Decision

in the procedure SaKo 2020 SaKo-RLE-IV/18

X. ___
[adress]
[place]

The **Sanctions Commission** - […], Chairman, […], […], […], […], […], secretary - has rendered a decision as follows:

1. It shall be determined that X. ___ violated, by negligence, the applicable financial reporting standard IFRS (notably IFRS 3) and thereby its obligations pursuant to Art. 51 LR in combination with Art. 6 DFR:
   a. by not accounting for a financial liability for A-interests resulting from the [Acquired Company] acquisition, which represent an obligation to pay out [x]% of all future [specific revenues] earned within the former [Acquired Company] units to the holder of the A-interests, in the [year] IFRS consolidated balance sheet;
   b. by not accounting for any re-measurement effects in the [year] IFRS consolidated income statement in relation to this financial liability; and
   c. by therefore misstating the [year] IFRS consolidated financial statements.
2. X. ___ shall be ordered to pay a fine of CHF 400,000 (Art. 61 para.1, number 2 LR).
3. X. ___ shall be ordered to bear the costs of the proceedings in the amount of CHF […] representing CHF […] costs for the procedure by SIX Exchange Regulations and the costs incurred by the Sanctions Commission (Ciph. 3.7 LOC) in the amount of CHF […].

The legally binding decision of the Sanctions Commission will be published on SIX Exchange Regulation AG's website in anonymous form (Ciph. 6 para 8 RP).

An appeal can be filed against this decision according to Ciph. 5.3 al. 2 LOC within 20 trading days after delivery. Arbitration proceedings will be instituted upon delivery of a written notice of arbitration to the preceding instance, i.e. the Sanctions Commission ([adress], [place]) according Ciph. 2.1 Rules of Arbitration.

Reasons for the decision

X. ___ (hereinafter: X. ___ , Company or Issuer) acquired [Acquired Company] (hereinafter: [Acquired Company]) on [date][year-1]. X. ___ acquired […]% of [Acquired Company]'s […] business, except for "A-interests" representing [x]% of all future [specific revenues], which are retained by [Acquired Company]'s partners. X. ___ entered into a contractual obligation to pay [Acquired Company]'s partners [x]% of all future [specific revenues] generated by [Acquired Company]'s business. This cash flow depends on future developments. X. ___ did not calculate an acquisition date fair value for the [x]% of future [specific revenues] and did not recognize a financial liability in its [year-1] and [year] IFRS consolidated balance sheet. X. ___ explained in the notes to the [year-1] and [year] consolidated financial statements that this was a contractual commitment and that the future liability would be accounted for only after and to the extent that the [specific revenues] crystalize (Note […] resp. note […]).

1. Procedure

1.1. Overview of proceedings

1. In accordance with Art. 51 Listing Rules (hereinafter: LR) in combination with Art. 6 of the Directive on Financial Reporting (hereinafter: DFR), SIX Exchange Regulation AG (hereinafter: SER) has the duty to review the annual financial statements of the issuers. After reviewing X. ___ 's [year] IFRS annual consolidated financial statements, SER initiated a preliminary investigation on [date] asking for clarification concerning the acquisition of [Acquired Company] ([Acquired Company]) and the way the [x]% future [specific revenues] have been accounted for in X. ___ 's [year] IFRS annual consolidated financial statements.
2. After having considered all the evidence gathered in the various steps of the preliminary investigation, SER opened an investigation on [date].
3. [Date], SER submitted a sanction proposal to the Sanctions Commission as well as the response from […] / [legal representative], legal representative of X. ___ , and the annexes to the proposal and the response.
4. The Sanctions Commission informed the Company on the composition of the Delegation for the decision on [date]. No request to abstain was raised within the deadline set.
5. The Delegation decided the case in its meeting of [date].

1.2. Applicable rules and jurisdiction

6. X. ___ is a company incorporated under […] law with its registered office in [place]. The Company's [securities] are listed in the [listing segment] of SIX Swiss Exchange AG. On [date], the Company accepted to be bound by the stock exchange regulations, especially by the LR and the Rules of Procedure (hereinafter: RP)[1].
7. A violation of the LR, any additional regulations thereto or any implementation decrees thereof, may be sanctioned with one or more of sanctions listed in Art. 61 LR (Art. 60 LR). Competent to decide upon sanction proposals submitted by SER is the Sanctions Commission (Ciph. 3.4 and Ciph. 4 RP).

2. Facts

8. The financial reporting standard chosen by X. ___ and applicable to its annual consolidated financial statements is IFRS. IFRS is a financial reporting standard recognized by the Regulatory Board

[1] Rules of Procedure (RP), dated 25 October 2018, entry into force 1 July 2019

(Art. 6 DFR). X. ___ applied all IFRS standards mandatorily applicable for [year] and has not early adopted any standards or interpretations, such as those related to IFRS 9, IFRS 15 or IFRS 16.

9. [Acquired Company] is an [industry] firm based in [place] with [currency] [amount] [assets] (as at [date][year-1]) and [amount] employees. [Acquired Company] operates [...] using a [technology infrastructure] (called a "[…]").

10. On [date] [year-1], in contemplation of the acquisition, the partners (and at that time the owners) of [Acquired Company] created a [place] [partnership] named [Newly created Company] (hereinafter: [Newly created Company]). [Acquired Company]'s partners also then created class A-interests (hereinafter: A-interests) and class B-interests (hereinafter: B-interests) in [Acquired Company], both of which were transferred to their parent partnership, [Newly created Company].

11. A-interests consist of the right to [x]% of future [specific revenues] (not linked to an ordinary share structure) which [Acquired Company] will earn from existing and new business relationships. [Description of specific revenues]. The B-interests, on the other hand, represent all other interests in [Acquired Company], such as profits, losses and all management/voting rights over [Acquired Company] as well as [100%-x]% of the future [specific revenues].

12. On [date] [year-1], Subsidiary A. ___ Limited (as Buyer), Subsidiary B. ___ Limited (as secondary Buyer), X. ___ (as Guarantor) and [Newly created Company] (as seller) signed a sale agreement "relating to the Class B interests and the Deferred Interest in [Acquired Company] and the entire issued share capital of [Acquired Company] ([place]) (ie including [100%-x]% of future [specific revenues].)".

13. On [date] [year-1], X. ___ publicly announced the acquisition of [Acquired Company]. At the same time X. ___ announced the launch of [new service], which was said to be based on [Acquired Company]'s technology infrastructure. The acquisition of [Acquired Company] was completed on [date] [year-1] and not only was a certain price agreed in cash, but additional consideration was structured in the following way:

    - Deferred contingent consideration payments related to [...];
    - [Acquired Company]'s previous partners entered into long-term X. ___ employment agreements ([…] years);
    - Revenue-based compensation structures were put in place, covering [Acquired Company]'s previous partners and the […] team;
    - [Acquired Company] partners re-invested the majority of the net consideration proceeds into [Acquired Company] […] for a multi-year period;
    - [Acquired Company] partners retained a [x]% interest in future [specific revenues] via the "A-interests".

14. In concrete terms, X. ___ acquired all rights to [Acquired Company] with the exception of a cash flow stream consisting of [x]% of all future [specific revenues], which belonged to [Newly created Company] via the "A-interests". The B-interests were sold to X. ___. All of [Acquired Company]'s employees together with the [assets], the related legal entities and contracts as well as all existing client relationships […] and client contracts and ultimately [100%-x]% of all future [specific revenues] were transferred to X. ___ through the B-interests. The A-interests however, were retained by [Newly created Company] with [Acquired Company]'s previous partners remaining partners of [Newly created Company]. A-interests owned by [Newly created Company] do not expire, are not capped and continue to exist for an indefinite period of time.

15. The acquisition of [Acquired Company] is described in note […] Acquisitions of X. ___ 's [year-1] IFRS annual consolidated financial statements (SER Act. […]). The consideration for the acquisition of [Acquired Company] consisted in an upfront cash payment of [currency] [amount] ([currency] [amount]) at closing and deferred contingent consideration payments based on […] revenue […] by the [Acquired Company] team for [year+1], [year+2] and [year+3] amounting to [currency] [amount]. X. ___ valued […]% of [Acquired Company] shares and [100%-x]% of all future [specific revenues] to be worth [currency] [amount].

16. [Newly created Company] agreed with X. ___ to allocate the revenues from the A-interests for the first […] years after the completion of the acquisition and for a maximum amount of [currency] [amount] to former [Acquired Company] employees (now X. ___ employees). After […] years or once [currency] [amount] have been distributed to the employees, the [x]% of future [specific revenues] will be paid to [Newly created Company] for an indefinite period of time. According to a separate agreement between X. ___ and [Acquired Company]'s previous partners, payments to employees will be administrated directly by X. ___.

17. According to note […] in X. ___ 's [year-1] IFRS annual consolidated financial statements, the liability to allocate [x]% of future [specific revenues] generated by [Acquired Company] is not recognized until crystallization of the [specific revenues]. A similar description can be found in note […] of X. ___ 's [year] IFRS annual consolidated financial statements.

3. Considerations

18. SER objects that X. ___ did not account for the A-interests future [specific revenues] in the annual consolidated financial statements until they crystallize. Instead, X. ___ should have recognized at acquisition date a financial liability for the estimated amount of the future [specific revenues] in its consolidated balance sheet and should have subsequently re-measured this financial liability at each reporting date, recognizing any adjustments in its consolidated income statement.

19. X. ___ argues that the accounting treatment is in accordance with IFRS and leads to a true and fair reflection of its financial situation. According to X. ___ , the A-interests comprising [x]% of future [specific revenues] never formed part of the acquisition and have no economic impact on the Company. Therefore, the arrangement was not reflected in the purchase price allocation in accordance with IFRS 3 (Business Combinations) but was treated as a separate transaction existing between [Acquired Company] and the A-interest holders already before the business combination /acquisition took place in accordance with the relevant IFRS standard.

20. SER states that in the case of mergers and acquisitions, IFRS 3 (business combinations) is the relevant standard establishing principles and requirements on how the acquirer, among others, has to recognise and measure a business combination in its consolidated financial statements: specifically assets acquired, liabilities assumed and any non-controlling interest in the acquiree (IFRS 3.1(a)). Assets acquired and liabilities assumed as part of the business combination have to be recognized at their acquisition date fair value (IFRS 3.18). There are limited exceptions to this measurement principle defined in the standard. None of them are applicable in the current case. According to IFRS 3.52 and IFRS 3B50, a transaction or arrangement occurring before a business combination is likely to be part of the business combination, if it is initiated by and for the benefit of the aquiree and its former owners which is the case with this acquisition.

21. The Sanctions Commission agrees with SER that correct application of IFRS 3 requires that the A-interests sale transaction needs to be considered when assessing the total impact of the [Acquired Company] business combination.

22. SER further states that IAS 32 is the applicable standard for the presentation of financial instruments and helps to decide on the classification of a financial instrument, mainly if such instrument is to be regarded as a financial liability or equity instrument. According to IAS 32.11 financial liabilities, are defined as being a *contractual obligation: i) to deliver cash or another financial asset to another entity; or ii) to exchange financial assets or financial liabilities with another entity under conditions that are potentially unfavorable to the entity*. The critical feature for differentiating a financial liability from an equity instrument is the existence of a contractual obligation of one party (…) to deliver cash (…) to the other party (…) (IAS 32.17). In contrast, the holder of an equity instrument may be entitled to receive a pro rata share of dividends or other distributions of equity, but the issuer of the equity cannot be obligated to make such distributions, i.e. whether dividends will be paid out is at the full discretion of the issuer.

23. X. ___ acquired all rights to [Acquired Company] with the exception of a cash flow stream consisting of [x]% of all future [specific revenues] for which [Newly created Company] has a legal entitlement. If [Acquired Company] generates [specific revenues] in the future, and these fulfill all of the [conditions], X. ___ has no right to avoid paying [x]% of these [specific revenues] to [Newly created Company]. A-interests are established by contract and involve an obligation for X. ___ to deliver cash to the A-interest holders. They therefore meet the definition of financial liability set out in IAS 32.17 and cannot be qualified as equity instruments.

24. SER concludes that the fact that the obligation to deliver cash depends on uncertain future events which are beyond the control of X. ___ has also no impact on the qualification of [x]% of the future [specific revenues] as financial liabilities. As set out above, IAS 32.25 clearly states that the requirement to satisfy a contractual obligation may be contingent on the occurrence or non-occurrence of a future event (including the issuer's future revenue). The [x]% future [specific revenues] are part of [Acquired Company]'s (i.e. also X. ___ 's) future revenue. The existence of an uncertainty regarding the occurrence of future [specific revenues] does not change the fact that A-interests are financial liabilities according to IAS 32.25, as X. ___ does not have an unconditional right to avoid paying cash.

25. In its [year-1] (note […]) and [year] (note […]) IFRS annual consolidated financial statements, X. ___ considers the A-interests as a contractual commitment to pay cash. X. ___ partially concurs in its answers to SER that the A-interests represent a financial liability. However, X. ___ changed its assessment several times. Additionally, the auditor […] / [external auditor] reported, in the interim report to the Audit Committee dated [date] [year-1] on page […] the following on the acquisition of [Acquired Company] as a status update: *[…] / [external auditor] discussed with management the accounting treatment for the [x]% [specific revenues] retained by [Acquired Company]'s partners at the time of entering the transaction. Management proposed to classify the element of the [x]% [specific revenues] as a financial liability (…).* Despite this, in its response to SER of [date], X. ___ concluded that the A-interests meet the definition of a contingent liability which is not recognized but only disclosed in the notes to the consolidated financial statements.

26. SER states that according to IAS 39.43, a financial liability is initially measured at its fair value plus transaction costs that are directly attributable to the acquisition or issue of the financial liability. The best evidence for the fair value of a financial instrument at initial recognition is, according to IAS 39AG76, normally the transaction price, i.e. the fair value of the consideration given or received determined in accordance with the principles of IFRS 13. For subsequent measurement, non-derivative financial liabilities are carried at amortized cost using the effective interest rate method according to IAS 39.47, unless they are designated at fair value through profit or loss. In applying the effective interest rate method, if an entity revises its estimates of payments or receipts, it shall adjust the carrying value of the financial asset or liability according to IAS 39AG8. The entity recalculates the

carrying amount by computing the present value of the revised estimated future cash flows at the instrument's original effective interest rate. The adjustment is recognized in profit or loss.

27. In order to determine a fair value of the A-interests, X. ___ should have applied IFRS 13 and thereby evaluating if the A-interests have a price that would be received by a 3rd party for transfer of the liability (exit price) (IFRS 13.57). Alternatively, if no exit price can be established, X. ___ should have applied one or more of the widely used valuation techniques, such as the market approach, the cost approach or the income approach (IFRS 13.61-13.62). Future [specific revenues] could have been estimated and discounted by an appropriate discount rate. The computation of the present value of the estimated future cash flows should reflect the very complex and volatile nature of [specific revenues] and take into consideration the fact that the A-interests are unlimited in time. The discount rate should reflect the inherent risks and uncertainties. The applied management judgement and estimates and further significant details would then need to be disclosed according to IFRS 13.91ss.

28. SER concludes and the Sanctions Commission concurs, that according to the above listed relevant accounting standards, X. ___ is expected to include an acquisition date fair value for the A-interests and to recognize a financial liability in its [year-1] IFRS consolidated balance sheet. This financial liability would then have been re-measured at each balance sheet date, in particular at year end [year-1] and [year], with the changes being recognized in the consolidated income statement. It is not disputed by X. ___ that these effects on the consolidated income statement in the Financial Year [year] would be significant.

29. X. ___ argued that the exception to the recognition principle for contingent liabilities pursuant to IFRS 3.23 and IFRS 3.22 applies to the A-interests and that therefore no liability was recognized. This would mean that the payment of [x]% of future [specific revenues] is not a contractual obligation and not a financial liability in the sense of IAS 32.11.

30. SER states that contrary to X. ___ 's argumentation, the exceptions of IFRS 3.22 and IFRS 3.23 are not applicable to the case at hand. IFRS 3.22 and IFRS 3.23 clearly refer to IAS 37, which is the standard for provisions, contingent liabilities and contingent assets applying to non-contractual scenarios (i.e. not financial liabilities). However, given that the payment of the [x]% [specific revenues] is contractual in nature and is a present obligation to pay cash, A-interests have to be qualified as a financial liability and the exceptions relied upon by X. ___ are not applicable. X. ___ itself abandoned this argument later on and agreed with SER that X. ___ 's obligation to pay [x]% of all future [specific revenues] to [Newly created Company] has to be qualified as a financial liability. Additionally, X. ___ 's auditor […] / [external auditor] was initially as well of the opinion, that this obligation represents a financial liability.

31. X. ___ further argues that it is not capable of reliably estimating the fair value of the A-interests as the amount, the timing (based on [thresholds]) and the uncertainties of [specific revenues] based on future market developments cannot be measured reliably until the date when [specific revenues] crystallize. Furthermore, since the A-interests establish an obligation to pay out [x]% of all future [specific revenues] indefinitely, a reliable estimate cannot be achieved.

32. SER points out that these arguments are contradicted by the fact that X. ___ already performed a fair value assessment of [Acquired Company] (and implicitly also […]% of the [specific revenues] it will generate) when it acquired [Acquired Company]. X. ___ 's [100%-x]% share of this is included in the additions in [year-1] of [currency] [amount] to the Company's [non-current assets] under [asset class]-- see the Company's [year] consolidated financial statements note […] (note […] in [year-1]). Indeed, X. ___ even paid cash for its [100%-x]% share of the future [specific revenues].

33. SER argues that assuming that the agreed value of [Acquired Company] were held constant, the purchase price for [Acquired Company] would have been higher in the absence of the A-interests being attributed to [Newly created Company], because they represent an unsold interest in cash flows

of [Acquired Company] that X. ___ has an obligation to pay out. In addition, an estimation of [specific revenues] (i.e. the other [100%-x]% of [specific revenues] not paid to the previous owner) has been included by X. ___ in the calculation of the value for the [assets class] acquired as part of the purchase price allocation according to IFRS 3.18. This demonstrates that it was possible to allocate a fair value to the A-interests' [x]% share of the [specific revenues] at the time of the acquisition.

34. The complexity of the estimation of future [specific revenues] and the fact that the inclusion of this estimation in the annual consolidated financial statements will introduce additional volatility to the consolidated income statement because of the re-measurement effects, is no excuse for not performing the estimation or for avoiding to accounting for them in the annual consolidated financial statements. Quite to the contrary, IFRS gives no other option than to perform an estimation in this case. There is no exemption built into the relevant IFRS and this is certainly intended by the standard setter. IFRS gives extensive guidance when dealing with such a situation stating that any measurement uncertainty as well as any expected volatility of liabilities has to be reflected and taken into consideration in the estimation of the fair value of the liability. This also needs to be supplemented by appropriate disclosures which describe assumptions and uncertainties (IFRS 13).

35. The Sanctions Commission agrees with the view of SER that the A-interests [x]% share of the future [specific revenues] should have been recognized in the Company's [year-1] consolidated financial statements as a financial liability and intangible asset as required by IFRS 3 and that an estimated fair value was possible as was shown by the Company's own valuation of its [100%-x]% share of the future [specific revenues]. This financial liability should have been re-measured in the Company's [year] consolidated financial statements with any change recorded in the consolidated income statement.

36. In its further argumentation, X. ___ refers to other similar transactions such as [revenue stream] and clarifies that reflecting this revenue stream as a liability would result in significant debits and credits being recognized in X. ___ 's group consolidated income statement and consolidated balance sheet as a result of fluctuations in the fair value of such a liability. X. ___ further argues that the [x]% future [specific revenues] revenue stream has no economic impact on X. ___ 's shareholders and is therefore not of importance to them. Further X. ___ argues that estimating A-interests would have a material impact on its annual consolidated financial statement and that it would distort its consolidated financial statements by reflecting a financial liability, which only materializes if X. ___ receives future income to the same amount, with no matching asset. X. ___ believes such a presentation would be misleading and result in the readers of X. ___ 's consolidated financial statements incorrectly assessing the financial position and performance of X. ___. X. ___ confirms that the A-interest financial liability would have a significant and material impact on X. ___ 's consolidated financial statements.

37. The Sanctions Commission considers this view as misleading and wrong. X. ___ collects […]% of [Acquired Company]'s [specific revenues] from […] as revenue and pays out [x]% to [Newly created Company]. Shareholders of X. ___ must be very interested to know how much the [specific revenues] are they are going to receive, not only today but also in the future, and what obligations X. ___ has relating to these [specific revenues]. Therefore, an estimated financial liability would indicate this and also inform the existing and potential new shareholders that there is a present obligation to pay out cash in the future. Furthermore, the correct application of an IFRS standard is not misleading or distorting a financial position. To the contrary, a correct application of the IFRS standards would increase transparency and clarity as the A-interests do exist and X. ___ has the contractual obligation for the future to pay them to [Newly created Company]. The goal of IFRS is to create transparency allowing potential investors to assess the financial position of the company they consider investing in. Complying with IFRS could therefore in no way lead to more confusion,

especially if the estimation relating to the [x]% future [specific revenues] is supported by detailed disclosures and explanations as requested by IFRS.

38. X. ___ argues that the entitlement to receive [x]% of future [specific revenues] cannot be qualified as a financial liability, since there is no contractual obligation to make payments until the future conditions are met. In order to substantiate this view, X. ___ refers among other items, to a legal opinion it requested from […] / [law firm] and to the accounting for [similar revenue streams]. According to X. ___ 's interpretation, the contractual obligation to deliver cash arises only once all future conditions are met. Therefore, a financial liability is only recognized when the outflow of cash is a present obligation (meeting the definition of a liability in the Conceptual Framework 4.15ff) based on the contractual provision in the [partnership] Agreement, dated [date] [year-1]. X. ___ concluded that the definition of a financial liability in accordance with IAS 32.11 is not met until crystallization and receipt of [specific revenues].

39. SER states however, that the mere fact that a contractual obligation is contingent on future events has no impact on the qualification as financial liability. The IFRS guidance (IAS 32.25) is very specific and clear in this regard. A financial liability can include terms whereby cash flows depend on the occurrence or non-occurrence of uncertain future events that are beyond the control of the parties involved. The fact that the obligation will only be payable once future conditions are met, has no impact on the existence of the obligation itself. The contractual obligation was entered into on the day of signing the contract and not on the date the payment will be due.

40. The Sanctions Commission agrees with SER that the A-interests have to be classified as financial liabilities as they entail a contractual obligation to pay cash and should have been valued at the fair value at initial recognition in X. ___ 's [year-1] consolidated balance sheet. In [year], X. ___ should have re-measured this liability and recognized any value adjustment in the consolidated income statement. The recognition of the financial liability and particularly the subsequent re-measurement of the financial liability at the balance sheet date could have a material impact on X. ___ 's [year] IFRS annual consolidated financial statements.

41. The existence of the financial liability according to IAS 32 is undisputed and the measurement according to IAS 39 / IFRS 13 would require a fair value measurement at initial recognition followed by a subsequent re-measurement at each reporting date. Any measurement uncertainties and [other features] should be reflected in the estimation process and appropriate disclosures should be provided. IFRS contains extensive and detailed guidance on the definition, classification, recognition and measurement of financial instruments, including detailed disclosure requirements that address the disclosures of measurement uncertainty.

42. **Therefore, the Sanctions Commission concludes that failure to recognize a financial liability for the A-interests constitutes a significant, and potentially a material, error to X. ___ 's [year] IFRS consolidated financial statements. This could be misleading for users of the consolidated financial statements and is not giving a true and fair view of the Company's financial position and financial performance and therefore, depending on the final assessment of the materiality of the error, a restatement of the Company's [year] consolidated financial statements should be considered.**

4. Sanction

43. Art. 61 para. 2 LR provides that in determining the sanction to be imposed, due consideration must be given, in particular, to the severity of the breach and to the degree of fault. When setting the level of fines, the Sanctions Commission also takes into account the impact of the sanction on the party concerned.

4.1. Severity of breach

44. A company's annual consolidated financial statements is one of the most important instruments for investors to assess and analyze the financial situation of a company. Therefore, it is of importance to present fairly, in all material aspects, the financial position of a company (see decision of the Sanctions Commission dated 13 August 2013 [SaKo 2013-AHP-I/12], number 33 and dated 28. July 2012 [SaKo 2012-AHP-II/11], number 56).

45. The error in the Company's [year] IFRS annual consolidated financial statements published on [date] is **significant.** There is a significant financial liability missing that would also significantly affect the consolidated income statement. The fact that X. ___ is not recognizing this financial liability is a violation of the applicable accounting standard in IFRS.
46. Although A-interests have not been hidden from investors but explained in the notes to the [year-1] and [year] IFRS consolidated financial statements, a reader of these consolidated financial statements would find it difficult, if not impossible, to assess the significance of the exclusion of the [x]% future [specific revenues] on X. ___ 's consolidated financial situation.
47. Without listing all financial liabilities, X. ___ 's [year] IFRS consolidated financial statements are incomplete. Interested parties, notably shareholders and investors do not get a clear picture of the Company's performance. This represents a **relevant breach** of the rules.

4.2. Degree of fault

48. The LR requires issuers to ensure compliance with the LR, additional rules and related implementing decrees at all times. In the present case, it should be noted that the issue at stake is the sanctioning of a legal person and not of a natural person. The Issuer shall be sanctioned if it is accused of not having taken all necessary and reasonable organizational precautions to prevent a breach of the obligations entered into under the LR. Accordingly, the assessment of fault is carried out according to largely objective standards. The conduct of the natural persons or bodies acting on behalf of the Issuer are attributed to the Issuer. (see decisions of the Sanction Commissions of 14 April 2015 [SaKo 2015-AhP-I/15], number 19; of 30 July 2010 [SaKo 2010-CG-II/10/SaKo 2010-MP-I/10], number 13; sanction notice of SIX Exchange Regulation AG of 12 August 2013 [SER-KTR-FOR-I/13], number 28; of 4 February 2013 [SER-MT II/12/SER-AHP I/12/SER-Listing I/12], number 103).

49. A person who has not considered the consequences of his conduct or has not taken them into consideration due to carelessness, acts negligently (see decisions of the Sanctions Commission of 13 August 2013 [SaKo 2013-AHP-I/12], number 36; sanction notice of SIX Exchange Regulation AG of 21 August 2014 [SER-MP-I/14], number 22; of 11 October 2013 [SER-AHP-I/13], number 48; of 12 August 2013 [SB-KTR-FOR-I/13], number 27; of 4 February 2013 [SER-MT II/12/SER-AHP I/12/SER-Listing I/12], number 102).

50. In the assessment of the degree of fault, the Sanctions Commission's consistant practice is to expect from listed companies, compliance with stock exchange regulations without further ado. The responsible employee must be familiar with the relevant regulations, including the applicable accounting standard, comments and practice of the stock exchange bodies (see decisions of the Sanction Commission of 14 April 2015 [SaKo 2015-AHP-I/15], number 26; of 13 August 2013 [SaKo 2013-AHP-I/12], number 37). Because of the issuer's duty of care, every issuer is expected to be familiar with the applicable stock exchange rules, commentaries and practice of the judicial bodies. Any breach of the rules and regulations must raise a presumption of negligence of the issuer in failing to discharge its duty of care (see sanction notice of SIX Exchange Regulation of 11 October 2013 [SER-AHP-I/13], number 49; of 4. February 2013 [SER-MT II/12/SER-AHP I/12/SER-Listing I/12], number 104).

51. As outlined above, X. ___ 's treatment of the A-interests representing an obligation to pay out [x]% of all future [specific revenues] is not in accordance with IFRS despite the Company's mentioning of their treatment of A-interests in the notes to the consolidated financial statements. Just recognizing a liability when the actual [specific revenues] crystallize is not compliant with the treatment of a financial liability, in particular as required by IFRS 3 when accounting for business combinations. Therefore, the consolidated financial statements do not give a true and fair view of the consolidated financial position and performance of the Company.
52. X. ___ is an expert in the field of [industry] employing highly skilled personnel some of whom are also familiar with IFRS. X. ___ based its practice on different expert advice and did not hide its accounting practice. Its intention was to present consolidated financial statements that accurately reflect the financial situation of the Company.
53. The Sanctions Commission has previously held that negligence is only gross if a clearly obvious path of conduct is incomprehensible (see decisions SaKo 2015 KTR-I/15 / MT-I/15 / MP-I/15). In the present case, there was no such failure to follow an obvious path of conduct, notably as internal experts, the Audit Committee and the independent auditor performed substantial efforts in determining the appropriate IFRS treatment. Thus, X. ___ 's behavior must be qualified as **negligent** but not grossly negligent.

4.3. Sensitivity to sanctions

54. In order to assess the sensitivity to sanctions, the economic performance of the issuer is considered. An issuer with a lower economic performance will tend to be hit harder by the same fine than a company with a comparatively higher economic performance. For the determination of these fines, economic key figures can be taken into consideration, e.g. EBIT, net income, operating cash flow, cash and cash equivalents or equity (See decisions of the Sanctions Commission of 28 June 2012 [SaKo 2012-AHP-II/11], number 63 et seq. and of 8 December 2011 [SaKo 2011-AHP-I/11, SaKo 2011-CG-I/11], number 37).
55. While the Company showed substantial net profits and cash flow in the years to [year], more recent figures present a more negative picture. Therefore, the sensitivity to sanctions of the Company is considered **medium** (neither high nor low).
56. In calculating the sanction amount, any previous sanctions of the last three years can be taken into account (Ciph. 2.6 para. 4 RP). In favor of the Issuer, it should be noted that no sanctions were imposed on X. ___ during this period.

5. Conclusion

57. Art. 61 para. 1 LR, foresees the possibility to impose a fine, which may amount up to CHF 1 million (in case of negligence) and up to CHF 10 million (in case of wrongful intent).
58. Considering that X. ___ acted **negligently** and that this resulted in a **significant relevant** breach and taking into account X. ___ 's **medium** sensitivity to sanctions, the Sanctions Commission imposes a **fine of CHF 400,000** on the Company, i.e. below the middle of the range for sanctions in such cases, in accordance with Art. 61 para. 1 number 2 LR.
59. Pursuant to number 6.3 para. 1 of the RP, this sanction must be published once it becomes legally effective.
60. In case of sanction proceedings, SER charges for costs are determined based on the expenditure incurred adopting an hourly rate of CHF 300 per person (Ciph. 3.7 in connection with Ciph. 4.1 of the List of Charges Regulatory Bodies). In the present case, these charges amount to CHF […]. The costs of the Sanctions Commission amount to CHF […] and shall also be borne by X. ___.

Zurich, 29 January 2020

The Chairman:
[Sig.]

The Secretary:
[Sig.]