AWARD

OF THE SIX SWISS EXCHANGE COURT OF ARBITRATION

[…]

IN THE MATTER OF

X AG [...]

Claimant

SIX Swiss Exchange AG, SIX Exchange Regulation [...]

Respondent

I. Facts

A.

1. X AG is a major bank incorporated under the laws of Switzerland with its registered seats in X and with offices in more than 50 countries, including all major financial centres. Its main activities include private banking, investment banking and wealth management. X AG is organized as a company limited by shares ("*Aktiengesellschaft*") pursuant to Swiss company law (as set forth in Art. 620 et seq. of the Swiss Code of Obligations).

2. X AG is a shareholder of SIX Swiss Exchange AG and its shares are listed on that exchange.

B.

3. SIX Swiss Exchange AG (so called since the reform of SWX Swiss Exchange in September 2008) is the Swiss securities stock exchange. It is organized as a company limited by shares, incorporated under the laws of Switzerland and headquartered in Zurich. The most important stock index on SIX Swiss Exchange AG is the Swiss Market Index. Though SIX Swiss Exchange AG is a commercial company governed by private law, it plays a significant regulatory role as it defines the requirements for the listing and maintaining the listing on the SIX Swiss Exchange, as part of self- regulation provided for under the Federal Act on Stock Exchanges and Securities Trading of 24 March 1995 (Stock Exchange Act [**SESTA**]; RS 954.l; see SIX Group, in Marc Bauen/Nicolas Rouiller, Swiss Banking, Schulthess 2013, pp. 20-22).

4. Article 1 of the Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Act [**FMIA**]; RS 958.1) sets out the organisation and operation of financial market infrastructures, and the conduct of financial market participants in securities and derivatives trading. It aims to ensure the proper functioning and transparency of securities and derivatives markets, the stability of the financial system, the protection of financial market participants and equal treatment of investors.

5. FINMA is a Swiss independent financial market supervisory authority. It was given statutory powers with regard to the regulation of the stock market in order to safeguard the legitimate interests of issuers and investors (cf. FMIA and Federal Act on the Swiss Financial Market Supervisory Authority of 22 June 2007 [Financial Market Supervision Act {**FINMASA**}]; RS 956.1). FINMA granted an authorization to SIX Swiss Exchange AG to operate a stock exchange (Article 4 FMIA [new] / Article 3 SESTA [old]). SIX Swiss Exchange AG is, therefore, responsible for the self-regulation of the market it manages, which means that it guarantees adequate organisation, administration and surveillance of this market. Its regulations are subject to FINMA's approval (Article 27[4] FMIA [new] / Article 4 SESTA [old]). SIX Swiss Exchange AG is required to

adopt the following regulations: (i) *regulation ensuring market organization* in order to ensure efficiency and transparency of the market, (ii) regulation on admission of securities dealers aiming to ensure compliance with the principle of equal treatment, and (iii) regulation on admission of securities, including requirements on the tradability of securities and the information to be provided to investors and allowing them to evaluate the characteristics of securities and the quality of the issuer. In light of the above, SIX Swiss Exchange AG issued its Listing Rules on 23 April 2009 (LR), as last revised on 1 April 2016. The LR provide for the obligation of the issuer to disclose potentially price-sensitive facts and how this obligation needs to be fulfilled (Articles 53-54 LR). The LR also provide for a penalty system that can be modulated depending on the degree of fault (Articles 59-60 LR).

C.

6. The legal regulations governing listing provide for a multi-tiered appeals procedure before different judicial bodies.

7. Pursuant to Article 1.2 of the SIX Group Ltd Rules of Organisation for the Regulatory Bodies of the Group's exchanges (hereinafter: the "RBOR"), the "Regulatory Bodies" are the "Regulatory Board", the "Sanctions Commission", the "Appeals Board" and the "Board of Arbitration" as well as the "SIX Exchange Regulation".

8. Pursuant to Article 62(2) LR, appeals may be lodged against the decisions and preliminary decisions of the "Regulatory Board" to the "Appeals Board" within 20 trading days of their issue or publication. Appeals against the decisions of the "Appeals Board" may, in turn, be lodged with the "SIX Swiss Exchange Board of Arbitration" within 20 trading days. Article 5.3(1) of the SIX Swiss Exchange Regulation Rules of Procedure (RP) provides that the decisions issued by the Sanctions Commission - which is a Regulatory Body according to Article 1.2 RBOR - regarding the exclusion of participants and traders, as well as the delisting or suspension of securities may be challenged by submitting an appeal to the "Appeals Court" within 20 trading days of receiving the decision in question.

9. Where other decisions of the Sanctions Commission are concerned, a complaint may be filed with the SIX Swiss Exchange "Court of Arbitration" within 20 trading days of receiving the decision in question (Article 5.3[2] RP). Such body, denominated "Board of Arbitration" by the LR and the RBOR and "Court of Arbitration" by RP, shall hereinafter be referred to as the "**Court of Arbitration**". Indeed, the basis for jurisdiction of this judicial body in the present proceeding is contained in Article 5.3(2) RP.

10. The Court of Arbitration is based in Zurich and comprises one chairman and two arbitrators, one appointed by each of the parties in the individual case in question. The Chairman and his deputy are appointed by the President of the Swiss Federal Supreme Court for a four-year term of office. The Chairman may conduct verbal conciliation proceedings. The Swiss Federal Code of Civil Procedure is applicable to the arbitration proceedings.

D.

11. Following a contradictory proceeding between Claimant and Respondent, initiated by SIX Swiss Exchange AG on 14 December 2012 for breach of its Directive on *Ad hoc* Publicity (Directive on *Ad hoc* Publicity, "**DAH**"), the Sanctions Commission rendered a decision on 16 March 2015 (hereinafter: the "**Sanctions Decision**"). The operative part ("*Dispositiv*") of the Sanctions Decision is as follows:

> *"1. X AG has breached its obligations pursuant to art. 54 para. 2 LR in connection with art. 17 para. 2 DAH:*
>
> *a) by not reacting to a leak regarding the impending strategy decision with publication of an Ad hoc notice at the latest on Monday, 29 October 2012, 7.30 a.m. CET; and*
>
> *b) by not reacting to a leak regarding impending fines in LIBOR-related investigations with publication of an Ad hoc notice at the latest on Monday, 17 December 2012, 7.30 a.m. CET.*
>
> *2. A fine of CHF 3 million is imposed on X AG.*
>
> *3. X AG shall pay the costs of the sanction procedure of CHF (...).*
>
> *4. This decision having acquired legal force shall be published by SIX Exchange Regulation.*
>
> *5. X AG may file an appeal with the Court of Arbitration within 20 trading days(. . .)".*

The grounds for this decision shall be described and analysed below under the chapter entitled "*II Legal Analysis*".

E.

12. The facts regarding the Strategy Decision (as defined below) are as follows:

13. In its weekend edition of 27/28 October 2012, the [...] published an article on its front page reporting precise information on the adoption of a new strategy by X AG. Reportedly this information had been leaked by two persons close to the situation and a third one familiar with the planned reform. When the stock market opened on the following Monday morning, the X AG's shares soared.

14. From autumn 2011 to autumn 2012, X AG developed a strategy change which was notably motivated by the strengthening of the international banking regulation standards (Basel III). The planned reform's aim was to maintain operations in this highly competitive sector through a targeted reduction of the risk weighted assets. The new strategy involved a resizing of the Investment Bank which was thought to become more cost-effective after abandoning less profitable activities and reducing the number

of employees from about 64,000 to around 54,000 (hereinafter also referred to as: the "**Strategy Decision**").

15. In November 2011 on occasion of the X AG Investor Day, X AG published an *Ad hoc* release in which important updates of its strategy and capital plans were declared. The Investment Bank was announced to be more focused, less complex and to reduce its risk-weighted assets and, hence, require less capital to produce sustainable returns for the shareholders.

16. On 26 July 2012, a Private Board of Directors Meeting was held. The Board members were informed by the group Chief Executive Officer that further steps were to be taken towards a strategy change in the Investment Bank. The Board members were also informed that a small team had been put together to review possible scenarios for the Investment Bank, up to and including exiting the Investment Bank.

17. On 24 August 2012, another Private Board of Directors Meeting was held. According to the minutes of that meeting, A updated the members on the strategy review and declared that the Group Executive Board of X AG (hereinafter: the "Group Executive Board") would hold their strategy off-site on 5 and 6 September 2012. A concurred with B's assessment that "*dramatic cuts in headcount*" needed to be made and noted that the Chief Executive Officer was moving in that direction as well.

18. At its off-site strategy meeting on 5 and 6 September 2012, the Group Executive Board discussed the following four scenarios for the future of the Investment Bank:

    i. "*Base Case*": continued operation of the Investment Bank without fundamental changes to its scope and size beyond the exits decided in November 2011;

    ii. "*Fine-tune IB*": significant further downsizing of the Investment Bank by exiting various parts of its operations relating to fixed income, currencies and commodities, although other significant parts thereof would be maintained;

    iii. "*Specialized IB*": this scenario went further in the direction of the "*Fine-tune IB*" scenario, calling for a complete exit from the fixed income, currencies and commodities operations with few exceptions;

    iv. "*IB exit*": exiting the Investment Bank altogether.

19. In September 2012, Claimant's management worked on the four scenarios, in order to present them to the Board of Directors at the meeting to be held on 27 September 2012. An *Ad hoc* strategy committee was set up to prepare the Board of Director's discussion about the proposals. This committee pre-discussed the four scenarios at a meeting on 18 September 2012.

20. On 25 September 2012, the Group Executive Board of X AG held a meeting in Sydney, during which the different scenarios were discussed.

21. The Group Executive Board held another meeting on 27 September 2012 where it reviewed the future strategy of the Investment Bank. According to the minutes, a

consensus was emerging among the Board of Directors and the Group Executive Board members about the "specialized IB" scenario. The Group Chief Executive Officer added that the Group Executive Board would then drill down on the financial impact of the "specialized IB" scenario with the goal of presenting a clear recommendation to the Board of Directors at the October meeting in New York.

22. A envisaged the following timeline: the *Ad hoc* Strategy Committee would reconvene in mid-October 2012 with the formal proposal by management to be submitted for the Board of Directors meeting on 25 October 2012. The final decision by the Board of Directors was scheduled for 29 October 2012, just before X AG's 2012 third quarter results presentation on 30 October 2012.

23. At the meeting of 17 October 2012, the Audit Committee, the Board of Directors' *Ad hoc* Strategy Committee and the Group Executive Board focused on the impact of the "specialized IB" scenario while discarding scenarios 2 and 4. According to the minutes, the meeting's participants expressed their satisfaction with the recommended scenario and it was noted that it was necessary to tackle a number of important tasks already ahead of a possible announcement on 30 October 2012, including communication, human resources, risk and operating issues.

24. On Thursday, 25 October 2012, the Board of Directors as a whole convened in New York where it was updated on the third quarter 2012 financial results as well as the final version for the strategy discussion, including the "specialized IB" scenario. This scenario was explained in detail, including future financial targets resulting from it. According to the minutes, around 10,000 redundancies would be made over the course of the following three years. The Board of Directors was informed of what had to be done and by whom, including communication, human resources, risk and operating issues. According to the minutes, no other scenario was discussed.

25. By Monday, 29 October 2012, the materials for the Board of Directors meeting had been made available to its members. The presentations that constituted the key documentation for the Board of Directors meeting of 25 October 2012 had been amended and slightly updated with regard to management's latest estimates of the likely financial consequences of the proposed Strategy Decision.

26. In the evening of 29 October 2012, the Audit Committee held a 30 minutes telephone conference call which was followed by a Board of Directors meeting via conference call which lasted from 5:30pm until 6:30pm. During that meeting, the Board of Directors approved the Three Year Strategic Plan and the Operating Plan 2013 (which included the "specialized IB" scenario). The Board of Directors also approved the 2012 Third Quarter Report and approved C as the new Chief Executive Officer of the Investment Bank following the stepping down of D from the Group Executive Board and his appointment as [...] Management, effective 1 November 2012.

27. The article published on Saturday, 27 October 2012 by the (…) under the headline "[…] eyes 10,000 job cuts in revamp" reported that:

i. X AG would announce a split of its Investment Bank the following Tuesday, i.e. 30 October 2012;

ii. X AG would bring large parts of its fixed income trading business into a non-core unit, leaving a reduced Investment Bank with equities trading, foreign exchange and advisory roles;

iii. the non-core unit would be headed by D ([...]) and would be wound down over time. C ([...]) would head the remaining Investment Bank;

iv. the move would result in a loss of up to 10,000 jobs which amounted to almost one-sixth of X AG's workforce of 63,500 employees (number of employees as of the end of June 2012). The job cuts would come on top of a continuing program announced in 2011 to cut 3,500 jobs. The job cuts would not happen at once and the precise number was still unclear;

v. this strategy was hammered out in several executive board meetings in New York the week before and was set to be announced the following Tuesday, i.e. 30 October 2012;

vi. the split of the Investment Bank would lead to another reduction in risk-weighted assets of up to EUR 100 billion.

28. A preview of the abovementioned article with the same content had already been published on [...] in the evening of Friday, 26 October 2012. Various Swiss media also reported the apparently imminent changes in the Investment Bank and the resulting job cuts: [...] on Monday, 29 October 2012, [...] on Saturday, 27 October 2012, and [...] on Sunday, 28 October 2012.

29. In the morning of Monday, 29 October 2012, Claimant's shares opened at CHF 12.60 (+ 3% compared to closing price on Friday, 26 October 2012) and rose steeply over the day. At 5.30pm CET when the Swiss market closed, Claimant's shares had reached CHF 13.12, i.e. + 7.2%.

30. The final decision on the adoption of the new strategy was taken by the Board of Directors in the evening of 29 October 2012. On the following day, Claimant published two *Ad hoc* notices entitled "[...] announces strategic acceleration from a position of strength" and "[...] third-quarter 2012 results". Claimant announced that:

i. its Investment Bank would be significantly reshaped;

ii. it would concentrate on its traditional strengths in advisory, research, equities, foreign exchange (FX) and precious metals and exit certain business lines, predominantly those in fixed income;

iii. C would lead the Investment Bank with immediate effect. D having stepped down from the Group Executive Board, would lead the management of the exited investment banking businesses and positions which would be transferred to, and reported in, X AG's Corporate Center;

iv. it would reduce costs significantly while driving further efficiencies across the group more rapidly. By 2015, X AG would be likely to have a headcount of around 54,000 (corresponding to a reduction of roughly I 0,000 jobs compared to the headcount of 64,000 as of 30 October 2012);

v. Basel III risk-weighted assets in the Investment Bank of about CHF 300 billion at the time of the press release were targeted to be reduced by about CHF 145 billion, or almost 50 % by 2016.

31. On the following day, Claimant described the group results in its Third Quarter 2012 Report as follows:

"Third quarter net loss attributable to [...] shareholders was CHF 2,172 million, compared with a profit of CHF 425 million in the second quarter. The pre-tax loss was CHF 2,516 million compared with a profit of CHF 951 million in the prior quarter, mainly reflecting impairment losses of CHF 3,064 million on goodwill and other non-financial assets in the Investment Bank, as well as an own credit loss of CHF 863 million compared with a gain of CHF 239 million in the prior quarter. Adjusted for the impairment losses, the own credit loss and restructuring releases, we recorded a pre-tax profit of CHF 1,389 million in the third quarter of 2012. In the third quarter, significant increases were seen in net interest and trading revenues excluding own credit, as well as net fee and commission income and other income, partly offset by higher operating expenses. We recorded a tax benefit of CHF 345 million, compared with an expense of CHF 253 million in the prior quarter. Net profit attributable to non-controlling interests decreased from CHF 273 million to CHF 1 million, as the prior quarter reflected dividends in preferred securities".

F.

32. The facts regarding LIBOR are as follows:

33. X AG has been involved in a case of worldwide impact triggered in 2008 by the discovery of LIBOR rate manipulations. LIBOR stands for London Interbank Offered Rate and is the name given to the interbank average rate at which banks lend or borrow money from other banks in order to meet their short term financing needs. Such rates have direct impacts on the whole financial sphere, in particular on financial derivatives but also on loans to companies and private households.

34. Since 2009, public authorities in the United States of America, the United Kingdom, Switzerland and Japan conducted investigations relating to alleged LIBOR rate manipulations by banks participating in the process of the British Bankers' Association for setting LIBOR rates.

35. Between 15 November 2012 and 15 December 2012, various major financial newspapers reported settlement agreements between X AG and the aforementioned supervisory authorities. The result of these settlements was, eventually, the settlement of the disputes around the LIBOR manipulations upon payment of a global amount of USD 1.4 billion by X AG. On Thursday, 15 November 2012, […] published an article stating that after Y's settlement of rate-rigging allegations with U.S. and U.K. regulators, several other banks were negotiating similar settlements and mentioned that "*Switzerland's […] AG currently is positioned to be the next bank to reach a settlement.*"

36. On Wednesday, 12 December 2012, [...] reported under the title "[...] settlement nears": *"[...], meanwhile, is in advanced settlement negotiations with (authorities) (. . .). The bank's eventual fine, which could come before Christmas, may top [...]'s settlement (...)".*

37. On Thursday, 13 December 2012, [...] reported that X AG was *"in final negotiations with American, British and Swiss authorities to settle accusations that its employees reported false rates, a deal in which the bank's [...] unit is expected to plead guilty to a criminal charge, according to people briefed on the matter (...)". According to the report, X AG "could/ace about $1 billion in fines and regulatory sanctions".*

38. On Saturday, 15 December 2012, [...] reported that X AG would have to pay LIBOR-related fines of nearly CHF 1.5 billion. On Sunday, 16 December 2012, [...] reported that X AG's [...] subsidiary was about to plead guilty. The same day, [...] published an article with the title "PRESSE/[...]/Höhe von Libor-Strafzahlung bis zu 1,5 Mrd CHF - Verurteilung möglich". On Monday, 17 December 2012, [...] reported that *"[...] [was] close to finalizing a deal with UK, US and Swiss authorities in which the bank [would] pay close to USD 1.5 billion and its [...] securities subsidiary [would] plead guilty to a US criminal offence".* At a CHF/USD exchange rate of 0.92 as at 17 December 2012, USD 1.5 billion was approximately equal to CHF 1.4 billion.

39. On Wednesday, 19 December 2012 at 7:00 a.m. CET, X AG published an *Ad hoc* notice announcing that its Board of Directors had authorized settlements of LIBOR-related claims with US and UK authorities and that FINMA would issue an order concluding its formal proceedings with respect to X AG.

40. X AG announced that it would pay approximately CHF 1.4 billion in fines and disgorgement to settle LIBOR-related investigations. The total amount consisted of GBP 160 million in fines payable to the FSA, USD 700 million in fines payable to the CFTC, USD 500 million in fines payable to the US Department of Justice and CHF 59 million in disgorgement of estimated profits to FINMA. As part of the settlement with the DOJ, [...] agreed to enter a plea to one count of wire fraud relating to the manipulation of certain benchmark interest rates, including [...] LIBOR.

41. On Wednesday, 19 December 2012, the day when Claimant's LIBOR *Ad hoc* release was published before trading opening, Claimant's share price did not show any

unusual movement (closing at CHF 15.20 on that day compared to CHF 15.25 the trading day before, moving afterwards between CHF 15.16 and CHF 15.62 during the day), nor was the trading volume exceptional.

* * *

42. Toe record shows that in its 2010 Annual report, X AG made an initial disclosure regarding LIBOR and reported that investigations were ongoing. Thereafter, such disclosure was updated on a virtually quarterly basis to inform investors.

43. From early October 2012, the investigations entered into a stage of intense settlement negotiations, which were conducted primarily between Claimant's external counsel and members of the various public authorities. During negotiations, such members mentioned amounts of monetary penalties that were requested from X AG and which were then heavily negotiated.

44. In the days before 18 December 2012, the settlement discussions with various agencies were still ongoing and the outcome was uncertain. Such uncertainty was related to both, i.e. whether the negotiation teams could agree on settlement terms to present for approval to the decision-makers on either side, and on the other hand whether such approval would, eventually, be given.

45. In the evening of 18 December 2012, a meeting was held by the Board of Directors in order to deliberate and decide on whether to authorise settlements on the terms that had been negotiated with the various authorities. During this meeting, the Group Executive Board of X AG made a recommendation to the Board of Directors to authorise the settlement. The Board of Directors granted the requested authorisation and on 19 December 2012 at 7am CET, X AG published its LIBOR *Ad hoc* release.

G.

46. On 16 April 2015, pursuant to Article 372(1)(a) of the Swiss Civil Procedure Code (Civil Procedure Code, "**CPC**"; RS 272), X AG, represented by [...], Attorneys-at-law in Zurich, filed a Request for Arbitration and Preliminary Statement of Claim (hereinafter: the "**Request for Arbitration**") with the Chairman of the Court of Arbitration (who had been appointed in accordance with the rules mentioned under letter D. above) and in essence requested that the Sanctions Decision be set aside 53 exhibits were attached to the Request for Arbitration, numbered from 1 to 53.

47. Claimant initially made the following Prayers for Relief:

*" **(a) As to the merits:***

(i) To set aside in its entirety the decision of the Sanctions Commission of Respondent of 16 March 2015.

(ii) To declare that Claimant has not breached its obligations pursuant to art. 54 para. 2 of the Listing Rules of the SIX Swiss Exchange (in connection with art. 17 para. 2 of the Directive on Ad hoc Publicity) in respect of the facts set out in the decision of the Sanctions Commission, in either of the cases therein described.

(iii) To declare the sanction proceeding conducted by Respondent against Claimant closed without the imposition of any sanction.

(iv) Eventualiter: to declare that if Claimant has breached its obligations pursuant to art. 54 para. 2 of the Listing Rules of the SIX Swiss Exchange (in connection with art. 17 para. 2 of the Directive on Ad hoc Publicity), in respect of the facts set out in the decision of the Sanctions Commission, it has not acted with fault and therefore cannot be sanctioned for such breach, and accordingly to set aside no. 2 of the decision of the Sanctions Commission.

(v) Subeventualiter: to declare that if Claimant has breached its obligations pursuant to art. 54 para. 2 of the Listing Rules of the SIX Swiss Exchange (in connection with art. 17 para. 2 of the Directive on Ad hoc Publicity), in respect of the facts set out in the decision of the Sanctions Commission, it has acted only with negligence, and to appropriately reduce the fine imposed pursuant to no. 2 of the decision of the Sanctions Commission.

(vi) To grant Claimant any further or other relief that may be appropriate.

(b) As to costs:

(i) To order Respondent to pay any and all arbitration costs (fees and disbursements of the arbitrators).

(ii) To order Respondent to fully compensate Claimant for all its party costs and expenses in connection with the present arbitral proceedings, including its attorney's fees and such other costs as Claimant will specify in due course."

H.

48. By an introductory decision of 24 April 2015 ("einleitender Präsidialbeschluss"), the Chairman of the Court of Arbitration took note that Claimant had appointed [...], Attorney-at-law in Zurich, as arbitrator. [...] submitted a Declaration of independence dated 15 April 2015 for the record. The Chairman also took note that the parties had accepted [...], Attorney-at-law in Lausanne, as legal secretary of the Court of Arbitration. The Chairman allowed SIX Swiss Exchange AG a deadline to appoint its own arbitrator and declared at that time that he would renounce to open a conciliation proceeding. The Chairman also took note of the parties' agreement to freely correspond in German throughout the

proceeding even though the challenged Sanctions Decision and the Request for Arbitration were written in English.

49. Respondent appointed [...], Professor at the University [...], as an arbitrator. On 19 April 2015, [...] accepted the mandate and filed a Declaration of independence for the record.

50. By ordinance of 21 May 2015, the Court of Arbitration confirmed the introductory decision. The Court of Arbitration observed that its jurisdiction had not been challenged and that in absence of specific rules adopted by the parties, the CPC would apply, that the applicability of chapter 12 of the Swiss Private International Law Act had been excluded by the parties, and that the Court of Arbitration would determine the procedure, in case need be (Article 373 (2] CPC). The Court of Arbitration reminded the parties that, under penalty of foreclosure, irregularities or procedural flaws had to be raised immediately before the Court of Arbitration and observed that the parties had not used the possibility to agree that the arbitral award may be contested by way of an appellate remedy to the cantonal court that has jurisdiction pursuant to Article 356(1) CPC, as allowed by Article 390 CPC.

51. The Request for Arbitration was granted suspensive effect, notably regarding the payment of the fine and the publication of the challenged decision. Finally, the Court of Arbitration reserved its right to hold conciliation proceedings at a later point of the proceedings.

52. The Court of Arbitration also decided, with the parties' approval, that even if the language of the proceeding was English, the presidential decisions, the procedural ordinances of the Court of Arbitration as well as any communication from the Chairman would be written in German, which is also the language to be used during oral proceedings.

53. The advance fees were set at CHF [...] by the Court of Arbitration. The parties both paid half of this amount within the set deadline.

I.

54. Within the deadline set by the Court of Arbitration, Respondent filed its answer on 12 June 2015 (hereinafter: the "**Answer**"). 49 exhibits numbered from 54 to 102 were attached to the Answer. Respondent requested from Claimant the production of various documents and made the following Prayers for Relief:

> *"1. Claimant's Prayers for Relief shall, to the extent they are admissible, be rejected.*
>
> *2. Claimant shall be ordered to pay a fine in the amount of CHF 3 million and the costs of the proceedings so far incurred in the amount of CHF [...].*
>
> *3. Costs for the proceedings before this Tribunal shall be borne by Claimant in full and Claimant shall be ordered to fully compensate Respondent for its costs and expenses incurred in connection with the proceedings before this Tribunal."*

55. Furthermore, SIX Swiss Exchange AG raised objections to the admissibility of Claimant's Prayers for Relief (ii), (iii), (iv), (v) and (vi) of the Request for Arbitration and asked the Court of Arbitration not to deal with these. According to Respondent, in cases where a party requests a declaratory judgement from a court (action for declaratory relief; *action en constatation de droit*; *Feststellungsbegehren)*, such party must demonstrate that (a) it has an own specific legal interest in such a declaration, and that (b) an action for performance (*action condamnatoire*, *Leistungsklage*) would not be a sufficient remedy, due to the specific circumstances at hand (subsidiarity of actions for declaratory relief).

J.

56. The Court of Arbitration ordered a second exchange of written submissions.

57. On the joint request of the parties, the Court of Arbitration extended the deadline to file the reply to Respondent's Answer (hereinafter: the "**Reply**") and the rejoinder to Claimant's Reply (hereinafter: the "**Rejoinder**"). Furthermore, the Court of Arbitration ordered that a preliminary hearing on evidence-gathering be held on 8 December 2015. The parties filed their submissions within the extended deadline. Claimant submitted its Reply on 17 August 2015. Exhibits numbered from 103 to 115 were attached to the Reply. Respondent submitted its Rejoinder on 16 October 2015. Exhibits numbered from 116 to 122 were attached to it. Both, Claimant and Respondent essentially confirmed *mutatis mutandis* their respective previous Prayers for Relief.

K.

58. In the Reply, Claimant restated and extended its Prayers for Relief as follows:

> *"**(a) As to the merits:***
>
> *(i) To set aside in its entirety the decision of the Sanctions Commission of Respondent of 16 March 2015.*
>
> *(ii) To declare that Claimant has not breached its obligations pursuant to art. 54 para. 2 of the Listing Rules of the SIX Swiss Exchange (in connection with art. 17 para. 2 of the Directive on Ad hoc Publicity) in respect of the facts set out in the decision of the Sanctions Commission, in either of the cases therein described.*
>
> *(iii) To declare the sanction proceeding conducted by Respondent against Claimant closed without the imposition of any sanction.*
>
> *(iv) Eventualiter, to declare that if Claimant has breached its obligations pursuant to art. 54 para. 2 of the Listing Rules of the SIX Swiss Exchange (in connection with art. 17 para. 2 of the Directive on Ad hoc Publicity), in respect of the facts set out in the decision of the Sanctions Commission, it has not acted with fault and therefore cannot be sanctioned for such breach, and accordingly to set aside no. 2 of the decision of the Sanctions Commission.*

(v) *Subeventualiter, to declare that if Claimant has breached its obligations pursuant to art. 54 para. 2 of the Listing Rules of the SIX Swiss Exchange (in connection with art. 17 para. 2 of the Directive on Ad hoc Publicity), in respect of the facts set out in the decision of the Sanctions Commission, it has acted only with negligence, and to appropriately reduce the fine imposed pursuant to no. 2 of the decision of the Sanctions Commission.*

(vi) *To reject Respondent's Prayer for Relief no. 2.*

(vii) *To grant Claimant any further or other relief that may be appropriate.*

(b) As to costs:

(i) *To order Respondent to pay any and all arbitration costs (fees and disbursements of the arbitrators).*

(ii) *To order Respondent to fully compensate Claimant for all its party costs and expenses in connection with the present arbitral proceedings, including its attorney's fees and such other costs as Claimant will specify in due course.*

(iii) *To reject Respondent's Prayer for Relief no. 3."*

L.

59. In the Rejoinder, Respondent repeated its Prayers for Relief submitted in the Answer and insisted that the admissibility of Claimant's newly introduced Prayer for Relief n° (vi) be denied or dismissed by the Court of Arbitration in case it was deemed to be admissible.

M.

60. According to Claimant, where a decision is entirely in the discretion and control of an issuer and there are no independent, external facts accompanying its decision-making process, only the decision by the issuer's competent corporate body constitutes a fact under Article 53 LR, to the exclusion of preparatory steps leading towards it. There was allegedly no disclosable "fact" until Claimant's Board of Directors decided on the strategy change for the Investment Bank in the evening of 29 October 2012. In the absence of such a fact, X AG had no obligation to immediately react to press reports potentially originating from a leak.

61. With regard to the LIBOR-related settlements, Claimant denies having breached its obligation to issue an *Ad hoc* publicity release prior to 19 December 2012 and argues in particular that no potentially price-sensitive fact had existed prior to 19 December 2012.

62. Respondent asserts that Claimant violated the Listing Rules, in particular Articles 53 and 54(2) in conjunction with Article 17(2) DAH. According to Respondent, it is not

always necessary for the Board of Directors to take a formal, final and binding decision on an issue for there to be a "fact" within the meaning of Article 53 LR. According to Respondent, the outcome of the decision taken by the Board of Directors allegedly was fully predictable at the time of the leak and was in fact a mere formality which Claimant wanted to occur on 29 October 2012, for communication reasons (publication together with the quarterly financial results on the next day). Because a leak occurred and that leak was in essence accurate and accurately reported by the media, X AG was obligated to react immediately by publishing a clarifying *Ad hoc* notice.

63. According to Respondent, Claimant's position that the general public had already been expecting the LIBOR settlements in the form and with the content they were ultimately concluded (prior to the respective leak) is not only irrelevant and contested, but also a mere assertion of facts. According to Respondent, the facts published were potentially price-sensitive.

64. In its Reply of 17 August 2015, Claimant insisted that participants to the strategy reform supposedly always had a clear understanding that they were not expected to take any decisions, and that the contemplated acceleration of changes in the Investment Bank's strategy was something that remained subject to the decision of the Board of Directors scheduled for 29 October 2012, and therefore uncertain.

65. Regarding LIBOR, Claimant maintains that the terms it negotiated and finally agreed upon with different authorities in December 2012 were not sufficiently different from what market participants expected, having the potential to "*affect the average market participant in his investment decision*".

66. In its Rejoinder, Respondent stressed that a fact within the meaning of Article 53 LR already existed as of 26 October 2012 and, hence, before the final and formal vote of Claimant's Board of Directors on 29 October 2012. Thus, because of the leak an immediate *Ad hoc* release would have been due. Regarding LIBOR, Respondent holds that the information was price-sensitive.

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67. The Court held an internal session in the morning of 8 December 2015. At the end of the preliminary hearing of the same day, the parties signed a procedural order which scheduled the witnesses' hearings on 19 and 22 January 2016.

68. Two successive deadlines were given to the parties on 6 and 14 January 2016 to mention the chronological order in which their witnesses should be heard as well as the main topics of their hearing.

69. In the same document, the closing hearing date was set for 29 February 2016.

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70. Within the granted deadline, the parties provided the identity of the persons asked to be heard. The parties also specified the hearing topics for each person.

71. With the approval of his co-arbitrators, the Chairman of the Court of Arbitration issued a presidential decision ("Präsidialbeschluss Nr. 2") in which he set the rules applying to cross-examinations to be followed at the hearing. After the cross-examination by both parties, the abovementioned persons were heard by the Court of Arbitration. Each person was heard in their chosen language. As requested by the parties, their hearing was recorded. The CDs and transcripts were handed over to the arbitrators and to the parties who were asked to submit observations in case any inaccuracies had resulted due to technical problems.

72. The witness hearings took place at the SIX Swiss Exchange AG registered office in Zurich. On 19 January 2016, B, former member of the Board of Directors, E, X AG [...] and F, X AG [...] were heard. On 22 January 2016, G, X AG [...] and H, Partner [...] law firm were heard.

73. Regarding the strategy change, on 19 January 2016, B, E and F declared in unison that at the time of the conference call on 29 October 2012, only one scenario remained pending before the Board of Directors ([...]). E went even further by declaring that in New York, on 25 October 2012, the only sub-scenario envisaged was dropped so that from that very day, only one scenario remained ([...]). In such circumstances, even if a switch to another scenario during the conference call held on 29 October 2012 could not be excluded, such switch was unlikely to happen ([...]). With regard to the conference call of 29 October 2012 F confided that he did not expect the Strategy Decision to be challenged given the heavy prior preparation ([...]). This is in line with the declarations of B, according to whom a non-approval by the Board of Directors of the management's strategy proposal would have come out of the blue ([...]) and that had there been any opposition to it, it would have arisen from the management rather than from the Board of Directors ([...]). It appears from F's testimony that it was prior to the Board meeting held in New York on 25 October 2012 that D was informed that he would have to step down as [...] of the Investment Bank as a consequence of the new strategy to be out in place ([...]).

74. In his testimony of 22 January 2016, G declared that there had been "*some pre-discussions by both [A] and [F] (. . .), a call once in the middle of October and early preliminary discussion with [authority E]. Then, I believe it was the Friday prior to the 29th, so the 26th, [F] had had, and depending on the regulator, had had calls with the regional head, for example, the US also attended the call that he had with the [authority G], for example, and [A] as well"*. ([…]). Indeed, [authority E] actually had knowledge of the new strategy plan. On 29 October 2012, G had a call with [authority E]. Regarding the Board meeting to be held that evening, he mentioned to [authority E] the presentation and the announcement that would be made that evening to the Board of Directors ([...]).

75. Regarding the LIBOR-related issue, H declared on 22 January 2016 that between Friday, 14 December 2012 in the evening and 18 December 2016 when the Board of Directors decided on authorising the settlements, significant aspects of the non-prosecution agreement were negotiated and the "*details on the plea agreement for the [...]*" had to be worked through ([...]). Some documents were said to be missing the day or two before the actual resolution and "*very important details*" still had to be collected ([...]). Still, according to H, it was not before December 2012 that Claimant "*really had the position of the [authority D] as to what they were putting on the table in terms of a resolution, including an amount, guilty plea and non-prosecution agreement (. . .)*" ([...]). H added that disclosure to the authorities "*without advance knowledge*" could have potentially *"jeopardise[d) the entire resolution"* ([...]).

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76. On 22 February 2016, both parties filed Post Witness Hearing Submissions.

77. According to Claimant, the witness statements not only confirmed that the Board of Directors' decision could not have been taken on 25 October 2012, but also gave the reasons for this. Even Respondent's witness, *i.e.* B was said to have confirmed that the Board of Directors was not in a position to take a decision during the meeting held on 25 October 2012.

78. According to Respondent, the witness hearings demonstrated that the outcome of the Board of Director's vote scheduled for 29 October 2012 was virtually certain as from 25 October 2012. Hence, X AG had a publication duty following the leak that occurred on 26 October 2012.

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79. On 25 January 2016, the Court of Arbitration ordered the payment of an additional advance on costs of CHF [...]. Each party paid half of that amount within the set deadline. Given that the parties did not request any, the Court of Arbitration eventually renounced to hold a conciliation hearing.

80. The Court of Arbitration simultaneously authorized the parties to submit written pleadings within the meaning of Article 232(2) CPC and to present oral arguments within the meaning of Article 232(1) CPC.

81. On the scheduled date of 29 February 2016, the parties appeared before the Court of Arbitration in order to comment the results of the evidence-gathering and the case.

82. Both parties confirmed their previous Prayers for Relief.

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83. After the closing of the pleadings on 29 February 2016, the Court of Arbitration rendered a closing ordinance dated 1 March 2016, in which it observed that the parties had accomplished all their legal duties and exercised all their procedural rights. It stated that the Court of Arbitration's decision would be finalized and served on them within a reasonable period of time.

84. The Court of Arbitration deliberated on the matter on 22 March 2016 and finally met on 14 May 2016 in order to finalize the grounds for the judgement.

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85. In total, the Court of Arbitration rendered two presidential decisions and eight procedural ordinances. Several conference calls were held, emails were exchanged and deliberations took place before or after each of the abovementioned hearings.

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86. Facts, declarations and parties' argumentation not referred to above will be taken into account in the chapter entitled "Legal Analysis" below to the extent that they are legally relevant.

II. Legal Analysis

A. Opening remarks

87. As a preliminary remark, the Court of Arbitration must recall that the purpose of the Listing Rules, whose enforcement is the subject of this dispute, is to implement the principles defined in the SESTA. In its message addressed to the Swiss Parliament to support the bill (*Botschaft*), the Federal Council recalled those principles and highlighted that the liberal self-regulatory system governing the Swiss stock market and the financial institutions such as banks can only be maintained if its functioning is perfectly correct (message of the Federal Council of 24 February 1993 in support of the SESTA bill, published in the *Bundesblatt* (BBi) 1993, Volume I, N 17 of 4 May 1993, p. 1369 *et seq*., N 152/153).

88. The message reads as follows:

"[D]ie Finanzmärkte erfüllen eine wesentliche volkswirtschaftliche Funktion, indem sie für eine reibungslose Koordination zwischen Sparen und Investieren im wirtschaftlichen Prozess sorgen. Sie lenken das Kapital dorthin, wo es die höchste Rendite abwirft. Die Börsen dürften in Zukunft bei diesem Prozess an Bedeutung gewinnen. Damit die Finanzmärkte diese Aufgabe effizient erfüllen können, bedarf es eines angemessenen Funktionsschutzes.

Der Funktionsschutz ist eine weitere Ausprägung des Vertrauensschutzes, er ist Vertrauens(kollektiv)schutz. Zielsetzung des Funktionsschutzes ist das Vertrauen des Publikums und der Effektenhändler in die Funktionsfähigkeit der Finanzmärkte. Dieses Vertrauen ist unter dem Aspekt van Treu und Glauben im Geschäftsverkehr schutzwürdig. Anders als beim Anlegerschutz stehen beim Funktionsschutz eher Kollektivinteressen im Vordergrund. Die Börsen müssen Gewähr für eine reibungslose Abwicklung der Transaktionen und eine effiziente Preisbildung bieten. Dazu bedarf es einer ausreichenden Transparenz und Liquidität der Märkte sowie eines Mindestmasses an technischer Zuverlässigkeit, Belastbarkeit und Robustheit von Handels- und Abwicklungssystemen.

Die durch die Automatisierung und Elektronisierung geforderte internationale Ausrichtung des Handels erfordert unter dem Aspekt des Funktionsschutzes eine nationale, international harmonisierte Gesetzgebung. Schocks auf einzelnen Finanzplätzen übertragen sich infolge der weltweiten Vernetzung rasch auf andere Plätze. Ein eidgenössisches Gesetz, das dem gesamten Finanzplatz ein einheitliches Regelwerk verschafft, ist auch geeignet, die Einführung neuer Handelssysteme zu erleichtern." (loc. cit., p. 1382).

89. The rules adopted by Respondent to regulate *Ad hoc* publicity address those objectives and principles, which is not disputed by Claimant. The questions that need to be addressed by the Court of Arbitration, whose jurisdiction includes both public and private law, are whether the facts taken as the basis of the decision against Claimant are established, and in such case whether the imposed sanctions are justified and proportionate to the facts alleged. Those are legal and factual issues that the Court of Arbitration shall consider freely, that is with full freedom of appreciation and latitude of judgement.

B. Jurisdiction of the Court of Arbitration

90. The Court of Arbitration examines *ex officio* whether it has jurisdiction to try the case, even if the parties do not challenge it. *In casu* the jurisdiction of the Court of Arbitration to render a final decision on the merits of the case results from the Declaration of Approval of X AG dated [...] (hereinafter: the "**Declaration of Approval**"), which is itself based on Article 62(2) LR.

91. The Declaration of Approval, originally drafted in German and translated into French and English, reads as follows:

"Der Emittent erklärt betreffend seine sämtlichen zum Handel zugelassenen oder kotierten Effekten, dass / Der Sicherheitsgeber erklärt betreffend sämtliche Effekten, bei denen er als Sicherheitsgeber auftritt, dass:

1. er das Kotierungsreglement, die Reglemente, die Zusatzreglemente und die Ausführungserlasse sowie die Verfahrensordnung, das Reglement für die Beschwerdeinstanz und die Gebührenordnung der SIX Swiss Exchange AG (nachfolgend «Rechtsgrundlagen» genannt) zur Kenntnis genommen hat. Er anerkennt diese hiermit ausdrücklich als verbindlich für seine rechtlichen Beziehungen zur SIX Swiss Exchange AG sowie zu den regulatorischen Organen, welche für die Zulassung zum Handel, die Kotierung, die Aufrechterhaltung der Kotierung, die Überwachung und die Durchsetzung der mit der Kotierung verbundenen Pflichten zuständig sind (heute: Regulatory Board, SIX Exchange Regulation, Sanktionskommission, Beschwerdeinstanz).

2. er im Zusammenhang mit den oben erwähnten Rechtsgrundlagen und seinen sämtlichen kotierten Effekten / seinen sämtlichen Effekten, bei denen er als Sicherheitsgeber auftritt, folgende ***Schiedsklausel*** *anerkennt:*

Streitigkeiten mit der SIX Swiss Exchange AG und den regulatorischen Organen, insbesondere auch wegen verhängter Sanktionen, werden ausschliesslich und endgültig von deren Schiedsgericht mit Sitz in Zürich entschieden, nachdem zuvor ein allfälliger interner Instanzenzug gemäss den oben erwähnten Rechtsgrundlagen ausgeschöpft worden ist. Das Schiedsgericht besteht aus einem Obmann und je einem von den Parteien für den einzelnen Fall bezeichneten Schiedsrichter. Der Obmann und sein Stellvertreter werden vom Präsidenten des Bundesgerichtes auf die Dauer von vier Jahren gewählt. Der Obmann kann ein mündliches Schlichtungsverfahren durchführen. Im Weiteren gilt das interkantonale Konkordat über die Schiedsgerichtsbarkeit. Kapitel 12 des Bundesgesetzes über das internationale Privatrecht (IPRG; SR 291) ist in jedem Fall ausdrücklich ausgeschlossen.

3. für den Fall, dass der Emittent seinen Gesellschaftssitz nicht in der Schweiz hat, er anerkennt, dass die Primärkotierung an der SIX Swiss Exchange AG die vollständige Einhaltung der Publizitätspflichten voraussetzt, gleichgültig, ob seine Effekten an einer weiteren Börse zum Handel zugelassen oder kotiert sind;

4. er anerkennt, dass die jeweils aktuellen Fassungen der Rechtsgrundlagen massgebend für seine rechtlichen Beziehungen zur SIX Swiss Exchange AG und zu den regulatorischen Organen sind, nachdem allfällige Änderungen oder Ergänzungen der Rechtsgrundlagen innert angemessener Frist vor ihrem lnkrafttreten auf der Webseite

der SIX Exchange Regulation regulation.com) veröffentlicht und ihm angezeigt worden sind;

5. er anerkennt, dass seine Zustimmung zu den jeweils aktuellen Fassungen der Rechtsgrundlagen Voraussetzung für die Aufrechterhaltung seiner Kotierung ist;

6. er anerkennt, dass sämtliche allfälligen Verweise und elektronische Links (nachfolgend gemeinsam „ Hinweise" genannt) in den Rechtsgrundlagen, darunter auch jene mit „Siehe hierzu auch:", auf verschiedene weitere Rechtsgrundlagen und andere Informationen nicht Bestandteil der entsprechenden Erlasse sind. Es handelt sich um Hinweise, die die Benutzung der Rechtsgrundlagen erleichtern sollen. Es besteht kein Anspruch auf Vollständigkeit der Hinweise.

7. er anerkennt, dass die deutsche Fassung der Rechtsgrundlagen der französischen bzw. englischen Fassung bei Inkongruenzen der verschiedenen Fassungen vorgeht;

8. er anerkennt, dass ausschliesslich schweizerisches Recht anwendbar ist."

92. X AG has an obvious legitimate interest to request the Court of Arbitration to set aside in its entirety the Sanctions Decision. This decision sanctioned Claimant's conduct following an alleged breach of its legal obligations imposed by the Federal stock market legislation in the field at stake here.

93. SIX Swiss Exchange AG's capacity as a Respondent results not only from its legitimate interests as a company limited by shares but also from the fact that it is a regulatory institution with public functions that the abovementioned stock market legislation aims to safeguard.

94. The procedural requirements being satisfied, the Court of Arbitration has jurisdiction to hear the case.

C. Strategy Decision

95. Claimant complains that the Sanctions Commission committed an error of law by ruling that X AG had breached its obligations by not reacting to a leak regarding the impending Strategy Decision with publication of an *Ad hoc* notice.

96. According to Claimant, no disclosable fact at all did arise in connection with the Strategy Decision until the evening of 29 October 2012 when the Board of Directors actually decided on the change. Therefore, it had no obligation to react to a leak.

97. The Listing Rules were approved by FINMA on 23 April 2009 and entered into force on 1 July 2009. They replaced the previous Listing Rules issued by SIX Swiss Exchange AG as well as various Additional Rules (Article 114 LR).

98. On the date that the alleged breach of obligations by Claimant occurred, the Listing Rules were in force and binding, and Claimant is subject to the obligations and sanctions set out in the Listing Rules.

99. Article 53 LR provides for the obligation of the issuer to disclose potentially price-sensitive facts. The purpose of *Ad hoc* publicity is to ensure market transparency, and equal information, to improve the flow of information and to serve the protection of investors and the proper functioning of the securities market (David Buser, The SIX Swiss Exchange Listing Rules, Stämpfli's Commentary 2014, N 1 ad Art. 53/54; Karin Lorez, Insider Dealing in Takeovers, Developments in Swiss and EU regulation and legislation, SSFM - Schweizer Schriften zum Finanzmarktrecht Band/Nr. 105, Schulthess 2013, p. 123; Felix M. Huber/Peter Hodel/Christopher Staub Gierow, Praxiskommentar zum Kotierungsrecht der SWX Swiss Exchange, Schulthess 2004, N 4 ad Art. 72; Hans Caspar von der Crone, Übernahmerechtliche Grundsätze: Gleichbehandlung, Transparenz und Lauterkeit, in : Schweizerisches Übernahmerecht in der Praxis, Schulthess 2005, p. 1 *et seq*.). Particularly, price-sensitive facts are defined as facts which are capable of triggering a significant change in market prices (Article 53[2], LR).

100. The rules regarding *Ad hoc* publicity are further defined in the DAH and the Commentary on the Directive on *Ad hoc* Publicity ("**DAH Commentary**"), version as of 1 November 2011.

101. According to Article 53 LR, an event or situation in the present or past which can be proven is deemed to be a fact (DAH, N 26 ad Art. 3; Decision by the Committee of the Admission Board dated 1 November 2004 [ZUL/AHP/II/04]). Mere rumours, earnings estimates by third parties, ideas, planning options and intentions are not subject to the scope of the *Ad hoc* publicity (DAH, N 27 ad Art. 3; Decision by the Disciplinary Commission dated 15 May 2002 [DK/AHP/l/02]; Karin Lorez, *op. cit.*, p. 128). But a comprehensive restructuring of the issuer, as well as significant changes in the composition of its board of directors or at the general management level, all constitute potentially price-sensitive facts (SWX Swiss Exchange, Monthly Report May 2003, pp. 54-55).

102. The need for a formal approval of the Board is not always a necessity to assume a fact as will result from the following.

103. Whether or not the Claimant had an obligation to react to the information which leaked between Friday, 26 October 2012 and Monday, 29 October 2012 by publishing an *Ad hoc* notice must be analysed in light of the events occurred.

104. At its off-site strategy meeting on 5 and 6 September 2012, the Group Executive Board discussed the four following scenarios for the future of the Investment Bank:

i. "*Base Case*": continued operation of the Investment Bank without fundamental changes to its scope and size beyond the exits decided in November 2011;

ii. "*Fine-tune IB*": significant further downsizing of the Investment Bank by exiting various parts of its operations relating to fixed income, currencies and commodities, although other significant parts thereof would be maintained;

iii. "*Specialized IB*": this scenario went further in the direction of the "*Fine-tune IB*" scenario, calling for a complete exit from the fixed income, currencies and commodities operations with few exceptions;

iv. "*IB exit*": exiting the Investment Bank altogether.

105. The Group Executive Board of X AG held a further meeting on 27 September 2012 where it reviewed the future strategy of the Investment Bank. According to the minutes, a consensus was already emerging among the Board of Directors and the Group Executive Board members about the "*specialized IB*" scenario. E added that the Group Executive Board would then drill down on the financial impact of the "*specialized IB*" scenario with the goal of presenting a clear recommendation to the Board of Directors at the October meeting in New York, United States of America.

106. At the meeting of 17 October 2012, the Audit Committee, the Board of Directors' *Ad hoc* Strategy Committee and the Group Executive Board focused on the impact of the "*specialized IB*" scenario while discarding scenarios 2 and 4. According to the minutes, the meeting's participants expressed their satisfaction with the recommended scenario and it was noted that it was necessary to tackle a number of important tasks already ahead of a possible announcement on 30 October 2012 including communication, human resources, risk and operating issues.

107. On Thursday, 25 October 2012, the Board of Directors as a whole convened a full in-person meeting in New York and was updated on the third quarter 2012 financial results as well as on the final version for the strategy discussion, including the "*specialized IB*" scenario. This scenario was explained in detail, including future financial targets resulting from it. According to the minutes, around 10,000 redundancies would be made over the course of the following three years. The Board of Directors was informed of what had to be done and by whom, including communication, human resources, risk and operating issues. The record shows that according to the minutes, no other scenario was discussed.

108. On Monday, 29 October 2012, the materials for the Board of Directors meeting had been made available to its members for their conference call meeting, usually used by Claimant in defined circumstances and for yes/no decisions. The presentations that constituted the key documentation for the Board of Directors' meeting of 25 October 2012 were amended and slightly updated with regard to management's latest estimates of the likely financial consequences of the proposed Strategy Decision.

109. The course of events demonstrates that the Strategy Decision had been carefully and thoroughly prepared. The "*specialized IB*" scenario eventually chosen had been intensely discussed for more than three months within the various bodies of Claimant, competent according to its internal organisation, and in particular by the board.

110. The information published by [...] and by other newspapers between Friday, 26 October 2012 and Monday, 29 October 2012 fully matches the aspects detailed in the "*specialized IB*" scenario. Indeed, the information that leaked to the press reflected what had been prepared, intensely discussed and presented to the Board of Directors on 25 October 2012.

111. At the witness hearing on 19 January 2016, B, E and F broadly confirmed that at the time of the conference call held on 29 October 2012, only one scenario was pending before the Board of Directors ([...]). According to E, this was in fact the only scenario which had subsisted since 25 October 2012, when the only envisaged sub-scenario was finally dropped ([...]). Moreover, D had been informed prior to the New York Board meeting of 25 October 2012 of his stepping down from the Group Executive Board and appointment as [...] as a consequence of the new strategy. The *Ad hoc* release issued by Claimant on 30 October 2012 reported the same information.

112. According to Claimant, a disclosable fact within the meaning of the DAH only occurs when the issuer's competent corporate body has adopted a plan or taken a decision (Request for Arbitration, p. 26). Before that, "*while a proposal for the decision or plan is being developed, supporting information prepared analysed and revised within the issuer's organization and other critical preparatory steps such as communications with regulatory authorities are being conducted, the issuer may, in the words of the DAH Commentary, have an [idea] or an [intention], but it has not yet formed a [plan or decision]. No disclosable [fact] therefore exists [...], so that there is also no obligation to react to information leaks*" (Request for Arbitration, pp. 26-27).

113. This argument does not convince. Indeed, the argument of Claimant suggesting that its Board of Director's approval was absolutely imperative to assume a fact in the meaning of Article 53 LR is contradicted by publications of scholars and previous cases decided by Respondent. The purpose of the *Ad hoc* publicity is to prevent insider trading and to put all the participants in the market on the same level of information. For instance, when a new member of the board of directors is to be elected by the shareholders, the proposal of the Board of Directors already constitutes a "fact" which must be disclosed by way of an *Ad hoc* publication - on the condition that other prerequisites are met (Decision by the Sanction Commission dated 18 December 2009 [SaKo-AHP/III/09], N 6 *et seq*.; Sanction Notice by SIX Exchange Regulation dated 22 December 2010 [SER/AHP/I/10], N 65 *et seq*.; Peter Böckli, *Ad hoc*-Publizität: Kursrelevanz als Kernkriterium der Bekanntgabepflicht, SZW 1/2014, p. 12; Anna Peter, Die kursrelevante Tatsache, SSHW, Dike 2015, N 239).

114. The decision by an issuer's executive board to pursue a specific strategy - in contrast to simple ideas and planning options - qualifies as a fact because it sets a binding target to be followed by the issuer (Decision by the Disciplinary Commission dated 15 May 2002 [DK/AHP/I/02], item 2.1 [b]). A fact, e.g., has to be assumed where the potentially price-sensitive figures are already established and known by the top management, regardless of whether the final approval by the responsible body will take place only later. In such a situation the decisive facts already exist and are known to the company, pending only final approval by the responsible body. Particularly in such cases there is the risk that employees use their information advantages for enrichment (DAH Commentary, N 35). As soon as the price sensitive figures are established with reasonable accuracy, issuers must inform the public.

115. As a rule, issuers must not wait to publish an Ad hoc notice until they know all the details of a fact (Decision by the Committee of the Admission Board dated 4 September 2006 [ZUL/AHP/II/06]). To distinguish if there is only an intention or already a plan or a decision, the authority should focus on all the relevant circumstances. A decisive element to take into consideration in this respect is the probability of realization of the fact (Felix Huber/Peter Hodel/Christopher Staub Gierow, op. cit., N 22 ad Art. 72; David Buser, *op. cit.*, N 7 ad Art. 53/54).

116. This Court sees no reason to change this practice. The existence of a fact within the meaning of Article 53 LR does not always require a formal decision to have been passed by the responsible body. To always require a formal decision by the competent corporate body to conclude that there is a fact would in certain cases be contrary to the purpose of the *Ad hoc* publicity requirements as a means of informing the market equally and preventing insider trading.

117. In a complex organisation a strategy change necessarily goes through different steps in its decision making process. At a certain moment in the decision process, options and scenarios which are under consideration may turn into a strategy likely to be implemented, and, therefore, turn into a fact to be published, when the competent decision makers in the company have essentially agreed on the main elements of a strategy change and no fundamental objections subsist.

118. In the present case, the new strategy has been thoroughly discussed at various high level meetings. On 25 October 2012, the strategy was presented by the Group Executive and discussed in detail at the in person meeting of the Board in New York. The Board of Directors eliminated all other scenario but the "*specialized IB*" scenario. This scenario did not meet any fundamental opposition and could, therefore, be submitted to the regulators before the final decision by the Board, which was scheduled for the conference call meeting on 29 October 2012.

119. Claimant has put forward the argument that it was in discussions with the regulators and subject to a confidentiality requirement that would have compelled it to disregard the obligation of the *Ad hoc* requirements when a leak occurred. It is doubtful, whether such a confidentiality requirement could indeed override the publicity obligations of an issuer in the case of a leak. In any event, the record does not show that the regulators imposed a confidentiality requirement on Claimant in this regard.

120. Therefore, it was after the Board meeting of 25 October 2012, at the latest, that the new strategy had become a fact, which, in principle, had to be published, unless Claimant was entitled to postpone the publication for a reasonable period of time, insofar as it ensured absolute confidentiality and was prepared to make an immediate publication in case of a leak (see §§ 122 et seq.). Hence, what [...] had published were no longer simple ideas, rumours, third-party earnings estimates, planning options or intentions but instead real events which can be proven.

121. Claimant produced a legal opinion by [...], who argues that it is only the "binding decision of the competent corporate body itself" which constitutes a fact and that Claimant acted carefully and reasonably "in deciding on the strategy change and on the results for the 3Q 2012, necessarily impacted by such strategy change, in a coherent and well-structured process, leading to one overreaching decision" (p. 6 et seq.). The opinion stresses the fact that the well-structured process put in place by Claimant created more transparency than an isolated *Ad hoc* publication on one element only. This Court agrees that such a process was - in principle - an admissible information plan. However, the reasoning set out in the legal opinion, while constituting a valid argument justifying the postponement of the publication, does not directly address the question of how to react if one information element leaks out before the end of the planned process. Yet, this is precisely the topical question that this Court has to decide in the present case.

122. Pursuant to Article 53(2) LR, the issuer must provide notification as soon as it becomes aware of the main points of the price-sensitive fact, but the disclosure may be postponed if the fact is based on a plan or decision of the issuer and its dissemination might prejudice the legitimate interests of the issuer (Article 54[1] LR). The issuer must ensure that the price-relevant fact remains confidential for the entire time that disclosure is postponed. In the event of a leak, the market must be informed immediately (Article 54[2] LR; Article 17[2] DAH).

123. Under Article 17(1) DAH, information leaks ("**leaks**") are situations in which 'the confidentiality of a potentially price-sensitive fact can, against the issuer's wishes, no longer be ensured. If during the postponement of disclosure, reports appear in the media on facts that largely match the information that is the subject of the postponed disclosure, it must, in most cases, be assumed that this is the result of a leak. This is valid in particular if details are reported that match the secret information. In such a situation a mere rumour can no longer be assumed. An *Ad hoc* notice must, therefore, be published immediately. This also applies if the company assumes that there is no leak, as it is often impossible to determine for certain whether there has been a leak, and, if so, where the leak has occurred (DAH Commentary, N 209).

124. Issuers must take precautions to ensure that they can release information immediately when a leak occurs. It is advisable in the case of legitimate postponement of disclosure to keep a regularly updated notice at hand so that the obligation to disclose the potentially price-sensitive facts can be met as quickly as possible. Issuers that make no preparations for immediately publishing an *Ad hoc* notice are, as a rule, unable to publish the notice immediately as required (Decision by the Disciplinary Commission dated 30 July 2004 [DK/AHP/I/04]; Decision by the Disciplinary Commission dated 29 June 2005 [DK/AHP/II/05]; Decision by the Committee of the Admission Board dated 4 September 2006 [ZUL/AHP/II/06]).

125. In accordance with the Sanctions Commission, the Court holds that Claimant was entitled to postpone any publication of its planned new strategy even after the New York Board meeting on 25 October 2012. However, it would have had to ensure that the information remains confidential and that an *Ad hoc* notice can be and is published

in case of a leak. Nothing in the file shows that precautionary measures had been taken in this respect or that an *Ad hoc* notice had been prepared. After the leak had occurred on Friday, Claimant did not react by publishing an *Ad hoc* notice before the beginning of the next trading day, at the latest, i.e. before Monday morning.

126. In summary, Claimant's position must, therefore, be rejected. The decision by the Sanctions Commission must be upheld in this respect.

D. LIBOR

127. According to Claimant, the Sanctions Commission of the SIX Swiss Exchange AG wrongfully decided that X AG had breached its obligations by not reacting to a leak regarding impending fines in LIBOR-related investigations.

128. Pursuant to Article 3 DAH, in order to be deemed relevant within the meaning of Article 53 LR, an event must be significantly price-sensitive and hence capable of affecting the average market participant in his investment decision.

129. There is no exhaustive list of potentially price-sensitive facts (DAH Commentary, N 23; Decision by the Committee of the Admission Board dated 7 January 2005 [ZUL/AHP/IV/04]). The specific circumstances in each case determine whether or not a fact is potentially price-sensitive (Karin Lorez, *op. cit*., p. 124). For example, statements on a particular point may be deemed potentially price-sensitive in one bank's annual report, but not in that of another bank (Decision by the Sanction Commission dated 28 October 2010 [SaKo-2010/CG/Ill/10, SaKo-2010/AhP/l/10]). If the new fact is likely to influence the average market participants' decision to buy, sell or hold the security because the current market price does not sufficiently reflect it, it means, a priori, that the fact is significantly price sensitive (Peter Bockli, *op. cit*., p. 7; David Buser, *op. cit*., N 22 ad Art. 53/54; Marc Bauen/Robert Bernet/Nicolas Rouiller, La Société anonyme suisse, Droit commercial, Loi sur la fusion, Droit boursier, Droit fiscal, Schulthess 2007, p. 349 *et seq*., especially p. 364-376).

130. The potential, i.e. the possibility of a significant change in the price, is sufficient. There is no need for an actual change in the price (Decision by the Committee of the Admission Board dated 23 January 2007 [ZUL/AHP/IV/06]; Decision by the Sanction Commission dated 30 July 2007 [SaKo-AHP/I/07]; David Buser, *op. cit*., N 21 ad Art. 53/54). The assessment has to be made *ex ante*. Therefore if the price does not change after the publication it does not mean that the fact was not potentially price sensitive (David Buser, *op. cit*., N 21 ad Art. 53/54).

131. Whether or not the information published contains price-sensitive facts must be analysed in light of the events occurred.

132. The record shows that in its 2010 Annual report, X AG made an initial disclosure and reported that investigations regarding LIBOR were ongoing. Thereafter, such disclosure was updated on a virtually quarterly basis to inform investors, the last time together with the publication of the 2012 third quarter results. On 30 September 2012, provisions for litigation were at CHF 897 million at that time, i.e. on 30 September 2012.

133. From early October 2012, the investigations entered into a stage of intense settlement negotiations, which were conducted primarily between Claimant's external counsel and the various public authorities. During the negotiations, the public authority mentioned amounts of monetary penalties that were requested from X AG and which were then heavily negotiated. In the days before 18 December 2012, the settlement discussions with various agencies were still ongoing and the outcome was uncertain. Such uncertainty was related to both, i.e. whether the negotiation teams could agree on settlement terms to present for approval to the decision-makers on either side, and, on the other hand whether such approval would, eventually, be given. In the evening of 18 December 2012, a meeting was held by the Board of Directors of X AG in order to deliberate and decide on whether to authorise settlements on the terms that had been negotiated with the various authorities. During this meeting, the Group Executive Board of X AG made a recommendation to the Board of Directors to authorise the settlement. The Board of Directors granted the requested authorisation and on 19 December 2012 at 7 a.m. CET, X AG published its LIBOR *Ad hoc* release.

134. The course of events described above demonstrates that X AG had regularly and repeatedly informed the public on the LIBOR case. Thus, the public had continuously been updated about the ongoing investigations and the settlement negotiations. By mid-December 2012, and on the basis of Claimant's prior disclosures and of other facts independently known by the public, the markets broadly expected the kind of outcome that the settlement negotiations would have. Claimant, therefore, had valid reasons to assume *ex ante*, i.e. during the last quarter of 2012, that the market had anticipated the possible results of the settlement arrangement, even a result which implied the payment of a fine that was about USD 500 million higher than expected at the end of September 2012, when the provisions for litigation were at roughly USD 900 mil1ion.

135. When the settlement and the fine of USD 1.4 billion had been agreed upon and were published in the LIBOR *Ad hoc* release of 19 December 2012, the market, indeed, did not show an appreciable reaction. This is also confirmed by the Expert Report issued by [...] dated 14 August 2015, according to which "*Performing an event study over an extended period from June 2012 through December 2012 shows that [...]'s common stock price movements are not consistent with the SIX's contention that the information released on December 19, 2012 was material to investors. On the contrary, the [...]common stock price movements are consistent with the market having absorbed relevant information on [...]'s potential exposure to a LIBOR- related settlement, the potential impact on their [...], and the criminal allegations well before December 13, 2012*".

136. Therefore, the fact that Claimant's share price and trading activity did not show any reaction to the press reports or to the LIBOR *Ad hoc* release, demonstrates that the public was expecting such outcome of the LIBOR-related settlements.

137. *Ex ante*, Claimant fulfilled its duty with its 2010 Annual Report and the updates that were published virtually on a quarterly basis until the third quarter of 2012. Hence, at the time of the leaks, X AG could reasonable think that there was no price-sensitive fact. Thus, Claimant did not breach its obligations under Article 54(2) LR.

* * *

138. As Claimant's Prayer for Relief (a)(i), which is a prayer for performance (*Leistungsbegehren*), is partly upheld, Claimant's remaining Prayers for Relief lack a specific legal interest and, hence, shall be partly (regarding costs) or fully rejected, insofar as they are admissible.

E. Sanction, severity of breach and degree of fault

139. Following Article 60 LR, sanctions may be imposed on an issuer who commits a breach of the Listing Rules, of the Additional Rules or their implementing provisions, or in the event that it does not ensure compliance with these rules and regulations.

140. In light of Article 60 LR, the Court of Arbitration has to determine the sanctions, if any, to be imposed on the Claimant as a result of its breach of the *Ad hoc* publicity requirements concerning the Strategy Decision.

141. As the Claimant fulfilled its duty regarding the LIBOR-related settlements, it is not subject to any sanctions pursuant to Article 59 *et seq*. LR. Hence, there is no need for further analysis in this respect.

142. The sanctions - which may be combined, insofar as appropriate - are provided by Article 61(1) LR (Karin Lorez, *op. cit*., footnote 819, p. 174) which reads as follows:

> *"1. reprimand;*
>
> *2. fine of up to CHF I million (in cases of negligence) or CHF 10 million (in cases of wrongful intent);*
>
> *3. suspension of trading;*
>
> *4. delisting or reallocation to a different regulatory standard;*
>
> *5. exclusion from further listings;*
>
> *6. withdrawal of recognition."*

143. Thus, fines can be up to CHF 1 million in cases of negligence and up to CHF 10 million in cases of wrongful intent.

144. There is conditional intent (*dolus eventualis*) if the issuer accepts that the rule be breached even though the goal of the action or omission is not targeted at breaching the rule (Matthias Courvoisier, *op. cit*., N 10 ad Art. 61; Decision by the Committee of the Admission Board dated 7 January 2005 [ZUL/AHP/IV/04]). The issuer acts with negligence if he does not act with sufficient care although it was foreseeable that the circumstances could lead to a breach (Decision by the Sanction Commission dated 13 August 2013 [SaKo-2013/AHP/l/12); Decision by the Committee of the Admission Board dated 23 January 2007 (ZUL/AHP/IV/06]; Matthias Courvoisier, *op. cit*., N 10 ad Art. 61). The lack of knowledge of the rules cannot be taken into consideration to lower the issuer's degree of fault (Matthias Courvoisier, *op. cit*., N 10 ad Art. 61; Sanction Notice by SIX Exchange Regulation dated 22 December 2010 [SER/AHP/I/10], *in fine*).

145. The events to take into consideration to determine Claimant's fault are as follows.

146. In the evening of Friday, 26 October 2012, [...] published an article mentioning important job cuts. Various Swiss media also reported imminent changes in X AG's Investment Bank and the resulting job cuts: [...] on 27 October, [...] on 28 October, [...] on 29 October. On 27 October 2012, [...] published an article in its weekend edition under the headline "[...] eyes 10,000 job cuts in revamp".

147. In the evening of Monday, 29 October 2012, the Board of Directors of Claimant approved the Three Year Strategic Plan and the Operating Plan 2013. In the morning of Tuesday, 30 October 2012, Claimant published two *Ad hoc* notices concerning these decisions.

148. X AG's strategy change should have, and had, appeared as a fact to Claimant's management, capable of having a substantial impact on the company's share price. X AG could postpone the publication, but it could not ignore that such fact was to be disclosed officially to ensure the equal treatment of all market participants. The significant number of people informed about the strategy change constituted a risk that a leak could occur before the planned regular communication of the new strategy together with the 2012 third quarter results. A regularly updated notice (so called leak statement) should have been kept on hand in order to ensure that the obligation to disclose the potentially price-sensitive facts could be met immediately. Nevertheless, preparations were not made, and Claimant was unable or unwilling to publish an immediate *Ad hoc* notice when the information leaked.

149. Following the ordinary course of things and taking into account the organisation and functioning of a bank of this size, Claimant should have published an *Ad hoc* notice on the strategy change immediately after the leaks, i.e. on Friday, 26 October 2012 or on Monday morning, of 29 October 2012 at the latest. It was at that time no longer possible to wait for a final confirmation from the Board of Directors to release an *Ad hoc* statement.

150. Claimant's failure to act in accordance with its *Ad hoc* information duties is, in the first place, due to an omission *prior* to the leaks. Claimant did not take the precautions to ensure that no leak would occur, and secondly, Claimant did not provide that an *Ad hoc* statement could, in accordance with Article 54(2) LR, be immediately published after a potential leak. It is not the task of Claimant's top executives to deal with the communication matter themselves during the decision-taking process. They had to focus on the strategy itself. But a company like X AG must be organized in an adequate manner, by entrusting communication to a specialized unit, or otherwise, in order to comply at all times with the *Ad hoc* publicity requirements. By not organizing itself accordingly, X AG accepted that a leak might occur without being ready to disclose the needed information immediately. In the second place, Claimant failed to react to the leak after it happened. This omission is primarily the result of the insufficient preparation, but it is particularly faulty in view of the fact that Claimant had an entire weekend to prepare the publication of an *Ad hoc* statement.

151. Considering all the circumstances at stake, as they have been revealed to the Court of Arbitration through its examination of the case (file and hearings), the Court of Arbitration first considers that when not taking all the measures useful to prevent a leak and secondly when not publishing an *Ad hoc* release as required the issuer might not have realised the degree of importance of the interests protected by Articles 53 and 54 LR. However, Claimant accepted such breach by not taking enough precautions to ensure that no leak would occur and to remain ready to publish an immediate and effective *Ad hoc* notice immediately after the leak. X AG acted as if facts of a secondary nature were concerned by the strategy change. Therefore, Claimant's fault crossed the border of negligence and must be qualified as conditional intent (*dolus eventualis*).

152. Besides the fault, the amount of the fine is defined primarily by the severity of the violation. The severity is directly related to the importance of the rule breached from a market's point of view (Matthias Courvoisier, *op. cit*., N 8 et seq. ad Art. 61 LR). *Ad hoc* publicity rules have to be considered as key elements of a properly working capital market (Decision by the Sanction Commission dated 28 June 2012 [SaKo-2012/AHP/II/11]). The severity also depends on the difference of the situation as it is and as it would have been without the breach (Decision by the Sanction Commission dated 28 June 2012 [SaKo-2012/AHP/II/11]). The impact of the sanction on the party concerned (Article 61 [2] LR) must also be taken into consideration. With regard to fines, large companies are less affected by large fines than small companies (Matthias Courvoisier, *op. cit.*, N 11 ad Art. 61). Finally, Article 61(2) LR does not provide an exhaustive list of elements that must be taken into consideration. Thus, when determining a fine all the relevant elements of the case have to be considered.

153. *In casu*, Claimant breached *Ad hoc* publicity rules. Hence, the violation is severe considering the impact on the market and the number of job cuts. Further, the Strategy Decision was, beyond doubt, of importance to the markets, and the danger of a leak and its effects had been raised in Board meetings early on. Also, X AG would have had an entire weekend at its disposition to draft and issue an *Ad hoc* statement. Finally, the increase of the share price on Monday, 29 October 2012 was substantial. On the other hand it has to be taken into consideration that X AG has fully cooperated in the proceedings and that a fine always has a negative impact on reputation, as small as the fine might be. Also, the required *Ad hoc* statement was published only one trading day late. Regarding the impact of the sanction, Claimant is one of the biggest companies in Switzerland and would suffer less from a large fine than most Swiss companies; X AG is therefore less sensitive to a fine. Given Claimant's Prayers for Relief (iii and vii), the Court can reduce the amount of the fine without judging *ultra petita*. Considering all the circumstances at stake, the Court of Arbitration concludes that the fine be reduced from CHF 3 million to CHF 2 million.

F. Costs and Fees

154. On the basis of the foregoing, the Court of Arbitration's costs shall be shared by Claimant and Respondent, Claimant bearing 2/3 and Respondent 1/3.

155. The costs of the Court of Arbitration include the arbitrators' fees and disbursements. Taking into account the material and legal complexity of the case and the corresponding workload, the arbitrator's fees are set at CHF [...]. The Court of Arbitration's disbursements, including the legal secretary's compensation, amount to CHF [...]. Thus, judicial costs and fees amount to CHF [...] in total. CHF [...] shall be borne by Claimant and CHF [...] by Respondent.

156. As the parties have paid an advance for judicial costs of CHF [...], the Court of Arbitration shall reimburse CHF [...]. Given the repartition of the judicial costs, the Court of Arbitration shall reimburse CHF [...] to Respondent and Claimant shall pay to Respondent the difference between the sum paid as an advance on judicial costs and the amount of costs due, i.e. CHF [...].

157. On 4 March 2016, Claimant provided the Court of Arbitration with receipts as well as the list of costs and expenses in the total amount of CHF [...], *i.e.* CHF [...] for attorney's fees and CHF [...] for the expenses related to the two experts retained on 18 and 25 September 2015, respectively.

158. On 11 April 2016, Respondent provided the Court of Arbitration, with receipts as well as the list of costs and expenses in the total amount of CHF [...], i.e. CHF [...] for attorney's fees and CHF [...] for other costs.

159. Given the outcome of the complaint, the Court of Arbitration concludes that Claimant shall pay CHF [...] to Respondent as participation to its costs for legal representation.

G. Remedy and service of process

160. Pursuant to Article 2 of the parties' Declaration of Approval of [...], the Court of Arbitration has "exclusive and definitive jurisdiction". Neither in the Declaration of Approval nor in any subsequently signed document did the parties agree that the Court of Arbitration's Decision could be challenged before the "Obergericht" of the Canton of Zurich'. Therefore, the present decision is subject to an appeal to the Federal Supreme Court (Articles 389 and 390 CPC).

161. The Court of Arbitration's Award shall be served on each party by registered mail.

AWARD

1. Paragraph 1, *lit*. b of the operative part of the Decision of the Sanctions Commission is annulled.
2. Paragraphs 2 and 3 of the operative part of the Decision of the Sanctions Commission are modified as follows:
   - Paragraph 2: a fine of CHF 2 million is imposed on X AG;
   - Paragraph 3: X AG shall pay to SIX Swiss Exchange AG two thirds of the procedure costs of the first instance, namely CHF [...].
3. The costs of the arbitral procedure amounting to a total of CHF [...] must be borne by the parties. Claimant must pay two thirds of the costs, namely CHF [...] and Respondent one third of the costs, namely CHF [...].
4. These costs are covered by the parties' advances of cost; the Court of Arbitration shall reimburse CHF [...] to Respondent; Claimant shall reimburse CHF [...] to Respondent.
5. Claimant is ordered to compensate Respondent for its costs for legal representation and other disbursements in the amount of CHF [...].
6. All other Prayers for Relief are dismissed and the Sanctions Decision is upheld in all other respects.
7. The present Award, signed by the Chairman and the arbitrators, shall be served on the parties by registered mail.

[...]

The present Award can be challenged before the Swiss Federal Supreme Court, 1000 Lausanne 14, within thirty (30) days from notification of the Award (article 389 Swiss Civil Procedure Code of 19 December 2008 [RS 272]) ; cf Articles 82 et. seq., Articles 90 et. seq. and Articles 100 et. seq. Swiss Federal Code on the Supreme Court of 17 June 2015 [RS.173.110]). The statement of appeal (written in one of the official language) shall indicate the Prayers for Relief, the grounds and the evidence and needs to be signed. The exhibits must be attached to the statement itself, as well as a copy of the present Award, with the envelope in which it was sent.