

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

Status on 28 June 2023
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 On 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) entered into force.¹
- 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 provision on quiet periods in the area of corporate governance. The circular will be continuously amended and updated as required.

2 Ad hoc publicity: terms of price sensitivity and of the reasonable market participant (Art. 53 para. 1 LR and Art. 53 para. 1^{bis} LR)

- 3 The term of price sensitivity was formally amended with the revision of Art. 53 para. 1 LR. **The term «price-sensitive fact» is 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.
- 4 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 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.**
- 5 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

¹ Regulatory Board Communiqué No. 3/2021 of 30 April 2021.

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.

- 6 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.
- 7 The previous term of «average market participant» was replaced 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)

- 8 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. Annual and interim reports** pursuant to Art. 49 and 50 LR, however, 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^{bis} LR and Art. 7 and Art. 9 para. 1 DAH)

- 9 The issuer must disclose price-sensitive facts to the market by publishing an ad hoc announcement. The information contained in an ad hoc announcement must be factual, clear and complete and must be formulated in such a way that the reasonable market participant can form an opinion of the extent to which the content is price-sensitive (Art. 15 para. 1 and 2 DAH).
- 10 With 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^{bis} LR; Art. 7 DAH). The flagging must be clearly recognisable visually and must show the wording specified in the LR. This **flagging obligation** is thus a consequence, and effectively a visual expression, of the issuer's previously existing qualification obligation. It helps to improve transparency through its easy visual recognisability.
- 11 **Only information on price-sensitive facts can be disseminated in accordance with the provisions of ad hoc publicity and have to be flagged accordingly.** Flagging as an ad hoc announcement pursuant to Art. 53 LR is not permitted, for e.g.:
 - announcements, whose content is intended to advertise and/or to promote a service, a product or the company itself (image) (**pure marketing announcement**);
 - announcements, which do not contain any new price-sensitive facts, but merely reproduce facts which have already been distributed previously in the context of an ad hoc announcement (publication of already known facts which were previously price-sensitive).

- 12 The flagging of announcements as ad hoc announcement pursuant to Art. 53 LR that do not contain price-sensitive facts is not permitted any may be sanctioned.
- 13 Likewise, **the mixing of price-sensitive facts with pure marketing announcements (see above) in an ad hoc announcement is not permitted** and may be sanctioned. Annual and interim reports pursuant to Art. 49 and 50 LR must always be published by an ad hoc announcement.
- 14 SIX Exchange Regulation AG may take legal action in case of violations of the flagging obligation and violations may 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.
- 15 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 fact that the directory contains ad hoc announcements pursuant to Art. 53 LR. Each ad hoc announcement must be available there for a period of three years after publication.
- 16 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.²

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

- 17 When making use of a **postponement of disclosure**, an issuer must 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**.
- 18 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)

- 19 The annual report must 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.

² Status as of 1 October 2021.