



Revised Ad Hoc Publicity Rules

Homburger Webinar

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Key principles of ad hoc publicity remain unchanged.

What stays the same?

- Prompt disclosure of price-sensitive facts that have arisen in the issuer's sphere of activity
 - Case-by-case assessment (reasonable investor test)
 - No percentage thresholds
- Disclosure can be postponed under certain circumstances
- Must ensure equal treatment of market participants

What's new?

- Rules relating to publication:
 - Flagging
 - Specific directory on issuer's website
 - Filing with SER via Connexor Reporting
- Enhanced requirements regarding confidentiality if disclosure is postponed
- Clarified definition of price-sensitivity
 - Abolition of "per se" price-sensitive facts
 - Discretionary decision
- New obligation to disclose general blackout periods in Corporate Governance Report

New requirement to label ad hoc releases as “ad hoc announcement pursuant to Art. 53 LR”

Flagging

- At the beginning of the release
- Clearly recognizable
- Only releases that contain price-sensitive facts can be flagged
 - ... and not mere marketing releases
 - SER may sanction abuse, **but**
 - discretion of issuers
- Applies to releases as of July 1, 2021

Content

- Addressed to *reasonable* (today: *average*) investor (no change in substance)

XYZ appoints new CEO

Zurich, July 1, 2021 | Ad hoc announcement pursuant to Art. 53 LR

AB appointed CEO

Zurich, July 1, 2021 – XYZ announces that Ms. AB was appointed CEO of XYZ effective September 1, 2021. ...

New obligation to make ad hoc releases available in a specific directory on issuer’s website for three years.

New: Filing with SER via Connexor Reporting.

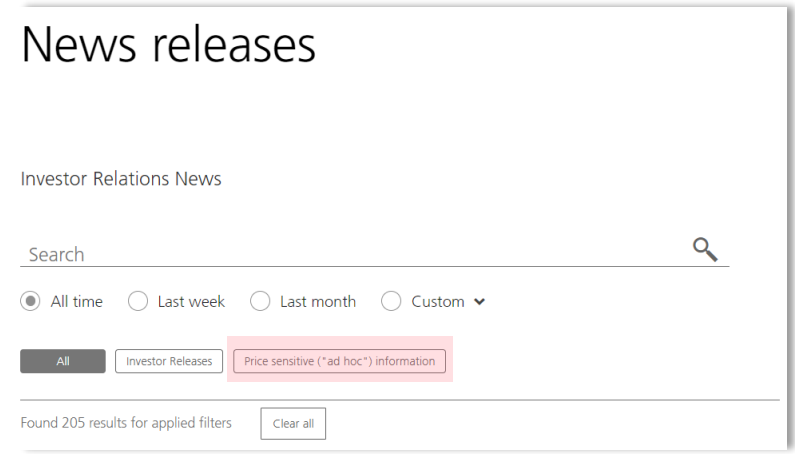
Issuer’s Website

- “Easy-to-find” directory
 - Filter *or*
 - Separate webpage
- Chronological order
- Date of distribution must be listed
- Applies to releases as of July 1, 2021

- For at least three years (today: two years)

Connexor Reporting

- As of October 1, 2021, issuers of primary-listed securities must file ad hoc releases with SER via Connexor Reporting
- Pre-notification of SER in case of leak by e-mail



New requirement to have measures in place that ensure confidentiality and sharing on a need-to-know basis only.

What stays the same

- Disclosure of a price-sensitive fact can be postponed if
 - the fact is based on a plan or decision of the issuer; and
 - its disclosure might prejudice the issuer's legitimate interests
- Issuer must ensure confidentiality
- Immediate disclosure in case of leak

Additional requirements

- "Adequate and transparent internal rules or processes" to ensure confidentiality
 - General policy or "ad hoc" measures
 - Possible measures: insider list, Chinese walls, technical measures
 - Confidentiality declarations *not* required as such
- Organizational measures to ensure disclosure on a **need-to-know** basis only
 - Interpretation in line with insider law*

² The issuer must have adequate and transparent internal rules or processes in place to ensure that the price-sensitive fact remains confidential for the entire time that disclosure is postponed. In particular, the issuer must take organisational measures to ensure that confidential facts are only disclosed to persons who need them to perform the tasks assigned to them. In the event of a leak, the market must be informed about the fact immediately, in accordance with the provisions of Art. 53 LR.

* art. 128 FMIO

Abolition of “per se” Price-sensitive Facts

New: Other than financial reports, there are no “per se” price-sensitive facts.

Abolition of “per se” price-sensitive facts

- Issuer must decide on a case-by-case basis
- Changes on the board and executive committee
 - Key positions (e.g., CEO, founder etc.)
 - Extraordinary circumstances
- Issuers to consider disclosure strategy going forward

Exception: financial reports are always price-sensitive

- Annual and interim (half-year and quarterly) financial reports
- Earnings releases
- Trading updates

In addition:

- Profit warning in the event of significant failure to meet own guidance
- In the absence of guidance: Profit collapse / hike in the event of significant deviation from prior-year period

Art. 4 Relevance

¹ (cancelled)

² 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 or announcement. **Apart from annual and interim reports pursuant to Art. 49 and Art. 50 LR, which must always be published with an ad hoc announcement pursuant to Art. 53 LR, there are no facts whose disclosure must always be classified as price-sensitive.**

³ The issuer makes its decision using its discretion, taking into account the company's internal division of responsibilities.

Decision on Price-sensitivity

Clarification: Issuer's assessment of price-sensitivity is a discretionary decision.

Issuer can follow its internal decision-making process

- No requirements regarding internal organization / decision-making process under SIX-rules, other than:
 - ensure “up-the-ladder reporting”
 - timely fulfillment of disclosure duties
- Internal policy not required, but recommended

Issuer's *ex ante* assessment as a discretionary decision

- SER to exercise restraint when reviewing the decision, as long as
 - proper decision-making process
 - relevant information available at the time was appropriately considered
 - no obviously unsuitable criteria were used
- Documentation not required, but recommended

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New obligation to disclose general blackout periods in the Corporate Governance Report.

— **Best practice and recommended by the Swiss Code of Best Practice for Corporate Governance**

- Prevention of (suspected) insider dealing

— **Disclosure regarding *general* blackout periods**

- Deadlines
- Addressees
- Scope
- Exceptions

— **No disclosure of**

- Actual dates
- Exceptions granted and reasons therefor
- Specific / ad hoc blackout periods (e.g., during postponement of disclosure)
- Quiet periods (no talks with analysts)

— **Comply or explain?**



Please reach out in case of any questions.



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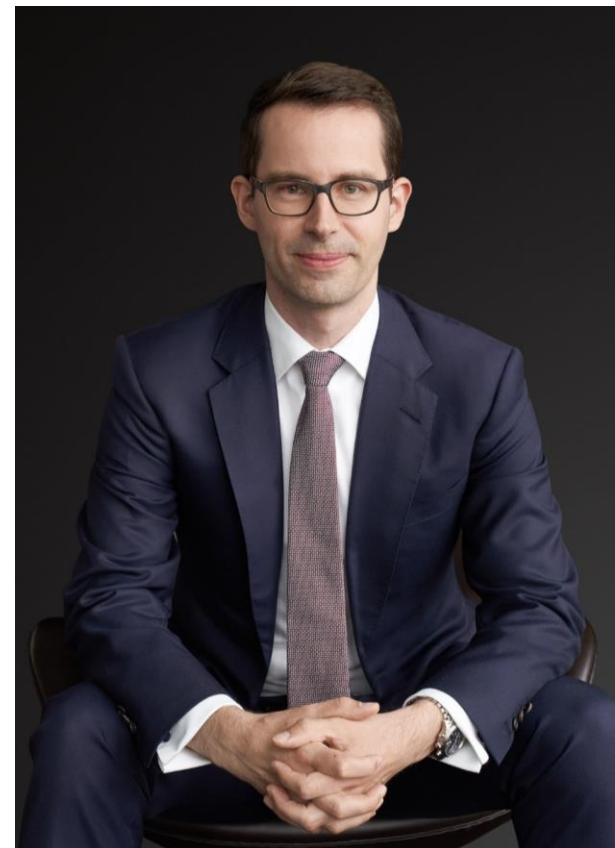
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