ and in particular Person A. ___ have unilaterally and deliberately continued to disrespect the Collaboration Agreement. Consequently, X. ___ filed a lawsuit against Company Y. ___. X. ___ claims to have always complied with its obligations under the SIX regulations and the Collaboration Agreement, and no lack of preparedness, willingness to implement procedures or organisational measures on the part of X. ___ could be established.

2.3. Rules regarding ad hoc publicity

38. Price-sensitive facts are facts that can trigger a significant change in market prices (Art. 53 para. 1 LR). Whether or not the disclosure of a fact can trigger a significant price change must be decided on a case-by-case basis prior to the disclosure of the announcement (Art. 4 para. 2 DAH). The issuer must inform the market of any price-sensitive facts that have arisen in its sphere of activity (Art. 53 para. 1 LR). Disclosure of

ad hoc announcements must be made to ensure the equal treatment of all market participants (Art. 53 para. 3 LR in connection with Art. 6 DAH).

39. Price-sensitive facts must be disclosed via ad hoc announcement in accordance with Art. 53 para. 3 LR in connection with Art. 6 DAH. 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, referred to as the "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, ad hoc announcements must be sent to the addresses mentioned in Art. 7 DAH. Furthermore, ad hoc announcements must be uploaded on the issuer's website (Art. 9 DAH).

40. The issuer is responsible for the proper fulfilment of its obligations. An issuer must ensure simultaneous distribution of ad hoc announcements to all addresses (Art. 10 para. 2 DAH).

2.3.1. Person A. ___: election as vice-chairman of the Board of Directors

2.3.1.1. Price-sensitive fact

41. The election of a new member and vice-chairman of the BoD was highly important to X. ___. Person A. ___ was not just any third party, but rather the founder and CEO of Company Y. ___. Company Y. ___ is (was) X. ___'s most important and exclusive [...] collaboration partner in testing its lead drug candidate [Product Name] ([Product Name], [Product Name]) for the treatment of [...]. From an *ex-ante* point of view, Person A. ___ was a key person in X. ___'s BoD, and his election as the new vice-chairman was decisive for the future success of X. ___. He would have had the ability to significantly influence the access to and the presence on the very important [...] market for X. ___'s drug candidate [Product Name] ([Product Name], [Product Name]). X. ___ explicitly stated this importance when announcing the election of Person A. ___ by the AGM [Year] in its media release on [Date]. Hence, his election to X. ___'s BoD was of significant relevance for X. ___'s investors. This is further underlined by the fact that after the AGM [Year], certain investors asked the Company why Person A. ___ was not listed in the issuer's documentation and not registered in the commercial register.

42. Accordingly, Person A. ___'s refusal to accept the election as vice-chairman and member of the BoD must be considered a price-sensitive fact. This is not disputed by X. ___. X. ___'s BoD exchanged views on [Date AGM +115 Days] and decided that a communication to the market within the scope of the rules on ad hoc publicity was necessary. On the occasion of SER's investigation, X. ___ confirmed that the election and Person A. ___'s refusal to accept the election were price-sensitive facts according to Art. 53 LR.

43. On [Date AGM], the AGM [Year] elected Person A. ___ as vice-chairman and member of the BoD of X. ___. The election alone does not constitute a legally valid appointment of the prospective BoD. The declaration of acceptance by the elected person is mandatory (MÜLLER Roland/Lipp Lorenz/Plüss Adrian, *Der Verwaltungsrat* - Band I, *Ein Handbuch für Theorie und Praxis,* 5. Aufl., Zürich - Basel - Genf 2021, S. 38).

44. X. ___ states that after the AGM [Year] "*Person A. ___, the founder and then CEO of X. ___'s [...] counterparty Company Y. ___, had always been so unpredictable in his dealings with*

X. ___, the ongoing discussions with him to try to ultimately convince him of the acceptance of this election by X. ___'s shareholders, to arrange for the fulfilment of his conditions, and to address his compliance concerns raised have, in our view, clearly been worth trying for quite some time, even after his email of [Date AGM +47 Days]. In our experience, Person A. ___ had said and written many things, and orally or in writing purported to agree to a number of obligations, but, unfortunately for X. ___, more often than not ended up doing or procuring something completely different than expected by us." In any case, Person A. ___ firmly declared his refusal in writing via e-mail to X. ___ on [Date AGM +47 Days] and requested that shareholders and SIX be informed accordingly within 24 hours.

45. The issuer must provide notification as soon as it becomes aware of the main points of the price-sensitive fact (Art. 53 para. 2 LR). The exception of Art. 54 LR (postponement of disclosure) does not apply in this case.

46. X. ____ became aware of Person A. ___'s definitive (written) refusal to accept his election at the latest on [Date AGM +47 Days]. X. ___ was therefore required to disclose the price-sensitive fact according to Art. 53 para. 2 LR by [Date AGM +47 Days] at the latest. The disclosure three and a half months later, on [Date AGM +154 Days], is not in compliance with Art. 53 para. 2 LR. X. ___'s attempts to change Person A. ___'s decision do not release it from its obligation of notification. Even on [Date AGM +47 Days], shareholders and the market had been left for several weeks with the wrong perception that Person A. ___ would be part of X. ___'s BoD "*and set the stage for successful clinical development*" (as stated in the media release after the AGM).

47. X. ___'s argument that Person A. ___'s election as vice-chairman and member of the BoD was "on hold" until Person A. ___'s approval of the media release dated [Date AGM +154 Days] is not valid. To SaKo, his argument is neither factually nor legally convincing because Person A. ___ explicitly refused to accept the election.

48. X. ___ failed to comply with Art. 53 LR and Art. 5 et seqq. DAH.

2.3.2. Failure to properly distribute price-sensitive facts

2.3.2.1. Publication incidents and price-sensitive facts

49. The six incidents described above refer to price-sensitive facts. All incidents refer to activities relating to the core product [Product Name] ([Product Name], [Product Name]). Entering a new phase of a product's development, results of studies, reference to clinical trials or the announcement of progress in worldwide, commercial-scale development can trigger a significant change in market prices (Art. 53 para. 1 LR).

50. X. ___ qualified the facts in the media releases dated [Date a +5 Days], [Date b +1 Day] and [Date c +1 Day] as price-sensitive facts and flagged the media releases dated [Date d +1 Day], [Date e +1 Day] and [Date f +3 Days] as ad hoc announcements pursuant to Art. 53 LR. This qualification is undisputed.

51. In each case mentioned, the ad hoc publication by X. ___ took place at least one or several days later than the respective publication by Company Y. ____ with the same content.

52. Even if the price reaction is not decisive for the assessment of price sensitivity (see *ex ante* approach), it is noted that X. ____'s share price (incl. its trading volume) reacted very strongly in each of the aforementioned events.

2.3.2.2. Nature of the collaboration between X. ____ and Company Y. ____

53. X. ___'s and Company Y. ___'s cooperation regarding [Product Name] ([Product Name], [Product Name]) is governed by their Collaboration Agreement. Company Y. ___ leads and has control over the […] clinical effort and commercialisation in its territory, and X. ___ has control over commercialisation in its territory. Put simply, the parties agreed that inter alia, X. ___, owner of the rights to [Product Name] ([Product Name], [Product Name]), basically funds research and development, and would conduct development and provide documentation.

54. X. ___ acknowledges that it is heavily dependent on Company Y. ___ when it comes to the development of [Product Name] ([Product Name], [Product Name]). This dependency extends to all development-related information, as Company Y. ____ is the only information holder. Due to the nature of the collaboration, any possible price-sensitive facts as defined in Art. 53 LR regarding [Product Name] ([Product Name], [Product Name]) established solely within the area of influence of Company Y. ___ (e.g. clinical studies, study results, admission applications, granted or declined official admissions, etc.) directly affect X. ___ and its share price.

55. SER considers that Company Y. ___ is X. ___'s auxiliary in accordance with Art. 101 of the Swiss Code of Obligations (CO) when it comes to the development and related information regarding [Product Name] ([Product Name], [Product Name]). X. ___ strongly objects to this qualification and alleges that "X. ___ *and Company Y. ___ always were, and are, truly independent parties bound by a mutual important contract (that was disregarded by Company Y. ___). Company Y. ___ is a […]-listed separate entity entirely outside the X. ___ group, and vice-versa. There were no personnel overlaps (as Person A. ___ did finally withdraw his prior willingness to join the X. ___ board) nor cross-participations or the like between these companies. Specifically, also when it comes to our SIX ad hoc publicity obligations, X. ___ did not in any way agree or permit, but in contrast repeatedly expressly prohibited, Company Y. ___ to act on behalf* of, *or without the express prior written consent* of *X. ___ when distributing any media releases in the […] under their applicable securities laws and […] listing rules. As far as these SIX proceedings are concerned, Company Y. ___ always issued their own press releases without our prior knowledge* or *agreement and not joint releases or ad hoc announcements pre-agreed by X. ___. Company Y. ___ is, and acted as, an independent third party (contractor) of X. ___.*"

56. SaKo concurs with the view of X. ___ that Company Y. ___ is not an auxiliary in accordance with Art. 101 of the Swiss Code of Obligations (CO). However, this does not discharge X. ___of its obligations to ensure conformity with the stock exchange rules, and notably the obligations concerning ad hoc publicity, as described hereinafter.

2.3.3. Violation of Art. 53 LR in connection with Art. 6 DAH

57. Issuers must take due account of the aims of transparency and equal opportunities for all market participants in their handling of information. It is the sole responsibility of the issuer to organise itself in such a way that it ensures compliance with all the provisions

of stock exchange regulations (Art. 53 LR, see SaKo decision of 2 August 2019 [SaKo 2019-AHP-I/19], No. 44, for further details).

58. Generally, X. ___ claims that its collaboration partner Company Y. ___ repeatedly failed to comply with their Collaboration Agreement, which stipulated that neither of the parties would issue any press releases or public statements pertaining to [Product Name] ([Product Name], [Product Name]) or any related activities without the prior express written consent of the other party, except as required by applicable laws. X. ___ is of the opinion that it has done everything in its power to enforce the Collaboration Agreement and to ensure Company Y. ___'s compliance with X. ___'s ad hoc publicity regulations. X. ___ stated that it has always complied with its ad hoc publicity regulations.

59. Based on the facts of the case, it appears that the exchange of information relating to price-sensitive facts between X. ___ and Company Y. ___ has been hampered. Nevertheless, it was the duty of X. ___ as an issuer at SIX to ensure that the Company was informed in advance of price-sensitive facts occurring within the sphere of influence of Company Y. ___ in order to comply with the rules of ad hoc publicity or, at the very least, to ensure coordinated communication with Company Y. ___. Since it appears that X. ___ was not able to enforce the Collaboration Agreement with Company Y. ___, it should have taken all necessary measures to monitor the announcements made by Company Y. ___ without prior coordination with X. ___ and it should have been prepared to react immediately with a proper ad hoc disclosure under SIX regulations had Company Y. ___ acted on its own. An issuer must take its own steps to ensure the necessary information is provided to market participants. For example, an issuer can (and must) publish its own ad hoc release as rapidly as possible if a contractor or another third party (pre)publishes the relevant information. It is undisputed that Art. 6 DAH has been violated, as market participants were not informed in accordance with Art. 7 et seqq. DAH. X. ___'s share price reacted very strongly to the aforementioned ad hoc announcements. In view of the applicable regulations and the principle of transparency and equal opportunities for all market participants, no constellation is conceivable in which an internal dispute may lead to the market not being notified of price-sensitive facts in a manner that is not in conformity with the rules, i.e. not in a manner that is appropriate in terms of time and content (DAH Guideline, No. 117, with further details on jurisprudence of the SIX judicial bodies).

60. On six occasions, X. ___ disclosed price-sensitive facts one or several days after its contractual partner Company Y. ___ had already made the same announcements in [Place]. The delayed publication by X. ___ led to multiple situations where market participants were not informed equally and simultaneously regarding price-sensitive facts. Such behaviour violates the principal of equal treatment of all market participants (Art. 53 para. 3 LR in connection with Art. 6 DAH) and the obligation to disclose price-sensitive facts in a timely manner in accordance with Art. 53 LR.

61. Price-sensitive facts must be disclosed via ad hoc announcement in accordance with the DAH (Art. 53 para. 3 LR in connection with Art. 6 DAH). 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, referred to as the "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, ad hoc announcements must be distributed to all addresses according to Art. 7 et seqq. DAH. The issuer is responsible for the simultaneous distribution of ad hoc announcements to all addresses (Art. 10 para. 2 DAH).

62. It must be concluded that on six instances, X. ___ published price-sensitive information in violation of Art. 7 et seqq. DAH. Such behaviour violates Art. 53 LR and, consequently, the principle of equal treatment of all market participants (Art. 53 para. 3 LR in connection with Art. 6 DAH).

3. Sanction

63. As described in detail above, X. ___ violated Art. 53 LR in combination with the DAH on several occasions.

64. Such violations are sanctioned in accordance with Art. 61 LR. The sanctions listed therein may be imposed cumulatively. Art. 61 para. 2 LR provides 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 is to be sanctioned with a fine, the impact of the sanction on the party concerned must also be considered when setting the amount of the fine.

3.1. Degree of fault

3.1.1. Commission of the breach

65. The LR requires issuers to ensure compliance with the LR, additional rules and related implementing decrees at all times. In this case, the sanction is addressed to a legal entity and requires that the issuer has not taken all necessary and reasonable organisational precautions to prevent a breach of the obligations under the LR. Accordingly, the fault is assessed based on largely objective standards. The conduct of the natural persons or bodies acting on behalf of the issuer are attributed to the latter (see SaKo decision of 14 April 2015 [SaKo 2015-AhP-I/15], No. 19, and of 30 July 2010 [SaKo 2010-CG-II/10/SaKo 2010-MP-I/10], No. 13; see also sanction notice of SER of 12 August 2013 [SER-KTR-FOR-I/13], No. 28, and of 4 February 2013 [SER-MT II/12/SER-AHP I/12/SER-Listing I/12], No. 103).

66. Whoever violates a relevant provision commits a conscious, intentional act. An issuer (through its officers) acts with conditional intent if they do not directly intend to violate an obligation, but nonetheless accept the likelihood of a violation.

67. X. ___ does not support this view and claims that "*X. ___ acted negligently but not intentionally*" (as far as the [non]-communication regarding Person A. ___'s refusal to be elected as a member of the BoD is concerned), and that "*X. ___ did not hide information or [seek] to mislead the market, at least not for such a long time. Similarly to the other events in question in these proceedings, X. ___ once again had to deal with the unsolicited consequences of a counterparty behaving against what had been agreed.*"

68. X. ___'s position is not supported by SaKo's long-standing practice and case law (see SaKo decision of 28 June 2012 [SaKo 2012-AHP-II/11], No. 46; also see sanction notice of SER of 11 October 2013 [SER-AHP-I/13], No. 48, of 12 August 2013 [SER-KTR-FOR-I/13], No. 26, and of 4 February 2013 [SER-MT II/12/SER-AHP I/12/SER-Listing I/12], No. 101).

Furthermore, it must be noted that a higher degree of diligence can and must be expected in the field of self-regulation than in state-ruled criminal or administrative procedures, since self-regulation is based on the premise that participants wilfully submit to such regulations, whereas state-ruled regulations are imposed on the parties concerned. Therefore, participants in self-regulation are expected to be fully aware of any aspect of such regulations and to put in place an organisation that ensures full compliance therewith.

69. Listed companies are expected to be in full compliance with all stock exchange regulations. The responsible employees and officers must be familiar with the relevant regulations, including the applicable accounting standards, comments and practices of the stock exchange bodies (see SaKo decision of 14 April 2015 [SaKo 2015-AHP-I/15], No. 26, and of 13 August 2013 [SaKo 2013-AHP-I/12], No. 37). Because of the issuer's duty of care, every issuer is expected to be familiar with the applicable stock exchange regulations, commentaries and practices of the judicial bodies. Any breach of the rules and regulations must raise a presumption of negligence on the part of the issuer in failing to discharge its duty of care (see sanction notice of SER of 11 October 2013 [SER-AHP-I/13], No. 49, and of 4 February 2013 [SER-MT II/12/SER-AHP I/12/SER-Listing I/12], No. 104; also see SaKo decision of 2 August 2019 [SaKo 2019-AHP-I/19], No. 53, for further details).

3.1.1.1. Person A. ___: election as vice-chairman of the Board of Directors

70. The elements in the file indicate that X. ___ violated Art. 53 LR and Art. 5 et seqq. DAH consciously, and hence intentionally. Not only was X. ___ aware – as documented by the exchange of e-mails that took place on [Date AGM +115 Days] – that the non-disclosure of Person A. ___'s refusal to accept his election on [Date AGM +47 Days] was "*an issue*" that "*should have [been] announced to [...] SIX and with a PR*" under ad hoc publicity regulations, but X. ___ also remained inactive for more than three and half months after it received the aforementioned refusal by e-mail. X. ___ expressed the "*hope*" that "*SER would not notice*" its misconduct and tried to "*hide*" the information about the non-acceptance within its media release dated [Date AGM +154 Days], where it was presented as a mere side note. Consequently, given the above facts, it is evident that X. ___ was aware of its violation, and instead of trying to remedy it immediately or at the latest when identifying the issue on [Date +115 Days], it consciously decided to further postpone the disclosure by more than a month and to "*hide*" the information in a media release scheduled to be published more than a month later.

71. Concerning the election of Person A. ___ as vice-chairman of the BoD, the conduct must be qualified as **intentional.**

3.1.1.2. Failure to properly distribute price-sensitive facts

72. Regarding the six incidents set out above, there is no indication that X. ___ acted intentionally. However, X. ___ had not taken the adequate organisational measures to react promptly when its partner Company Y. ___ repeatedly breached its contractual obligations by disclosing price-sensitive information in another time zone. At least after the first breach, X. ___ should have reacted immediately in accordance with SIX regulations.

73. Concerning the reporting of price-sensitive facts, the conduct must be qualified as **grossly negligent** at least after the first incident.

3.1.2. Behaviour after the breach and in the proceedings

74. The behaviour of the issuer after the violations does not give rise to any concerns. The Company participated constructively in the proceedings and responded to the questions raised in a timely manner.

3.1.3. Behaviour in previous years

75. There is an entry for X. ___ in the sanctions register. On [Date], SER issued a sanction notice against X. ___ in connection with a violation of regular reporting obligations and the LR. X. ___ was sanctioned with a fine of CHF [...]. The sanction notice became legally binding on [Date]. This entry must be considered in the assessment of the sanction (Art. 2.6 para. 4 RP).

3.2. Severity of the breach

76. 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 during their business. 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, No. 6 et seq.; SaKo decision of 28 June 2012 [SaKo 2012-AHP-II/11], No. 56). Therefore, a violation of the rules on ad hoc publicity is, as a rule, considered to be severe (SaKo decision of 2 August 2019 [SaKo 2019-AHP-I/19], No. 61).

3.2.1. Person A. ___: election as vice-chairman of the Board of Directors

77. According to X. ___'s own statement, Person A. ___ joining the BoD was an important element for the development of the Company. Therefore, failure to report the refusal of the election represents a serious violation of the ad hoc reporting obligations, even without considering the time frame. However, X. ___ also waited at least three and a half months to inform the market about Person A. ___'s refusal to accept the election as a board member and vice-chairman of the BoD. Moreover, X. ___ tried to "hide" this information within the ad hoc announcement of [Date AGM +154 Days]. This failure must be regarded as a **very severe violation**.

3.2.2. Failure to properly distribute price-sensitive facts

78. The Company violated the ad hoc publicity rules in a consistent pattern. The Company repeatedly failed to inform market participants equally over a period of several months. The publication of price-sensitive facts in violation of Art. 7 et seqq. DAH and the delayed publication of price-sensitive facts must be regarded as a **severe violation**.

3.3. Sensitivity to sanctions

79. Taking into account the severity of the breach and the degree of fault, SaKo considers a fine to be the appropriate sanction in accordance with Art. 61 LR.

80. When quantifying the sanction amount, the issuer's sensitivity to sanctions must be taken into account. In order 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 SaKo decision of 28 June 2012 [SaKo 2012-AHP-II/11], No. 63 et seq. and of 8 December 2011 [SaKo 2011-AHP-I/11, SaKo 2011-CG-I/11], No. 37).

81. According to the Company's [Year] and [Year -1 Year] financial statements, X. ___'s EBITDA amounted to TCHF -[...] in [Year] ([Year -1 Year]: TCHF -[...]), and its operational result was TCHF -[...] in [Year] ([Year -1 Year]: TCHF -[...]). In [Year +1 Year], the loss amounted to TCHF [...].

82. In view of the economic figures described above, the Company's **sensitivity to sanctions is very high**.

3.4. Amount of the sanction

83. The Swiss Financial Market Supervisory Authority (FINMA) expects stock exchanges in Switzerland to enforce all applicable rules with strict measures. SaKo has already warned 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 current practice. The purpose is not only to penalise the issuer for past breaches, 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]: "[I]n *recent years it has become clear that it is necessary to impose stronger sanctions for violations of the rules of the Exchange. The Sanctions Commission 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, for instance, in the SaKo decisions 026/19, 051/21, 061/21, I/2022 (not yet entered into force) and II/2022, all of which saw SaKo taking steps to impose higher sanctions in respect of a preventive effect.

84. The limit for a sanction is CHF 10 million for intentional violations and CHF 1 million in cases of negligence. Sanctions can be combined in cases of multiple violations. In this case, two different violations are to be sanctioned, namely with regard to the election of Person A. ___ to the BoD and the delayed publication of price-sensitive facts. The degree of fault as intention in the first violation and the severity of the breach in both cases lead to a sanction in a higher range, whereas the size of the X. ___ and the Company's sensitivity to sanctions justify a lower amount.

85. Considering all the relevant factors for determining the sanction, SaKo will sanction X. ___ with a **fine of CHF 125,000** for both violations, remaining at the lower end of the scale, mainly due to the size of the X. ___ and the Company's sensitivity to sanctions.

3.5. Publication of the decision of the sanctions commission

86. According to Art. 6 para. 7 RP, the public will be informed of any investigation concluded by a legally binding sanction decision. In addition, the legally binding SaKo decision will be published on SER's website in anonymous form (Art. 6 para. 8 RP) and a media release, including the name of the Company, will inform the public of the closure of the case.

3.6. Costs

87. In case of sanctions 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 (LocRB). In this case, **the charges incurred by SER to date amount to CHF [...]**. SaKo considers this amount to be at the lower end of the scale, taking into account the length and complexity of the proceedings.
88. The costs incurred by SaKo amount to **CHF [...]** and shall also be borne by X. ___.
89. Therefore, X. ___ must cover **total costs of CHF [...]**.

Zurich, [Date]

Chairman of the Sanctions Commission:

[...]

Secretary of the Sanctions Commission:

[...]