SANKTIONSKOMMISSION

Decision

Procedure No. SaKo IV/2022

SIX Exchange Regulation AG
(Corporate Disclosure)
Hardturmstrasse 201
8021 Zürich

vs.

X. ___
[Address]

represented by
[Legal representatives],[Address]

The Sanctions Commission (**SaKo**) – [...] (Chairman), [....] (Member), [...] (Secretary) - decided on [Date] 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 [Date] in accordance with Art. 7 et seqq. DAH and, as a consequence, to comply with Art. 6 DAH.

II. X. ___ is ordered to pay a fine in the amount of CHF 75'000.

III. X. ___ is ordered to bear the costs of the present proceedings in the amount of CHF [...] for SER and additional charges of CHF [...] incurred by the Sanctions Commission, including the charges for the interim decision.

IV. Once the sanction decision has become legally binding, it will be made available in anonymized form on the website of SIX Exchange Regulation AG Furthermore, the conclusion of the proceedings will be communicated to the public in a media release, with the names of the parties mentioned like at the opening of the investigation.

An appeal can be filed against this decision according to Ciph. 5.3 al. 2 RP 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 Ciph. 2.1 Rules of Arbitration.

Considerations

1. Procedure

1. 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').

2. As a reaction to the press release of X. ___ entitled “[Title Ad hoc announcement]” published on [Date], 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].

3. 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 Ciph. 3.3 para. 1 RP.

4. On [Date], SIX Exchange Regulation AG (SER) submitted a sanction proposal dated [Date] against X. ___ with the relevant files to the Sanction Commission.

5. The application was accompanied by the responding statement of [Legal representatives], in the name and on behalf of X. ___, dated [Date].

6. On [Date], the Sanction Commission acknowledged receipt of the sanction application SER vs. X. ___ including the enclosures as listed (including X. ___'s statement of [Date]).

7. 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. X. ___ did not request time for a supplementary statement but filed a procedural motion requesting an oral hearing, SER did not submit any own claim and requested rejection of the procedural motion raised by X. ___.

8. On [Date], the Chairman decided in a procedural decision on the composition of the delegation and rejected the procedural motion for an oral hearing. No request to abstain was raised against the delegation communicated.

9. The delegation decided on the case in its meeting of [Date].

2. Findings

2.1. Formal Findings

10. 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 [Listing segment] 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.

11. 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 the Sanctions Commission (Ciph. 3.4 para. 1 and Ciph. 4 RP).

12. Given that the violation occurred on [Date], the LR dated 8 November 2019 and the DAH dated 20 March 2018 are applicable.[1]

2.2. Material Findings

2.2.1. Facts of the Matter

13. In establishing the relevant facts for this sanction proposal, SER 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 (Ciph. 3.1 para. 1-2 RP). In drafting the sanction proposal, SER evaluated all facts presented by X. ___ even if not explicitly referred to in the sanction proposal.

14. X. ___'s e-mail distribution service (push system) relies on two software tools. One script developed by X. ___ which collects the e-mail addresses of the subscribers of the push system and the second one (external) which is used to dispatch the actual e-mails to the subscribers. In order to improve the level of data security X. ___ decided to update its own software. In order to test the updated software X. ___ used “dummy” e-mails. The testing was successful and the updated script was deployed according to the declaration of X. ___.

15. In the evening of [Date], X. ___ prepared the publication of the press release “[Title ad hoc announcement]” which was planned to be published the following day at 07.00 am. While preparing this publication the script was accidentally left to run in the test environment, i.e. configured to capture the “dummy” e-mail addresses instead of the actual e-mail addresses of the subscribers of X. ___'s push system.

16. On [Date] at around 06.30 am, X. ___ realized that there were some issues with its IT remote access system, which prevented employees working from home to access the company’s system. Due to the extraordinary situation during the Covid pandemic, working from home was customary and widespread.

17. The press release was then released at 07.00 am as planned. It reached SER via e-mail on 07.00 am and was also available on the issuer's website as of 06.56 am. Further the press release was distributed to Bloomberg, Reuters and various Swiss medias (e.g. NZZ, Le temps, Finanz und Wirtschaft). However, no press release was received by SER via the e-mail address used to subscribe to the issuer’s push system.

18. At 07.15 am, X. ___ first noticed that there was a problem regarding the distribution via push system. Employees of the company, who were also subscribers of the push system, realized that they had

[1] The violation corners around the distribution of the ad hoc announcement via the e-mail distribution service (push system). As no material changes to the LR and the DAH occurred in this regard, reference is therefore always made to the set of rules in force on the date of the sanctions proposal.

not received the press release and informed the IT operations teams accordingly. The IT operations team started to investigate; however, the investigations were hindered by the still ongoing difficulties regarding the remote access. Around 08.45 am the X. ___'s systems were again accessible remotely which facilitated the identification of the issue concerning the push system.

19. At 09.03 am SER contacted X. ___ by phone. X. ___ informed that they were aware of the issues concerning the push system, that the IT operations team was working to solve the problem and that X. ___ would contact SER after having clarified the situation.

20. At 09.52 am the press release "[Title ad hoc announcement]" was received by SER via the e-mail address used to subscribe to X. ___'s push system. Thereafter at 10.24 am, X. ___ reached out to SER via phone confirming that the press release was distributed via push system.

21. The press release announced that X. ___ was expecting a record first half-year result with net revenues for the first half year 20XX around CHF [...] million (prior year: CHF [...] million) and pre-tax profit exceeding CHF [...] million (prior year: CHF [...] million).

22. The market reaction to the press release was strongly positive (+19%) and trading volumes (approximately [...]) were way above average. X. ___ confirmed that the press release contained price-sensitive facts and later by e-mail that the issues only involved the distribution of the press release via push system.

23. As a result of the above-described events X. ___ implemented necessary additional measures (organizational and technical) in order to prevent such issues from happing again.

2.2.2. Rules Regarding Ad hoc Publicity

24. X. ___ qualifies the press release "[Title ad hoc announcement]" dated [Date] as a price-sensitive fact. This qualification is undisputed.

25. Price-sensitive facts have to 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 in order 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).

26. In order 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. (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).

27. 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 has to 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).

28. X. ___ published and distributed the ad hoc announcement dated [Date] to SER, two electronic information systems widely used by professional market participants and two Swiss media of national importance at 07.00 am. Further the ad hoc announcement was uploaded on the issuer's website at 06.56 am.

29. The push system, however, was only operated at 09.52 am, almost three hours later and during trading hours. Therefore, X. ___ failed to comply with Art. 7 DAH in connection with Art. 8 DAH and Art. 10 para. 2 DAH. As a consequence thereof, X. ___ also failed to comply with Art. 6 DAH. The fact that the violation originated from a combination of human and technical errors has no impact on the obligation to comply with the publication requirements set out in DAH. However, this must be considered when assessing the degree of fault.

3. Sanction

30. X. ___ violated Art. 53 LR in combination with Art. 7 et seqq. DAH and as a consequence Art. 6 DAH. Such violations can be punished 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.

3.1. Degree of Fault

3.1.1. Commission of the Breach

31. The LR require issuers to ensure compliance with the LR, additional rules and related implementing provisions at all times. 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 (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).

32. 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 the Sanctions Commission 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).

33. In the assessment of the degree of fault, the constant 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).

34. In the case at hand, it must be considered that the violation was a result of a combination of human and technical errors. X. ___ failed to recapture the real email addresses of the subscribers of the push system once the testing of the updated script was completed and thus to verify that the timed distribution was set up correctly. And as soon as X. ___ realized that something went wrong with the push system during the publication on [Date] at 07.15 am remote access problems further delayed the identification and resolution of the issue.

35. It has to be noted that the problem occurred as part of a process to improve the functioning of the solution used to make push notification. Further the human error was compounded by unrelated technical issues that prevented employees from using their remote access to the X. ___ systems. These issues affected a large number of X. ___'s employees because Covid-related measures were still in force, such that many employees were working from home.

36. The violation by X. ___ consists mainly of not having checked the system more in detail before the release of a communication that was scheduled and of not informing SER immediately once X. ___ first realized that there was a problem regarding the distribution via push system. Contrary to the suggestion set out in para. 154 of the DAH Guideline, X. ___ omitted to inform SER as soon as it became aware of problem and hindered thereby, among others, discussions regarding a temporary trading suspension.

37. Given the above it appears that X. ___ did not violate the provisions intentionally. Nevertheless, and all facts considered, it cannot be denied that X. ___ acted **negligently**.

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

38. X. ___ cooperated constructively in the proceeding introduced by SER.

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

40. There is no entry for X. ___ in the sanctions register that needs to be considered as aggravating factor in the assessment of the sanction.

41. [...]

42. The Company complains in its statement that the formulation of the SER media release informing the public on the opening of the investigation was misleading and caused irritation on the markets.

However, SaKo judges the violation of the rules by the issuer not the later communication policy by SER. Nevertheless, the wording of a media release at the opening of an investigation should make clear that the findings are "preliminary" or "established at this stage" in order to preserve the rights of the Company under investigation and to avoid confusion on the markets.

3.2. Severity of the Breach

43. 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 speaking considered to be severe (Decision of Sanction Commission of 2 August 2019 [SaKo 2019-AHP-I/19], number 61).

44. In order 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 if all addressees are served simultaneously with the ad hoc announcement the principle of equal treatment is complied with (Art. 6 DAH). In other words, in order 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.

45. 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 only by institutional investors, 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.

46. X. ___ states that Swiss media are widely accessible via internet from anywhere and that shareholders generally use a number of media push channels to be kept informed on events relating to companies they are invested in or intend to invest. In fact, the media release informing on the results of X. ___ was widely distributed and published before the opening of the trading session. Further, an analysis of X. ___'s share register shows that more than 97% of registered shareholders are based in Switzerland.

47. SaKo acknowledges 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 concrete case despite the failure of the push distribution. Therefore, SaKo regards the violation as serious but not as severe.

3.3. Impact of a Sanction on the Party Concerned

48. 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.

49. When quantifying the sanction amount the sensitivity to sanctions has to 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 decisions of the Sanctions Commission 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). As X. ___ rightly points out, not all of these elements are relevant for a company in the financial sector, e.g. as customer assets inflate some figures.

50. X. ___'s net profit for the financial years 20XX and 20XX amounted to CHF [...] million and CHF [...] million respectively. The cash flows from operating activities were CHF [...] million and CHF [...] million respectively.

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

3.4. Determination of the Sanction

52. X. ___ compares the Sanction Proposal with sanctions in other cases. However, each case is very different as far as the violation, the effect, the fault and the sensitivity to sanctions are concerned. A simple comparison of the decisions is not possible.

53. 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. The Sanctions Commission 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. 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 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.

54. Considering all the relevant factors for determining the sanction, a **fine of CHF 75'000 is appropriate**.

4. Publication of the Decision of the Sanctions Commission

55. The public will be informed in accordance with the provision of Ciph. 6 RP. The Company will be notified of the communication with a short pre-notice. However, it has to be understood that the RP do not provide for a negotiation on the text of the communication as such.

5. Costs

56. In case of sanction proceedings, charges are determined based on the expenditure incurred adopting an hourly rate of CHF 300 per person according to Ciph. 3.7 in connection with Ciph. 4.1 of the List of Charges Regulatory Bodies (LOC). In the present case, charges incurred by SER to date amount to CHF [...].

57. The costs of the Sanctions Commission are set to CHF [...], including the costs for the interim decision. These costs shall also be borne by X. ___. Charges of the SaKo and its Secretary exceeding this limit have to be borne by SER.

58. The **total costs** charged to X. ___ are of **CHF [...]**.

[Place], 29.11.2022

[...] President	[...] Secretary