Decision

in the procedure SaKo III/2022

SIX Exchange Regulation AG

Hardturmstrasse 201

8021 Zurich

vs.

X.___

[address]

[place]

Switzerland

The Sanctions Commission (**SaKo**) - […] (Chairman), […],[…],[…] (Secretary) - decided on 28 September 2022 as follows:

Decision

1 The Sanctions Commission determines that X.___ violated negligently the applicable rules regarding financial reporting and thereby its obligations pursuant to Art. 51 LR in combination with Art. 6 DFR by making incomplete disclosures and committing technical mistakes in the annual financial statements of [20X0] and [20X1].

2 X.___ is ordered to pay a fine in the amount of CHF 50'000.

3 X.___ is ordered to bear the costs of the present proceedings incurred by SER in the amount of CHF [amount] and the additional charges of CHF [amount] incurred by the Sanctions Commission. The total amount of costs to be paid by X.___ amounts to CHF [amount].

4 Once the sanction decision has become legally binding, it will be made available in anonymized form on the website of SIX Exchange Regulation Ltd. Furthermore, the conclusion of the proceedings will be communicated to the public in a media release, with the names of the parties mentioned in the same way as when the file was submitted to the Sanction Commission.

Reasons for the decision

1. Proceedings Overview

1 In accordance with Art. 51 Listing Rules (**LR**) in conjunction with Art. 6 of the Directive on Financial Reporting (**DFR**), SIX Exchange Regulation (**SER**) reviews the compliance of the issuers' financial statements with the applicable accounting standard.

2 After reviewing the [20X0] IFRS annual financial statements of X.___ (**X.___**, **Company** or **Issuer**), SER initiated a preliminary inquiry in accordance with the Rules of Procedure (**RP**) concerning a possible violation of the applicable accounting standard. X.___ responded timely to the preliminary inquiry letter as well as to several following requests for further information. In January [20X2], SER informed X.___ that the preliminary investigation will be extended to include a review of the [20X1] IFRS annual statements. Again, X.___ responded timely to the further requests for information.

3 After having considered all the evidence, SER concluded that there were indications of a potential violation of the obligations set out by the applicable accounting standard (IFRS) in connection with X.___'s [20X1] and [20X0] IFRS annual financial statements. Therefore, on [date] [20X2], SER initiated an investigation submitting additional questions and informing X.___ that an investigation generally concludes with the closure of the proceedings or upon an agreement, the issue of a sanction notice or the submission of a proposal for sanctions with the Sanctions Commission (**SaKo**, Ciph. 3.4 para. 1 RP). Again, X.___ timely responded and participated constructively in the procedure.

4 On [date] [20X3], SER submitted its Sanction Proposal of [date] [20X3] (**Proposal**) as well as the detailed Statement of X.___ of [date] [20X3] (**Statement**) to the Proposal to SaKo.

5 SaKo confirmed receipt of the file on [date] [20X3] and offered both parties the opportunity to complement their position. This opportunity was not used.

6 The composition of the delegation for the decision was notified to the parties on [date] [20X3] and no request to abstain was raised.

7 The delegation discussed the Proposal on [date] [20X3] and decided on the case.

2. Findings

2.1. Formal Findings

8 X.___ is a company incorporated under the laws of Switzerland with its registered office in [place], Switzerland. The company's registered shares are listed in the International Reporting Standard of SIX Swiss Exchange AG. On [date] [20X0], X.___ signed a declaration and accepted to be bound by the stock exchange regulations, the LR, the additional rules, implementing provisions and the RP in their latest version.

9 The violation of the LR, any additional regulations thereto or any implementing provisions 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).

2.2. Material Findings

2.2.1. Facts of the Matter

10 In establishing the relevant facts for this sanction decision, SaKo considered both the exculpatory and inculpatory facts with equal care. All objects and information that serve to determine the facts of the case are subject to free evaluation and are deemed to be evidence (Ciph. 3.1 para. 1-2 RP).

2.2.1.1. X.___'s goodwill impairment test for the year [20X0]

2.2.1.1.1. Valuation model to determine the recoverable amount for goodwill impairment testing

11 In the [20X0] IFRS annual financial statements the carrying amount of goodwill amounted to CHF [amount] million. This represents [low two-digit number]% of the Company's total assets declared in the [20X0] IFRS annual financial statements. According to note 14 of the [20X0] IFRS annual financial statements X.___ performs the goodwill impairment test by determining the recoverable amount based on the cash generating unit's (**CGU**) fair value less costs of disposal (**FVLCD**). X.___ discloses that it identified only one CGU, which lead to the result that the goodwill impairment test was performed for the entire group on a consolidated basis. X.___ applied a discounted cash flow (**DCF**) model to determine the fair value which it disclosed as a level 3 fair value according to the IFRS 13 fair value hierarchy.

12 According to note 14 of the [20X0] IFRS annual financial statements, the DCF model covers a 10-year plan period and includes a terminal value based on the ultimate plan year. X.___ disclosed an average growth rate of [middle two-digit number]% ([20X0 – 1 year]: [middle two-digit number]%) for the first 5 plan years and of [low two-digit number]% ([20X0 – 1 year]: [low two-digit number]%) for the subsequent plan years, i.e. years 6 – 10. For the calculation of the terminal value, a growth rate of [one-digit number]% ([20X0 – 1 year]: [one-digit number]%) was disclosed. The weighted average cost of capital (**WACC**) applied to cash flow projections was disclosed to be [low two-digit number]% ([20X0 – 1 year]: [low two-digit number]%).

13 The [20X0] DCF Valuation Model (**DCF VM**) used by X.___ covers one budget year ([20X1]) and 10 plan years ([20X2] – [20X2 + 9 years]) totalling 11 years. This is unusually long. The [20X0] DCF VM shows a DCF company value of CHF [amount] million, which results essentially from the terminal value. X.___ performed the goodwill impairment test as of 31 December [20X0] by comparing the DCF company value of CHF [amount] million with the carrying amount of equity of CHF [amount] million.

14 The main variance in assumptions between the [20X0 – 1 year] and [20X0] DCF VM concerns the terminal growth rate, which was increased from [one-digit number]% in [20X0 – 1 year] to [one-digit number]% in [20X0]. Not increasing the terminal growth rate by [one-digit number]% would have reduced the DCF company value by CHF [amount] million to CHF [amount] million based on the sensitivity analysis requested by SER from X.___ and would have triggered an impairment of CHF [amount] million.

15 X.___ used data from analysts D.___ KmG and C.___ AG to determine the WACC used in the DCF VM to discount future cash flows. X.___ provided two D.___ KmG analyst reports dated [date] [20X0 – 1 year] and [date] [20X0] and one C.___ AG analyst report dated [date] [20X1]. The C.___ AG report refers to the [20X0] results and applies a WACC of [low two-digit number]%. C.___ AG calculated a market capitalisation of CHF [amount] million based on a share price of CHF [amount] as of [date] [20X1]. C.___ AG assumes a price target of CHF [amount] per share and reiterates its hold rating. The D.___ KmG reports also assume a WACC of [low two-digit number]% and issue a hold rating with a price target of CHF [amount] per share.

16 X.___ discloses in note 14 of the [20X0] IFRS annual financial statements that the recoverable amount exceeds the carrying amount based on the DCF analysis.

17 On page 5 of the comprehensive report to the board of directors regarding the [20X0] financial statements, the auditor, A.___ Ltd (**A.___ Ltd**), states that they do not concur with the assumptions used for the DCF calculation, mainly in determining the terminal value.

18 On page 19 of the comprehensive report to the board of directors, A.___ Ltd informed X.___ that the audit file for the year [20X0 – 1 year] is under regulatory review. The regulator Federal Audit Oversight Authority (**FAOA**) raised points related to the sufficiency and appropriateness of audit evidence regarding the goodwill impairment test and related disclosures. A.___ Ltd further informed X.___, that the FAOA will share their observations with SIX.

19 According to the minutes of the meeting of the Board of Directors dated [date] [20X1] and related documentation, the goodwill impairment test was not discussed in detail by the Board of X.___. The Company refers to the fact that the minutes had been drafted as very short resolution minutes. However, the overall length of the meeting indicates that most probably no extensive discussions have taken place and that the Board relied on the recommendations by the finance department of the Company, the auditors and the Audit Committee.

2.2.1.1.2. Costs of disposal

20 During the preliminary inquiry, X.___ concedes that it did not include any costs of disposal in their goodwill impairment test and indicates that, based on its own experience and discussions with M&A advisors, the estimated costs of disposal would approximately amount to [one-digit number]% to [one-digit number]% of the transaction value.

2.2.1.1.3. Market capitalisation plus control premium assessment

21 In note 14 of the [20X0] IFRS annual financial statements X.___ discloses that it additionally assessed the recoverable amount based on its market capitalisation plus control premium and that the recoverable amount exceeds the carrying amount based on this alternative analysis as well. X.___ discloses that the control premium was determined by an independent third party as a median of premiums paid amongst X.___'s peer group.

22 Furthermore, X.___ stated in its response letter that the control premium was determined by B.___ AG. On page 4 ("scope of our work") of the control premium assessment, however, B.___ AG explicitly stipulates that they only had analysed publicly available data and that they did not make any statement regarding any specific control premium applied by X.___ in the context of IAS 36 (impairment of assets) and IFRS 13 (fair value measurement).

23 Furthermore, A.___ Ltd pointed out in the comprehensive report to the board of directors regarding the [20X0] IFRS annual financial statements that SIX might challenge this approach.

2.2.1.1.4. Market capitalisation assessment (for audit purposes)

24 Because A.___ Ltd did not concur with the assumptions used for the DCF calculation, A.___ Ltd tested the valuation of goodwill by applying a market approach, i.e. market capitalisation without control premium. They compared the net assets of the Company (CHF [amount] million) with its market capitalisation as of 31 December [20X0] (CHF [amount] million) and noted that the market capitalisation exceeds the net assets.

2.2.1.1.5. Disclosures related to goodwill impairment

25 The sensitivity analyses disclosed in note 14 of the [20X0] IFRS annual financial statements are based on the DCF model. According to the first sensitivity analysis, an increase in WACC of [one-digit number]% would decrease the DCF value by [middle two-digit number]%. The second sensitivity analysis shows that a decrease in the terminal growth rate of one-digit number]% would decrease the DCF company value by [low two-digit number]%.

26 The following information regarding the sensitivity disclosures were not included in note 14 of the [20X0] IFRS annual financial statements but provided to SER by X.___ upon request in the response letter:

- The recoverable amount exceeds the carrying amount by CHF [amount] million (IAS 36.134(f)(i)).
- The key assumptions used are a WACC of [low two-digit number]% and a terminal growth rate of [one-digit number]% resulting in a headroom of CHF [amount] million (IAS 36.134(f)(ii)).
- An increase in WACC of [one-digit number]% from [low two-digit number]% to [low two-digit number]% and an unchanged terminal growth rate of [one-digit number]% would reduce the headroom from CHF [amount] million to zero (IAS 36.134(f)(iii)).

2.2.1.2. X.___'s goodwill impairment test for the year [20X1]

2.2.1.2.1. Valuation model to determine the recoverable amount for goodwill impairment testing

27 According to note 14 of the [20X1] IFRS financial statements X.___ still identified only one CGU. X.___ further discloses that they determined the recoverable amount based on the CGU's fair value represented by the market capitalisation (fair value level 1). In contrast, X.___ states in its [20X0] IFRS financial statements that they determined the FVLCD by applying a DCF model, which represents a level 3 of the fair value hierarchy.

28 X.___ explained to SER that they changed from the DCF Model to the market capitalisation model because their auditor A.___ Ltd demanded the change. However, no disclosure of the change in approach was made in the [20X1] IFRS financial statements.

29 A.___ Ltd's [20X1] comprehensive report states that A.___ Ltd was unable to agree to X.___'s DCF model in [20X0], which represented a level 3 fair value. A.___ Ltd concluded that X.___'s fair value can be derived from the market capitalisation, which represents a level 1 fair value, and that IFRS does not support the use of a level 3 fair value in this case. As a consequence, X.___ applied a market capitalisation approach (level 1 fair value) for [20X1].

30 X.___ discloses in note 14 of the [20X1] IFRS financial statements that it calculated the market capitalisation by multiplying the share price as of [date] [20X1] with the number of outstanding shares. X.___ provided the disclosures for the comparative period ending on 31 December [20X0] also based on market capitalisation but did not mention that the comparative information was restated.

31 X.___ further stated to SER that the [20X0] IFRS annual financial statements were not changed retrospectively in their view and that the corresponding disclosures are still valid for the year [20X0].

32 X.___ used a share price of CHF [amount] ([20X0]: CHF [amount]) and a number of outstanding shares of [number] ([20X0]: [number]) leading to a market capitalisation value of CHF [amount] million as of 31 December [20X1] ([20X0]: CHF [amount] million). The carrying amount of the CGU corresponds to total equity and amounted to CHF [amount] million ([20X0]: [amount] million). On this basis the headroom, i.e., the positive variance between recoverable amount (market capitalisation in this case) and the carrying amount of the CGU, amounted to CHF [amount] million for [20X1] ([20X0]: CHF [amount] million). X.___ disclosed that no impairment was needed as of 31 December [20X1] and [20X0].

33 The sensitivity analyses disclosed in note 14 of the [20X1] IFRS annual financial statements are based on the market capitalisation. As of 31 December [20X1], X.___ notes that a decrease of the market capitalisation by CHF [amount] million (minus [low two-digit number]%), which corresponds to a decrease in share price from CHF [amount] to CHF [amount], would result in the market capitalisation being equal to the carrying amount of the CGU. As of 31 December [20X0], X.___ notes that a decrease of the market capitalisation by CHF [amount] million (minus [one-digit number]%), which corresponds to a decrease in share price from CHF [amount] to CHF [amount], would result in the market capitalisation being equal to the carrying amount of the CGU.

2.2.1.2.2. Impairment indicator

34 According to a comparison of a market capitalisation calculation as of [date] [20X1] and [date] [20X0] to an approximation of the corresponding carrying amount of equity requested by SER, the carrying amount of equity exceeded the market capitalisation by approximately CHF [amount] million as of [date] [20X1] and by CHF [amount] million as of [date] [20X0]. X.___ stated that it did not consider price fluctuations during the year to be a triggering event, "as the share prices of early-stage […] companies are generally fluctuating significantly".

2.2.1.2.3. Treasury shares and costs of disposal

35 X.___ confirmed that the market capitalisation calculation as of [date] [20X1] (and [20X0]) includes treasury shares. X.___ acknowledges that treasury shares need to be deducted and shall not be part of the market capitalisation calculation.

36 X.___ did also not consider costs of disposal in their impairment test. X.___ disclosed in note 14 of the [20X1] IFRS annual financial statements that the market capitalisation amounts to CHF [amount] million. This amount results from multiplying the number of shares outstanding (wrongfully including treasury shares) of [number] by the share price of CHF [amount].

2.2.1.2.4. Disclosures about the change of valuation technique

37 X.___ did not disclose that it changed the valuation technique nor the reason for making the change.

2.2.2. Rules regarding Financial Reporting

2.2.2.1. X.___'s [20X0] IFRS annual financial statements

2.2.2.1.1. Assumptions in the valuation model to determine the fair value

38 According to IAS 36.6 fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.

39 According to IFRS 13.2 *a fair value is* a market-based measurement, *not an entity-specific measurement*. For some assets and liabilities, observable market transactions or market information might be available. For other assets and liabilities, observable market transactions and market information might not be available. However, the objective of a fair value measurement in both cases is the same - to estimate the price at which an orderly transaction to sell the asset or to transfer the liability would take place between market participants at the measurement date under current market conditions (i.e. an exit price at the measurement date from the perspective of a market participant that holds the asset or owes the liability).

40 IFRS 13.3 specifies, when a price for an identical asset or liability is not observable, an entity measures fair value using another valuation technique that maximizes the use of relevant observable inputs and minimizes the use of unobservable in-puts. Because *fair value* is a *market-based measurement*, it *is measured using the assumptions that market participants would use when pricing the asset or liability*, including assumptions about risk.

41 IFRS 13.22 states – inter alia – that an entity shall measure the fair value of an asset using the assumptions that market participants would use when pricing the asset, assuming that market participants act in their economic best interest.

42 X.___ performed the impairment test based on the FVLCD method, using a DCF VM as valuation technique. As such, the provisions of IFRS 13 apply and X.___ should avoid entity-specific assumptions (IFRS 13.2) and instead use assumptions that market participants would use (IFRS 13.3, IFRS 13.22) in the DCF VM.

43 X.___ is covered by analysts C.___ AG and D.___KmG. These analysts perform regular valuations of X.___ to estimate a price target for X.___ shares and to issue their Buy/Sell/Hold ratings. This information is used by market participants for investment decisions. As such, valuations performed by analysts are an appropriate benchmark to test, whether an entity is using assumptions that market participants would use (IFRS 13.3, IFRS 13.22) rather than its own, entity-specific assumptions.

44 The D.___ KmG reports refer to the half-year [20X0 – 1 year] and the full-year [20X0 – 1 year] results and are not relevant for the situation as of 31 December [20X0]. Therefore, the analysis

is based on the C.___ AG report dated [date] [20X1] referring to X.___'s [20X0] full year results published on [date] [20X1].

45 X.___'s DCF VM is based largely on own assumptions rather than on market information. The difference between the values of X.___ and C.___ AG (unadjusted NPV) results from different assumptions used in the same types of DCF valuation models. Due to this effect alone, X.___ calculates a value which is almost [low two-digit number]% higher than what market participants estimate before any risk adjustment.

46 C.___ AG further considers a risk adjustment, i.e. a deduction on cash flow estimations of certain new products, which results in a rNPV of CHF [amount] million. This rNPV estimation corresponds to the price target of CHF [amount] / share, which is the basis for the Hold rating C.___ AG issued for X.___ on [date] [20X1].

47 A further comparative analysis of C.___ AG's NPV and X.___'s DCF company value reveals that the terminal value assumption is a major source of the valuation differences noted above between X.___ and market participants. While it is relatively common that the terminal value accounts for a substantial portion of the total company value derived from a DCF model (such as in the C.___ AG valuation), X.___'s valuation results in a situation where virtually all of the company value is in the terminal value. This means that X.___, based on its own model and assumptions, will not generate any value during the budget and planning period of the next 11 years and will only start to create value thereafter far in the future.

48 In contrast to X.___, C.___ AG assumes higher results and cash flows during the plan period and a much lower terminal value. The main reason for the variance in terminal value is the [one-digit number]% terminal growth rate X.___ applies. It is commonly understood in valuation theory that a terminal growth rate "cannot be higher than the growth rate of the economy in which the firm operates". C.___ AG applies a [one-digit number]% terminal growth rate which is the average of the lowest ([decimal number]%) and the highest ([one-digit number]%) terminal growth rate C.___ AG uses in its sensitivity analyses. In this context, the range between [decimal number]% and [one-digit number]% can be considered as a range of market participant's terminal growth assumptions. X.___ did not provide any evidence for the applied [one-digit number]% terminal growth rate. As this rate is far outside the range of assumptions that market participants use, it is factually not substantiated.

49 Further, X.___ increased the terminal growth rate from [one-digit number]% (already twice the growth rate C.___ AG assumed) to [one-digit number]% between [20X0 – 1 year] and [20X0]. If the terminal growth rate would have remained at [one-digit number]%, a goodwill impairment of CHF [amount] million would have resulted. This means that all the goodwill of CHF [amount] million would have been impaired.

50 Further evidence that the terminal growth rate assumption of [one-digit number]% is far too high can be derived from the auditor's [20X0] comprehensive report. According to this report, A.___ Ltd did not concur with the assumptions used for the DCF calculation, mainly in determining the terminal value (based on the terminal growth rate of [one-digit number]%). A.___ Ltd's internal valuation experts consider a maximum terminal growth rate of [one-digit number]% to be acceptable, which is consistent with the upper end of the range C.___ AG uses. As a consequence, A.___ Ltd raised an audit adjustment on the disclosure of note 14 (intangible

assets) and tested the valuation of goodwill alternatively by comparing X.___'s net assets with its market value.

51 Based on the aforementioned considerations, SaKo shares the conclusion of A.___ Ltd and concludes that X.___ did not use assumptions that market participants would use in their DCF model when pricing its own company value and therefore violated IFRS 13.3 and 13.22.

2.2.2.1.2. Costs of Disposal

52 Costs of disposal according to IAS 36.6 are incremental costs directly attributable to the disposal of an asset or cash-generating unit, excluding finance costs and income tax expense.

53 Costs of disposal are deducted in measuring fair value less costs of disposal. IAS 36.28 gives examples of such costs, e.g., legal costs, stamp duty and similar transaction taxes, costs of removing the asset, and direct incremental costs to bring an asset into condition for its sale.

54 X.___ conceded that it did not consider cost of disposal in the impairment test, because a "DCF valuation model was used to calculate the value in use". This explanation for not considering costs of disposal is incorrect, since X.___ disclosed in the [20X0] IFRS annual financial statements explicitly that a FVLCD was used to determine the recoverable amount. Costs of disposal need to be deducted regardless of how the fair value is determined (e.g. whether by reference to a market price or by using a DCF model).

55 By not recognizing costs of disposal in the FVLCD calculation, X.___ violated IAS 36.6 and IAS 36.28. X.___ estimated costs of disposal to be [one-digit number]- [one-digit number]% of the fair value. Due to this systematic error alone, X.___'s FVLCD is overstated by approximately [one-digit number]- [one-digit number]%.

2.2.2.1.3. Market capitalisation plus control premium assessment

56 X.___ states in its [20X0] IFRS annual financial statements to have alternatively performed a second impairment assessment, which is based on a "Market capitalisation plus control premium" approach.

57 Regarding the secondary assessment, only the market capitalisation is derived from market data relating to X.___. The third party (B.___ AG) did not actually determine the control premium for X.___ as alleged in note 14 of the [20X0] IFRS annual financial statement. Rather, B.___ AG explicitly disclaimed that they did not make any statement with regards to a specific control premium for X.___ in the context of IAS 36 (impairment testing) and IFRS 13 (fair value measurement). X.___ ultimately determined the control premium itself and did not provide market evidence. Therefore, the control premium is not substantiated. Furthermore, X.___ did not determine or disclose any amount for the FVLCD according to this secondary assessment. For these two reasons, the secondary assessment cannot be relied upon for the purpose of X.___'s goodwill impairment testing.

2.2.2.1.4. The market capitalisation assessment and impairment of the goodwill

58 X.___'s auditor A.___ Ltd did not accept the outcome of the DCF VM as of 31 December [20X0], mainly because of the calculation of the terminal value. As a result, A.___ Ltd decided not to rely on X.___'s DCF VM to audit the recoverability of the goodwill, but to perform instead an altogether different and more reliable impairment test, which was to determine the fair value based on X.___'s market capitalisation (without control premium).

59 Even if the alternative assessment performed by A.___ Ltd for audit purposes would have been X.___'s actual impairment test, an impairment would have still resulted because the valuation assessment comprises two errors. The first error is again the omission of costs of disposal (IAS 36.6 and IAS 36.28). The second error concerns the inclusion of treasury shares in the market capitalisation calculation.

60 Since the market capitalisation calculation done correctly is a more reliable way to determine the FVLCD of X.___, SER rightly uses that method to estimate the quantitative impact of the error. Also, this estimated quantification of the error is more beneficial for X.___ than adjusting the terminal growth rate in X.___'s own DCF VM, since a reduction of the terminal growth rate to the upper end of a reasonable range would result in the entire goodwill being fully impaired.

61 Based on this assessment the FVLCD as of 31 December [20X0] can be determined as follows:

Total number of shares	**[number]**
Treasury shares	[number]
Shares outstanding	[number]
Share price	CHF [amount]
Market capitalisation / Fair Value	CHF [amount] million
Cost of disposal ([one-digit number]%)	CHF [amount] million
Fair Value Less Costs of Disposal	CHF [amount] million

62 Based on the FVLCD the goodwill impairment as of 31 December [20X0] can be determined according to SER as follows:

Carrying amount of Equity	**CHF [amount] million**
Fair Value Less Costs of Disposal	CHF [amount] million
Impairment	CHF [amount] million

63 In accordance with IAS 36.104 the amount of CHF [amount] million shall be fully allocated to the carrying amount of goodwill. SaKo agrees with this calculation by SER.

64 According to IAS 36.60 an impairment shall be recognised immediately in profit or loss and, according to IAS 36.104, it shall be allocated for a CGU to reduce the carrying amount of goodwill first. SER concludes, that X.___ erroneously did not recognise a goodwill impairment of at least CHF [amount] million as of 31 December [20X0]. The impact of the error on the [20X0] IFRS annual financial statement is as follows (amounts in CHF million):

	Reported	Adjusted	Impact
Net loss for the period	([amount])	([amount])	Net loss [low two-digit number]% higher
Goodwill	[amount]	[amount]	Carrying amount [low two-digit number]% lower
Equity	[amount]	[amount]	Carrying amount [one-digit number]% lower

2.2.2.1.5. The disclosure in the [20X0] IFRS annual financial statements

65 According to IAS 36.130, an entity shall disclose for an asset (including goodwill) or a CGU, for which an impairment loss has been recognised during the period:

(a) the events and circumstances that led to the recognition or reversal of the impairment loss.

(b) the amount of the impairment loss recognised.

(c) […]

(d) for a cash-generating unit

i. a description of the cash-generating unit (such as whether it is a product line, a plant, a business operation, a geographical area, or a reportable segment as defined in IFRS 8);

ii. the amount of the impairment loss recognised or reversed by class of assets and, if the entity reports segment information in accordance with IFRS 8, by reportable segment; and

iii. if the aggregation of assets for identifying the cash-generating unit has changed since the previous estimate of the cash-generating unit's recoverable amount (if any), a description of the current and former way of aggregating assets and the reasons for changing the way the cash-generating unit is identified.

(e) […]

(f) […]

66 Since X.___ failed to recognise the impairment loss, the disclosures required by IAS 36.130 were missing in note 14 of the [20X0] IFRS annual financial statements). This is a consequence of the errors described above.

67 If a reasonably possible change in a key assumption on which management has based its determination of the unit's recoverable amount would cause the unit's carrying amount to exceed its recoverable amount, an entity shall disclose the following information (IAS 36.134(f)):

i. the amount by which the unit's (group of units') recoverable amount exceeds its carrying amount (commonly referred to as "headroom");

ii. the value assigned to the key assumption;

iii. the amount by which the value assigned to the key assumption must change, after incorporating any consequential effects of that change on the other variables used to measure recoverable amount, in order for the unit's (group of units') recoverable amount to be equal to its carrying amount.

68 Irrespective of whether the impairment test was wrong, X.___ additionally failed to disclose the sensitivity information required by IAS 36.134(f).

69 While X.___ did disclose some sensitivity information relating to the DCF model in note 14 of the [20X0] IFRS annual financial statements, these disclosures were not in line with IAS 36.134(f) and were not useful to readers of the financial statements.

70 X.___ disclosed a percentage number by how much a [one-digit number]% shift in each the WACC and the terminal growth rate assumption would change the DCF value of the company. Without knowing the monetary amount of the DCF value nor the headroom (required by IAS 36.134 (f)(i)), a reader of the financial statements could not assess the consequences of such a shift. X.___ also failed to comply with IAS 36.134(f)(iii) by not disclosing that an increase of the WACC by [one-digit number]%, i.e. from [low two-digit number]% to [low two-digit number]%, would reduce the headroom from CHF [amount] million to zero.

71 The reader of X.___'s [20X0] IFRS annual financial statements has been deprived of the information that relatively slight changes in key assumptions lead to a goodwill impairment and that the goodwill was therefore highly at risk, even if the impairment test would not be subject to the errors described above. Based on the information in note 14 of the [20X0] IFRS annual financial statements, the reader is led to believe that a goodwill impairment is not an issue.

2.2.2.2. X.___'s [20X1] IFRS annual financial statements

2.2.2.2.1. Impairment indicator

72 A CGU to which goodwill has been allocated shall be tested for impairment annually and *whenever there is an indication that the unit may be impaired*, by comparing the carrying amount of the unit, including the goodwill, with the recoverable amount of the unit (IAS 36.90).

73 An impairment loss shall be recognised immediately in profit or loss (IAS 36.60). According to IAS 36.104, an impairment loss for a CGU shall be recognised, if the recoverable amount of the unit is less than the carrying amount of the unit. The impairment loss shall be allocated first to reduce the carrying amount of goodwill and then to the other assets pro rata, based on the carrying amount of each asset in the unit. In IAS 36.105-107 the allocation to other assets is specified.

74 According to IAS 36.124 an impairment loss recognised for goodwill shall not be reversed in a subsequent period. IFRIC 10 clarifies that an impairment loss recognised in a previous interim period shall also not be reversed.

75 X.___ denies the existence of an impairment indicator as of 23 March 2020. X.___ argues that there is no triggering event because share prices of early-stage [...] companies are generally fluctuating significantly. Since X.___ uses market capitalisation as its impairment testing model in [20X1], a significant drop of the share price below the break-even threshold cannot be ignored as impairment indicator according to SER. The first half year [20X1] showed a general

high market volatility due to COVID-19. Similarly, X.___'s market capitalization was also rather volatile, but stabilized again by [date] [20X1].

76 X.___ points out in its statement of [date] [20X1] that based on IFRIC 10 and IAS 34, an impairment shall not be recognized within a reporting period if it does not have to be recognized at reporting date. Since X.___ reports semi-annually in the sense of IAS 34, no impairment shall be recognized on [date] [20X1] because the reason for impairment was not present anymore at both reporting dates (30 June [20X1], 31 December [20X1]). SaKo agrees with this view.

77 While a significant drop in market value is an indicator for impairment, it was not present any longer at the end of the reporting period and hence SaKo concurs with X.___'s view that the company was not obliged to take the share price of [date] [20X1] as a trigger point for impairment.

78 The impairment testing performed on [date] [20X1] by X.___ applying a FVLCD calculation considering its market capitalization less treasury shares, costs of disposal and excluding any control premium did not require any impairment.

2.2.2.2.2. Disclosures in the [20X1] IFRS annual financial statements

79 Based on the errors described above, namely the incorrect treatment of the treasury shares in the market capitalisation calculation and the omission of the costs of disposal, the disclosures in note 14 of the [20X1] IFRS annual financial statements contain several consequential errors.

80 If the recoverable amount is based on fair value less costs of disposal, IAS 36.134 (e)(iiB) requires that if there has been a change in valuation technique, the change and the reason for making it need to be disclosed.

81 X.___ did not disclose that it changed the valuation technique nor the reason for making the change. The actual reason for changing the valuation technique was that their auditor A.___ Ltd demanded this change, as it is a more reliable way to determine the FVLCD. As a consequence, X.___ changed to the market capitalisation approach (fair value level 1) for [20X1].

82 Even accepting that no impairment indicator existed during [20X1] and no other errors were made in the impairment test, it is required that a change in accounting policy is disclosed. By not disclosing the information, X.___ deprived readers of the financial statements of this important fact.

2.2.2.3. Summary of violations

83 Although the year [20X0 – 1 year] is only relevant as comparative period in the [20X0] IFRS annual financial statements, the goodwill impairment issue already became apparent. X.___'s auditor noted that X.___ did not provide sufficient and appropriate audit evidence to support the DCF calculation and the FAOA raised similar concerns related to the goodwill impairment test and the related disclosures. Therefore, X.___ was aware of the fact that their [20X0 – 1 year] goodwill impairment test was regarded as insufficient and inappropriate before they prepared their [20X0] test and the issuance of the [20X0] IFRS Financial Statements.

84 SER objects that X.___ continued to provide an insufficient and inappropriate DCF-based test and corresponding documentation. The [20X0] impairment test contains the following mistakes according to SER:

- X.___ was not using assumptions that market participants would use in their DCF VM and therefore breaching IFRS 13. Bringing the terminal growth rate down to the upper end of a reasonable range would result in the goodwill being fully impaired;
- X.___ did also not deduct costs of disposal from the calculated fair value;
- The control premium used in a second assessment was not reliable;
- An alternative assessment to calculate the fair value based on the market capitalisation excluding the consideration of a control premium would have led to a partial impairment of the goodwill;
- Irrespective of the errors above, the sensitivity analysis disclosed by X.___ were not in line with the requirements of IAS 36.134(f)).

85 X.___ acknowledges that it would have been correct to disclose the DCFVM as a value in use model and the market capitalization plus control premium (less costs of disposal) as FVLCD. Nevertheless, the [20X0] annual financial statements are in X.___'s view not materially misstated as the correct application of the calculation would not have led to a different result. However, X.___ concurs that the disclosure is not appropriate. X.___ further states that the applied control premium of [middle two-digit number]% resulted from a B.___ AG study dated [month] [20X0]. A retrospective assessment with an X.___ specific control premium of [low two-digit number]% as of 31 December [20X0] leads to the conclusion that no impairment needs to be recognized. The alternative assessment calculated by SER omits the control premium according to X.___. Considering the sensitivity analysis, a modest control premium of [one-digit number]% would lead to CHF [amount] headroom. Considering the X.___ specific control premium of [low two-digit number]%, the Issuer does not concur with the conclusion that CHF [amount] million should have been impaired. The Company agrees that they did not disclose all required information by IAS 36.134(f). If the DCFVM had qualified as a FVLCD model, then X.___ would have had to disclose the change in key assumptions regarding the Fair Value model in accordance with IAS 36. However, the DCFVM was in fact a value in use model, inadequately disclosed as FV model. Therefore, there was in fact no change in key assumptions regarding the FV model as that has already been based on market capitalization (+control premium).

86 SaKo agrees with the SER conclusion that X.___ did not use assumptions that market participants would use. In fact, the projection period applied is far to long compared to a standard of five years. Further, SaKo notes that X.___ accepts that costs of disposal must be deducted and that the sensitivity analysis disclosed was not in line with IAS 36.134 (f).

87 As far as the control premium and the alternative assessment criticized by SER are concerned, SaKo notes that X.___'s approach seems unusual compared to market practices. However, the literature is not clear in this respect and the auditor A.___ Ltd accepted the way chosen. Therefore, SaKo does not endorse the third and fourth objection of SER as quoted above.

88 In [20X1], X.___ did no longer apply the DCF method and instead applied a market capitalisation calculation to determine the FVLCD. The [20X1] impairment test contains the following mistakes according to SER:

- X.___ missed an impairment trigger and consequently an impairment as of [date] [20X1];

- X.___ wrongly considered treasury shares and omitted costs of disposal;
- As a result, goodwill should have been fully impaired in [20X1];
- Irrespective of the errors above, X.___ failed to disclose the change in valuation technique to determine FVLCD and the reason for the change, i.e. a disagreement with the auditor about the previous valuation technique.

89 X.___ states that based on IFRIC 10 and IAS 34, an impairment shall not be recognized within a reporting period if it does not have to be recognized at reporting date. Since X.___ reports semi-annually in the sense of IAS 34, no impairment shall be recognized in [20X1] because the reason for impairment was not present anymore at both reporting dates (30 June [20X1], 31 December [20X1]).

90 Sako agrees with the above interpretation of IAS 36, IAS 34 and IFRIC 10, in line with various guidances quoted by X.___ (IFRIC, Deloitte, KPMG, Haufe and BDO). Therefore, SaKo rejects the first and third objection relating to [20X1] raised by SER. On the other hand, the second and forth objection are shared by SaKo.

91 As a consequence of these errors, both the [20X0] and the [20X1] IFRS annual financial statements are misstated, since X.___ did not identify and recognise required goodwill impairments in its [20X0] IFRS annual financial statement nor make all necessary disclosures to the [20X0] and [20X1] IFRS annual financial statements.

3. Sanction

92 X.___ violated Art. 51 LR in combination with Art. 6 DFR, IAS 36 and IFRS 13.

93 Such violations can be sanctioned in accordance with Art. 61 LR. The sanctions listed therein may be imposed cumulatively. Art. 61 para. 2 LR provides that in determining the sanction to be imposed, due consideration must be given to the severity of the breach and to the degree of fault. In cases where the issuer shall be sanctioned with a fine, the impact of the sanction on the party concerned has also to be considered when setting the amount of the fine.

3.1. Degree of Fault

3.1.1. Commission of the Breach

94 The LR require 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 entity 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 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).

95 Anyone who violates the relevant provision consciously acts intentionally. An issuer acts with conditional intent, if it does not directly intend to violate an obligation, but at least accepts the likelihood of a violation (see decisions of the Sanctions Commission of 28 June 2012 [SaKo 2012-AHP-II/11], number 46; sanction notice of SIX Exchange Regulation AG of 11 October 2013 [SER-AHP-I/13], number 48; of 12 August 2013 [SER-KTR-FOR-I/13], number 26; of 4 February 2013 [SER-MT II/12/SER-AHP I/12/SER-Listing I/12], number 101).

96 In the assessment of the degree of fault, the constant 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).

97 X.___'s auditor A.___ Ltd raised various concerns about the impairment tests performed in the [20X0] and [20X1] IFRS annual financial statements. A.___ Ltd even informed X.___ that the FAOA was conducting investigations in connection with the audit of the goodwill impairment testing. As such, X.___ was aware of the risks associated with their impairment testing methods and assumptions. Despite that, it appears from the minutes of the Board of Directors and the related documentation concerning the [20X0] IFRS annual financial statements that the risks in connection with X.___'s impairment testing were not in depth analysed by the Board.

98 The Company contends that X.___ acted within the limits of its reasonable discretion in interpreting the applicable rules of financial reporting. If X.___'s behaviour were held to have been outside of the limits of its reasonable discretion, then this conduct amounted to a light negligent violation of such rules.

99 SaKo refers to the general obligation of any issuer to fully respect the relevant provisions and to the warning signals by the auditors. The Company could not document that an in-depth analysis took place, that would be indispensable to consider a light violation of the rules. For these reasons, X.___'s conduct must be qualified at least as **negligent**.

3.1.2. Behaviour after the Breach

100 The behaviour of the Issuer after the violations is regarded as constructive. The Company participated constructively in the proceedings and responded to the questions raised in a timely manner. SaKo notes notably that the detailed statement of [date] [20X1] facilitated the judgement of the events and actions.

101 X.___ further expresses its regret that the accounting mistakes were not resolved earlier and that they are now in a position where X.___ must face consequences. Going forward, X.___ assures that they will do their outmost to ensure that the financial reporting obligations are fully complied with at all times, and the new management has already taken measures to strengthen the skill sets and processes. They emphasize their willingness to also improve the communication and transparency towards SER to build trust and avoid any issues in the future.

SaKo takes this behaviour favourably into account for the determination of the sanction to be imposed.

3.1.3. Behaviour in the previous Years

102 X.___'s conduct in the previous years is to be assessed neutrally. There is no entry in the sanctions register that needs to be considered in the assessment of the sanction.

3.1.4. Severity of the Breach

103 The annual financial statements are one of the most important instruments for investors to assess and analyse the financial situation of a company. Therefore, it is of the utmost 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).

104 A reader of X.___'s annual financial statements is led to believe that X.___'s goodwill is tested appropriately for impairment and is valuable, when in fact, X.___ wrongfully applied the goodwill impairment test in [20X0]. The FVLCD used is actually not a fair value in accordance with IFRS 13 and the costs of disposal, as required by IAS 36, are missing entirely. Therefore, X.___ did not identify and recognise the necessary goodwill impairments in its [20X0] IFRS annual financial statements. Besides the consequential errors in the notes, X.___'s disclosures in its [20X0] and [20X1] IFRS statements are insufficient.

105 The error in the [20X0] IFRS annual financial statements is material. The goodwill is overstated in [20X0]. This also significantly affects the income statements of X.___'s [20X0] IFRS annual financial statements.

106 Without recognising the goodwill impairment loss, X.___'s [20X0] IFRS annual financial statements fail to fulfil their goals (i.e. provide transparent financial information for the decision finding of potential investors in accordance with IAS 1.9). Therefore, the breaches have to be regarded as **relevant**.

3.1.4.1. Sensitivity to Sanction and proposed Sanction

107 Taken into account the severity of the breach and the degree of fault, SaKo considers a fine to be the appropriate sanction in accordance with Art. 61 LR.

108 When quantifying the sanction amount the sensitivity to sanctions has to be taken into account. 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).

109 X.___'s net loss attributable to the shareholders for the financial years [20X2] and [20X1] amounted to CHF ([amount]) million and CHF ([amount]) million. The cash flows from operating activities were negative CHF ([amount]) million and CHF ([amount]) million. Cash and cash equivalents amounted to CHF [amount] million and CHF [amount] million while total equity stood at CHF [amount] million and CHF [amount] million, respectively. In view of the above-

described economic measures the **sensitivity to sanctions** of the Company **is high**. The Company agrees with this qualification.

110 In this context it should be noted that in recent years it has become clear that it is necessary to impose stronger sanctions for violations of the rules of the Exchange. The Financial Market Surveillance Authority expects that Stock Exchanges in Switzerland enforce all applicable rules with strict measures. The Sanctions Commission already warned earlier that it tends to raise the fines for breaches compared to the practice of earlier years, so prior levels of fines do not automatically set the standard for its current practice. The purpose is not only to penalize the past, but also to prevent breaches of the rules in the future. The sanction should in fact have a preventive effect [SAKO 2016 – SER 29/15]: "*in recent years it has become clear that it is necessary to impose stronger sanctions for violations of the rules of the Exchange. The Sanctions Commission therefore is tending to raise the fines for breaches compared to the practice of earlier years ... The sanction should have a preventive effect.”*. This policy was confirmed e.g. in the decisions SaKo 026/19, 051/21, 061/21, I/2022 (not yet entered into force) or II/2022 taking steps to impose higher sanctions in respect of a preventive effect.

111 Considering all the relevant factors for determining the sanction, SaKo sanctions X.___ with a **fine of CHF 50,000.**

3.1.5. Publication of the Decision of the Sanctions Commission

112 According to Ciph. 6 para. 7 RP, the public will be informed of any investigation concluded by a legally binding sanction decision. In addition, the legally binding decision of the Sanctions Commission will then be published on SER’s website in anonymous form (Ciph. 6 para. 8 RP). In addition, there will be a media release, including the name of the company, informing the public on the closure of the case.

3.1.6. Costs

113 In case of sanction proceedings, charges are determined based on the expenditure incurred adopting an hourly rate of CHF [amount] per person according to Ciph. 3.7 in connection with Ciph. 4.1 of the List of Charges Regulatory Bodies (LOC). In the present case, **charges of SER to date amount to CHF [amount]**.

114 The costs of the Sanctions Commission amount to CHF [amount] and shall also be borne by X.___.

115 Therefore, X.___ must cover **total costs of CHF [amount]**.

[place], 31 October 2022

The Chairman:	The Secretary:
[Sig.] Chairman	[Sig.] Secretary