



# Issuers Committee Circular No. 1 – Revised provisions in the area of ad hoc publicity and corporate governance (IC-CIR1)

Status on 10 March 2021  
Basis Listing Rules («LR»), Directive on Ad hoc Publicity («DAH») and  
Directive on Information relating to Corporate Governance («DCG»)

## 1 Subject matter and scope

- 1 As of 1 July 2021, the revised provisions of the Listing Rules (LR), the Directive on Ad hoc Publicity (DAH) and the Directive on Information relating to Corporate Governance (DCG) will enter into force.
- 2 This circular issued by the Issuers Committee of the Regulatory Board specifies the revised provisions in the area of ad hoc publicity and draws attention to the new provision on quiet periods in the area of corporate governance. The circular will be continuously amended and updated as required.
- 3 In the area of ad hoc publicity, the circular is addressed to all issuers with registered office in Switzerland whose securities are listed on SIX Swiss Exchange Ltd and to issuers whose registered offices are not in Switzerland but whose securities are listed on SIX Swiss Exchange Ltd but not in its home country.
- 4 In the area of corporate governance, the directive applies to all issuers whose equity securities have a primary listing on SIX Swiss Exchange Ltd.

## 2 Ad hoc publicity: terms of price sensitivity and of the reasonable market participant (Art. 53 para. 1 LR and Art. 53 para. 1<sup>bis</sup> LR)

- 5 The term of price sensitivity was formally amended with the revision of Art. 53 para. 1 LR. **The term «price-sensitive fact» is now being used instead of «potentially price-sensitive fact».** Indications from academic research were taken into account leading to the removal of the word «potentially». It had been determined that the term «potentially price-sensitive» was a dilution of the concept, since the word «sensitive» already contained the element of potential. The change to «price-sensitive fact» is a clarification of a purely linguistic nature and does not lead to any substantial modification of the term or its legal meaning. As previously, the fact must be considered of being price-sensitive from an ex ante perspective.
- 6 The principle according to which a **fact is considered price-sensitive if its disclosure is capable of triggering a significant change in market prices was newly transferred** from the DAH to Art. 53 para. 1 LR. **A change in market prices is significant if it is considerably greater than the usual price fluctuation.**

- 7 The amendments to Art. 53 para. 1 LR do not result in any change in legal practice. The issuer is responsible for timely and correct fulfilment of the duty to provide information when price-sensitive facts emerge. The issuer makes its decision using its discretion, taking into account the company's internal division of responsibilities (Art. 4 para. 3 DAH). The company's internal division of responsibilities must be based on the company's legal documents, in particular the articles of association, rules of organisation, schedule of powers and so forth. In terms of timing, issuers must organise themselves in such a way that timely fulfilment of its obligations to provide information is always guaranteed.
- 8 Whether or not the disclosure of a fact is capable of triggering a significant change in market prices must be decided on a case-by-case basis prior to disclosure or announcement («ex ante perspective»; Art. 4 para. 2 DAH). Consequently, there are no generally binding thresholds or percentages with fixed definitions that cause significance to be manifested if they are reached, exceeded or fallen short of.
- 9 What is new is the replacement of the previous term of «average market participant» by the term **«reasonable market participant»**. The reasonable market participant is a rationally acting person who is familiar with the activity of the issuer and the market of the financial instrument in which this person is making an investment. This person knows the fundamentals of securities trading, corporate law and financial market practices but does not need to have any special expertise. However, it is necessary to distinguish the reasonable market participant from the «professional investor». The terminological adjustment is made in the context of an alignment with international standards.

### **3 Ad hoc publicity: no per se facts/annual and interim reports (Art. 4 para. 2 DAH)**

- 10 The new Art. 4 para. 2 DAH enshrines the **principle according to which there are no facts whose disclosure is to be classified as always price-sensitive, with the exception of the annual and interim reports** pursuant to Art. 49 and 50 LR. These reports are always to be published with an ad hoc announcement pursuant to Art. 53 LR. Since the content of annual and interim reports generates great attention and is of importance for the market, it is justified to always (or 'per se') require compliance with the requirements of ad hoc publicity for their disclosure.

### **4 Ad hoc publicity: obligation to classify ad hoc announcements (Art. 53 para. 2<sup>bis</sup> LR and Art. 7 and Art. 9 para. 1 DAH)**

- 11 The issuer must disclose price-sensitive facts to the market by publishing an ad hoc announcement. As of the entry into force of the revised provisions on 1 July 2021, an **ad hoc announcement must be classified as such («Flagging»)**. When the ad hoc announcement is published, it must be flagged with the preface of **«ad hoc announcement pursuant to Art. 53 LR»** (Art. 53 para. 2<sup>bis</sup> LR; Art. 7 DAH). The flagging must be clearly recognisable visually. The new **flagging obligation** is thus a consequence, and effectively a visual expression, of the issuer's existing qualification obligation. It helps to improve transparency through its easy visual recognisability.
- 12 Conversely, it follows from the flagging obligation that notices that are purely of a marketing nature are contrary to the obligation to provide information regarding price-sensitive facts. If a price-sensitive fact is obviously missing from a notice, the notice shall not be flagged as an ad hoc announcement. It is therefore **not permitted** to flag a notice that is purely of a marketing nature as an ad hoc announcement. Misuse of flagging may be sanctioned.

- 13 SIX Exchange Regulation AG will take legal action in case of violations of the flagging obligation and violations will be assessed by the regulatory bodies responsible for sanctions. When assessing a possible violation, due consideration is given to the latitude of discretion and judgement that the issuer has in its ex ante qualification of the price-sensitive fact pursuant to Art. 4 para. 3 DAH.
- 14 Pursuant to Art. 9 para. 1 DAH, each published ad hoc announcement must be made available in chronological order on the issuer's website in an easy-to-find directory that indicates the date of distribution. An appropriate reference must be made to the classification of the announcement as an «Ad hoc announcement pursuant to Art. 53 LR». Each ad hoc announcement must be available there for a period of three years after publication.
- 15 For reasons of security and confidentiality, issuers of primary-listed equity securities must use the online platform Connexor Reporting for transmission of their ad hoc announcements to SIX Exchange Regulation AG (Art. 12a DAH). Issuers of derivatives, bonds, conversion rights, collective investment schemes and secondary-listed equity securities may continue to submit ad hoc announcements to SIX Exchange Regulation AG by e-mail<sup>1</sup>.

## 5 Ad hoc publicity: confidentiality of the price-sensitive fact (Art. 54 para. 2 LR)

- 16 When making use of a **postponement of disclosure**, an issuer must henceforth use **adequate and transparent internal rules or processes** to ensure that the price-sensitive fact remains confidential during the entire period of the postponement. In addition, the issuer must **in particular take organisational measures to ensure that confidential facts are only disclosed to persons who need to know them to perform the tasks assigned to them**.
- 17 In general, the issuer is free to choose the organisational methods and instruments for ensuring confidentiality. The issuer is expected to keep its internal rules, processes and measures in line with the latest developments and best practice with regard to safeguarding confidentiality and ensure that the rules it adopts comply with the relevant standard of a listed company. In maintaining the confidentiality of a price-sensitive fact, «best practice» may include: i) limiting the number of people who know the information to the smallest possible number (the «need-to-know» principle); ii) limiting and safeguarding access to information; iii) confidentiality declarations from all people who know the information, both internal and external (e.g. consultants); and iv) maintaining a list of insiders.

## 6 Corporate governance: quiet periods (Annex clause 10 DCG)

- 18 The annual report must now also contain information on **general quiet periods («blackout periods»**; e.g. deadlines, addressees, scope, exceptions) (Annex clause 10 DCG). The principle of «comply or explain» of Art. 7 DCG applies.

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<sup>1</sup> This margin number enters into force on 1 October 2021.