SIX Exchange Regulation AG
Listing & Enforcement
SB-AHP-IV/23

Sanction Notice
dated 23 November 2023

in the Matter of

Issuer

X. ___
[Address]

concerning

Violation of the Rules regarding Ad hoc Publicity (Art. 53 LR)

A. Proceedings Overview

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 ad hoc announcement of X. ___ entitled "[Title]" published 13 September 20XX, 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. 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 the Sanctions Commission (Ciph. 3.4 para. 1 RP).

4 With the letter dated [Date], SER sent the Issuer the draft of the sanction notice (including files) for comments. With letter dated [Date] X. ___ submitted its comments timely.

B. Findings

I. Formal Findings

5 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.

6 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). SER may issue a sanction notice for a negligent violation if possible sanctions include a reprimand or fine of up to CHF 100'000 (Ciph. 3.5 para. 2 RP).

7 Given that the violation occurred on 12 September 20XX[1], the LR dated 25 July 2022 and the DAH dated 1 October 2021 are applicable.

II. Material Findings

1. Facts of the Matter

8 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 this sanction notice, SER evaluated all facts presented by X. ___ even if not explicitly referred to in this sanction notice.

1.1 Failure to properly distribute price-sensitive facts

9 On 13 September 20XX, the media A. ___ (published at 7.41 a.m.) featured a report on X. ___. The article said that the Issuer's shareholders would propose the conversion of [Amount] in debt into shares at the general meeting on [Date]. It was further reported that the majority shareholder B. ___ had already agreed to the deal and that it had become known that B. ___ would take over the majority of the board of directors at the general meeting (SER act. [...]). Other media (C. ___) also reported on this debt restructuring before the start of trading on the same day (SER act. [...]).

10 On 13 September 20XX, at 5.40 p.m., X. ___ transmitted its ad hoc announcement entitled "[Title]" to SER by using the online platform Connexor Reporting. The PDF file sent via Connexor Reporting dated 13 September 20XX (SER act. [...]). According to the information provided in the Connexor Reporting form, X. ___ intended to

[1] The violation corners around the distribution of the ad hoc announcement. As no material changes to the LR occurred in this regard, reference is therefore always made to the set of rules in force on the date of this sanctions proposal.

publish the ad hoc announcement on 13 September 20XX at 5.40 p.m. 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).

11 On 13 September 20XX, at 5.44 p.m., X. ___ served the push system and SER received the ad hoc announcement via the email address used to subscribe to X. ___'s push system (Art. 8 DAH).

12 According to the information provided by X. ___ in its answer to the preliminary inquiry letter dated [Date], X. ___ published the ad hoc announcement on its website on 12 September 20XX at 6.09 a.m. (SER act. […] page […], SER act. […] Attachment […]).

13 In summary, the ad hoc announcement entitled "[Title]"

i. was uploaded on the Issuer's website on 12 September 20XX at 6.09 a.m.,

ii. was picked up and distributed by the media on 13 September 20XX as of 7.16 a.m. and

iii. was disseminated by the Issuer in accordance with Art. 7 et seqq. DAH only after the close of trading at 5.40 p.m. on 13 September 20XX.

1.2 Possible cause of failure

14 In its statement, the Issuer pointed out that there had been a large change of personnel in the company. The Issuer further stated that "*due to their high workload and the short familiarisation period in the new role including not being fully acquainted with the process of publishing press releases and ad hoc announcements at X. ___, unfortunately publication of the ad hoc announcement regarding the AGM invitation was not completed in due time*." (SER act. […] page […]).

2. Rules regarding Ad hoc Publicity

15 Price-sensitive facts are facts that are capable of triggering a significant change in market prices (Art. 53 para. 1 LR). Whether or not the disclosure of a fact is capable of triggering 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 which have arisen in its sphere of activity (Art. 53 para. 1 LR). Disclosure of ad hoc announcements must be made so as to ensure the equal treatment of all market participants (Art. 53 para 3 LR in connection with Art. 6 DAH).

16 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). In order to make sure that all market participants have the same opportunity to become aware of a price-sensitive fact, ad hoc announcements have to be sent at least to the addressees mentioned in Art. 7 DAH

1) SIX Exchange Regulation AG pursuant to Art. 12 et seqq. (90 minutes ahead of time if published during trading hours);

2) at least two electronic information systems widely used by professional market participants (e.g. Bloomberg, Reuters, SIX Financial Information);

3) at least two Swiss media (printed or electronic) of national importance;

4) all interested parties upon request (push system).

Further, simultaneously to the distribution in accordance with Art. 7 DAH the ad hoc announcement also has to be uploaded to the issuer's website (Art. 9 DAH).

17 The issuer is responsible for the proper fulfilment of its obligations. In particular, it must ensure simultaneous distribution of ad hoc announcements to all addressees (Art. 10 para. 2 DAH).

18 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 organize itself in such a way that no provisions of stock exchange regulations are violated (Art. 53 LR, cf. decision of the Sanctions Commission of 2 August 2019 [SaKo 2019-AHP-I/19], number 44, with further details).

19 With the invitation to the Annual General Meeting, X. ___ published the detailed agenda. Detailed information were provided concerning the intended Carve-Out, Amendment of the Company's Purpose and substantial Financial Restructuring measures. X. ___ classified the press release entitled "[Title]" as "Ad hoc announcement pursuant to Art. 53 LR" meaning that the facts included in the aforementioned press release were qualified as price-sensitive by X. ___. This qualification is undisputed.

20 As set out above (para. 12 above), the Issuer uploaded the ad hoc announcement on its website more than 30 hours before the publication and distribution to the other addressees of Art. 7 DAH. Hence, the Issuer did not distribute the ad hoc announcement to all addressees simultaneously as required by Art. 7 in connection with Art. 10 para. 2 DAH. As a consequence thereof, X. ___ also failed to comply with Art. 6 DAH.

21 The Issuer does not deny that it did not ensure simultaneous distribution of the ad hoc announcement dated 13 September 20XX (SER act. […] page […]). X. ___ admits that its employees were not fully familiar with the rules of ad hoc publicity (SER

act. […] page […] et seq.). The fact that the violation originated from a human error has no impact on the fact that X. ___ failed to comply with the publication requirements set out in DAH, even though the latter shall be considered below when assessing the degree of fault (para. 25 et seqq. below).

22 Regarding the ad hoc announcement entitled "[Title]", X. ___ failed to comply with Art. 53 LR and Art. 7 DAH and as a consequence Art. 6 DAH.

3. Sanction

23 As set out in detail above, X. ___ violated Art. 53 LR in combination with Art. 7 DAH and as a consequence Art. 6 DAH (para. 16 et seqq. above).

24 Such violations can be prosecuted 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

25 The LR requires 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).

26 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).

27 In the assessment of the degree of fault, the constant practice is to expect from listed companies' 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).

28 In the case at hand, it must be considered that the violation was due to a lack of knowledge and organization and a result of human error. With regard to the incidents set out above there is no indication that X. ___ acted intentionally. Nevertheless, and all facts considered, it cannot be denied that the issuer acted negligently as the issuer always remains responsible to fulfill its ad hoc publicity obligations according to the applicable stock exchange regulations (Art. 53 LR in connection with the DAH).

3.1.2 Behaviour after the Breach

29 The behaviour after the breach does not give rise to comments and is to be assessed neutrally. X. ___ cooperated constructively in the proceedings.

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

31 In its comments of [Date], X. ___ reiterates that based on the implemented measures it expects that this should be taken positively into account when determining the fine and refers to SaKo's jurisprudence (cf. SaKo V/2023 and SaKo II/2022). These organizational measures included, amongst others, an internal process ensuring that decisions from the responsible body deciding on whether a press release shall be published as an ad hoc announcement or as a mere press release are taken immediately to ensure compliance with all relevant ad-hoc rules as well as setting up a process in case the planned ad hoc announcement cannot be translated into German and/or French in time due to extreme urgency. Further, a mandatory and in-depth training has been held by a reputable law firm concerning the rules on ad hoc publicity with the whole management team, the marketing department as well as certain business relationship managers to ensure that all involved employees at X. ___ know the current applicable SIX ad-hoc publicity rules.

32 The adoption of measures to prevent possible breaches of the rules on ad hoc publicity by X. ___ is welcomed and viewed positively. But it has also to be noted that it is generally expected from listed companies to implement respective measures in order to prevent possible breaches. Particularly, the issuer must ensure from the beginning of its listing that internal processes exist and are adapted to changes and that responsible persons are and will be trained with regard to the applicable rules and regulations (cf. DAH Guideline number 39). The behaviour after the breach has already been taken into account adequately when determining the fine (severity of the breach, degree of fault and impact of the sanction on the party involved; cf. Art. 61 para. 2 LR). Hence, there is no basis for a (further) reduction.

3.1.3 Behaviour in the previous Years

33 X. ___'s conduct in the previous years has to be assessed neutrally. There is no entry in the sanctions register that needs to be considered in the assessment of the sanction.

3.2 Severity of the Breach

34 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, number 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).

35 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 and to distribute the ad hoc announcement accordingly.

36 The failure to simultaneously distribute the ad hoc announcement via push system (Art. 7 et seqq. DAH) violates the principle of equal treatment and has to be regarded as a **severe violation** (cf. also SaKo IV/2022 dated 29 November 2022).

37 As communicated on [Date], X. ___ is of the opinion that the violation should be considered serious but not severe. Reference is made to SaKo jurisprudence (SaKo decision dated 10 August 2023; SaKo IV/2022 and SaKo I/2023).

38 With regard to other cases and considering different context and general discretion of judgement, a prudent comparison is advisable. In contrary to the cases mentioned by X. ___ (SaKo VII/2023 and SaKo IV/2022), where – in short – the push system was not properly operated, the present case is fundamentally different (cf. para. 13, 20 and 21 above).

3.3 Sanction and impact on the party concerned

39 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.

40 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 to be 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).

41 X. ___ shows the following key financial figures in its most recently published annual report (20XX):

Financial Figures	... (k)
Total income	[Amount]
Operating loss	[Amount]
Loss before tax for the period	[Amount]
Total assets	[Amount]
Total equity	[Amount]
Net cash used in operating activities	[Amount]

42 In view of the above-described economic measures the sensitivity to sanctions of the company is considered to be high. The recently published figures in the 20XX semi-annual report offer no reason for a different assessment.

43 Considering all the relevant factors for determining the sanction, namely (and exclusively) the degree of fault, the severity of the breach and the sensitivity to sanctions, a fine of CHF 15'000 seems appropriate.

4. Conclusion of the Investigation and Publication of the Sanction Notice

44 The investigation at hand concludes with the issue of a sanction notice (Ciph. 3.4 para. 1 RP).

45 Both the Issuer and the Sanctions Commission will be informed in writing of the sanction notice (Ciph. 3.4 para. 3 RP).

46 Pursuant to Ciph. 6 para. 4 RP, the public will be informed of the conclusion of the investigation involving a sanction notice that has acquired legal force. In addition, the legally binding sanction notice is published on SER's website in anonymised form (Ciph. 6 para. 6 RP).

5. Costs

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

48 In the present case, charges to date amount to CHF […]. These costs shall be borne by X. ___.

C. Sanction Notice

SIX Exchange Regulation AG determines the following:

1. It is determined that X. ___ negligently violated the applicable rules regarding ad hoc publicity and thereby its obligations pursuant to Art. 53 LR by failing to distribute the ad hoc announcement dated 13 September 20XX in accordance with Art. 7 et seqq. DAH and as a consequence to comply with Art. 6 DAH.

2. X. ___ is ordered to pay a fine in the amount of CHF 15’000.

3. X. ___ is ordered to bear the cost of the present proceedings in the amount of CHF [...].

4. This Sanction Notice will be published in anonymised form on the website of SIX Exchange Regulation AG upon becoming legally binding.

5. This Sanction Notice will be notified to:

   – X. ___

   – Sanctions Commission

SIX Exchange Regulation AG

[Sig.]
Head Listing & Enforcement

[Sig.]
Head Corporate Disclosure

Legal Remedy

The party concerned may lodge an appeal with the Sanctions Commission ([...]) against sanction notices by the investigative bodies within ten days (Art. 62 para. 1 LR in conjunction with Ciph. 5.2 para. 1 RP). No recess is taken into account (Ciph. 2.4.2 para. 2 RP). Having received the appeal, the Chairman of the Sanctions Commission will set the party concerned a deadline by which it must submit grounds for its appeal (Ciph. 5.2 para. 2 RP). The appeal may challenge all deficiencies relating to the investigation, to the proceedings themselves or to the sanction notice issued by the investigative bodies (Ciph. 5.2 para. 3 RP). Appeals generally are accorded suspensive effect (Ciph. 5.1 para. 2 RP).