Decision

in the procedure **SaKo RLE-IV/19**

SIX Exchange Regulation AG

Hardturmstrasse 201

8021 Zurich

vs.

X. ___

[address]

[place][1]

The Sanctions Commission (**SaKo**) - […] (Chairman), […], […], […], […] (Secretary) - has decided as follows:

Decision

1. It is determined that X. ___ violated, at least by gross negligence, the applicable financial reporting standard IFRS and thereby its obligations pursuant to Art. 51 LR in combination with Art. 6 DFR.
2. It is noted that X. ___ was presented with the sanction proposal on [date] [20X4] and requested to be delisted from SIX on [date] [20X4].
3. X. ___ is ordered to pay a fine of CHF 100,000 (Art. 61 para. 1 number 2 LR).
4. X. ___ is ordered to bear the costs of the SER proceedings in the amount of CHF […] and the costs incurred by the Sanctions Commission (Ciph. 3.7 LOC) in the amount of CHF […], resulting in total costs of CHF […].
5. Upon entry into force of this decision, the closure of the procedure shall be notified to the market by a media release and the Sanctions Commission's decision is to be published separately in anonymised form on the website of SIX Exchange Regulation AG.

[…]

[1] Administrative remark: The registered office of X. ___ is in [place]. However, at the request of the Company, copy of the correspondence is sent to their operational headquarters in [place]. Concerning deadlines, communication to the registered office is considered determinant.

Reasons for the Decision

1. Introduction and overview of proceedings

1. X. ___ (**X. ___, Issuer** or **Company**) is a […] company with its registered office in [place] and publicly traded on the SIX Swiss Exchange AG since [date] [20X1]. Its operational office is in [place].

2. At the time of the [listing] on the SIX, financial information on the Company was provided but in the listing decision of [date] [20X1] it was made clear that " …. *the financial information published in the prospectus has undergone a formal examination with regard to completeness only. The issuer's annual report will be reviewed when submitted to SIX Exchange Regulation as part of the ongoing obligations to be fulfilled by the issuer. Any irregularities which might be discovered in the said review cannot be justified with reference to the listing prospectus."*

3. The first audited annual report of X. ___ after listing, comprising the full financial year for the twelve months ending on [reporting period-end] [20X2], was published on [publication date] [20X2] and was reviewed by SIX Exchange Regulation AG (**SER**). This review of the audited financial statements for the year [20X1/20X2] indicated that a preliminary investigation was required. The same held true for the interim financial statements [20X2/20X3] for the six-month period to [reporting period-end] [20X2]. SER had numerous questions and concerns about the reliability of these financial statements and, despite the requests by SER, the submitted documents and statements provided by the Company were not able to resolve the issues. Furthermore, both annual and interim financial statements contain multiple and obvious errors.

4. In accordance with Art. 51 Listing Rules (**LR**[2]) in conjunction with Art. 6 of the Directive on Financial Reporting (**DFR**[3]), SER's review is aimed at monitoring compliance of the issuers' financial statements with the applicable accounting standards.

5. After reviewing X. ___'s audited [20X1/20X2] IFRS annual financial statements, SER initiated a preliminary investigation on [date] [20X2] asking for clarification concerning various questions. X. ___ timely filed its answer to the preliminary investigation, including to additional questions raised. 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 audited [20X1/20X2] IFRS annual financial statements and the unaudited [20X2/20X3] IFRS interim financial statements. Therefore, on [date] [20X3], SER opened an investigation submitting additional questions. X. ___ timely submitted its answers.

6. SER submitted the sanction proposal to X. ___ for comments by letter dated [date] [20X4]. X. ___ responded on [date] [20X4].

7. X. ___ asked for a delisting from SIX Swiss Exchange on [date] [20X4].

8. By decision of [date] [20X4], SER accepted the delisting of the Issuer at its request by [date] [20X5]. The last trading day of the Company on SIX Swiss Exchange shall be on [date] [20X5].

9. The sanction proposal and the answer of X. ___ were handed over to SaKo on [date] [20X4] .

10. SaKo notified the Delegation for the Decision on [date] [20X4] and granted possibilities for supplementary responses to X. ___. The composition of the Delegation was not opposed. X. ___ submitted a timely response on [date] [20X5]. SER reacted to this response on [date] [20X5]. The Company submitted its additional position on [date] [20X5].

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[2] Listing Rules (LR) dated 8 November 2019, entry into force 2 January 2020.
[3] Directive on Financial Reporting (DFR) dated 11 September 2019, entry into force 2 January 2020.

11. The Delegation discussed and decided the case in a physical meeting on [date] [20X5] after intensive study of the file.

2. Facts and concerns raised

12. X. ___ is a company incorporated under the laws of [country] and [country] with its registered office in [place]. The Company's [shares] are listed on the [Regulatory Standard] of SIX Swiss Exchange AG. On [date] [20X3], X. ___ signed a declaration accepting to be bound by the stock exchange regulations, especially by the LR and the Rules of Procedure (**RP**[4]) in their latest version.

13. 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).

14. In establishing the relevant facts for a sanction proposal, SER has to consider 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). In drafting the sanction proposal to SaKo, SER declared to have evaluated all facts presented by X. ___ even if not explicitly referred to in the sanction proposal.

15. SaKo notes that the Issuer requested a delisting from SIX on [date] [20X4]. This request was approved by SER by decision of [date] [20X4] which is to take effect on [date] [20X5]. The last trading day at SIX Swiss Exchange shall be on [date] [20X5].

16. As of [date] [20X2], X. ___ submitted the audited [20X1]/[20X2] IFRS annual financial statements to SER. The unaudited [20X2]/[20X3] IFRS interim financial statements of X. ___ were submitted to SER on [date] [20X3].

17. The accounting standards applicable to X. ___'s audited [20X1]/[20X2] annual financial statements dated [date] [20X2] and unaudited [20X2]/[20X3] interim financial statement dated [date] [20X3] are IFRS as adopted by the European Union. For the matters addressed in this sanction proposal, there is no difference between IFRS issued by the International Accounting Standards Board (**IASB**) and IFRS as adopted by the European Union.

2.1. Concerns relating to the valuation of the investment in A. ___ Inc. (A. ___ Inc.) and financial asset, B. ___ Inc. (name changed to C. ___ Inc. from [20X2]/[20X3] interim financial statements)

18. As of [reporting period-end] [20X2], the Company's consolidated statement of financial position includes two significant assets, being a financial asset and investment, totaling [currency] [amount], representing approximately [high two-digit number]% of the Company's consolidated assets at that date.

19. As indicated below SER has substantial reservations about the carrying value of these assets as of [reporting period-end] [20X2]. SaKo concurs with the views of SER.

2.1.1. Valuation of the investment in A. ___ Inc. (A. ___ Inc.)

20. SER is concerned about the value placed on A. ___ Inc. at [reporting period-end] [20X2]. In note […] of its audited [20X1]/[20X2] IFRS annual financial statements, X. ___ presents a financial investment in A. ___ Inc. (incorrectly described as "D. ___ Inc.") in the amount of [currency] [amount] as of [reporting period-end] [20X2] (as of [reporting period-end] [20X1]: it was not existing). The carrying value of the investment in A. ___ Inc. represents around [two-digit number]% of the total assets of the group as of [reporting period-end] [20X2]. X. ___ classified the A. ___ Inc. investment as an investment.

21. The Company has provided SER with documentation that the investment was acquired under an agreement dated [date] [20X2] on or before [date] [20X2]. The corresponding value recorded on the balance sheet amounts to [currency] [amount] as of [reporting period-end] [20X2]. To explain the value development of A. ___ Inc., X. ___ provided SER with a reconciliation of the contribution of various

[4] Rules of Procedure (RP), dated 8 November 2019.

assets from [first date of the reporting period] [20X1] to [reporting period-end] [20X2] which had been exchanged for shares in A. ___ Inc..

22. By summing up these contributions, the Company obtains a value for these contributions, and therefore a value for the investment in A. ___ Inc., amounting to [currency] [amount] as of the [month] [20X2] acquisition date. Specifically, the contributions listed are:

a) license rights for [product] with E. ___ Inc.,

b) F. ___ Inc. distribution rights which have been transferred in exchange for A. ___ Inc. ownership rights as of [date] [20X2],

c) advertising prepayments and

d) royalties due from E. ___ Inc..

Regarding item a) the license rights for [product] with E. ___ Inc. amounting to [currency] [amount] and item b) the F. ___ Inc. distribution rights amounting to [currency] [amount]. Both assets were not existing as of [reporting period-end] [20X1] and were generated at some point between [reporting period-end] [20X1] and the [month] [20X2] acquisition date. SER explicitly requested the relevant documentation to prove the existence of these additions, i.e. before these assets have been contributed to A. ___ Inc. in exchange for shares in A. ___ Inc. on the [month] [20X2] acquisition date. However, X. ___ did not provide any specific documents proving these additions. The only document provided supporting the value of these assets, (namely a) the license rights for [product] with E. ___ Inc. and b) the F. ___ Inc. distribution rights), is an agreement between X. ___ and A. ___ Inc., which details the assets contributed in exchange for equity of A. ___ Inc.. However, this agreement does not show the basis for capitalisation of the contributed license rights with E. ___ Inc. (Ciph. […])), the F. ___ Inc. license value (Ciph. […])) nor the value of the F. ___ Inc. orders. SER consider that answers have not been provided as to how these contributed assets originated and how these amounts, contributed in exchange for equity of A. ___ Inc., have been calculated. Furthermore, SER explicitly asked for the amount of related cash flows paid to acquire the aforementioned intangible assets. X. ___ did not provide any answer.

23. In support of the advertising prepayments (item c)) amounting to [currency] [amount] as of [reporting period-end] [20X1], X. ___ submitted an agreement with G. ___ Inc. (**G. ___ Inc.**). This agreement was signed on [date] [20X0 – 4] and according to clause […] of said agreement, it was valid for a maximum of five years, i.e. until [date] [20X1]. However, it was transferred in exchange for A. ___ Inc. shares only on [date] [20X2]. SER has not been provided with documentation supporting how these advertising prepayments could support a transfer of A. ___ Inc. equity valued at [currency] [amount].

24. As a proof for the existence of the royalties due from E. ___ Inc., X. ___ submitted the license agreement with E. ___ Inc. dated [date] [20X0], Ciph. […]. According to this agreement, X. ___ was entitled to receive fixed royalty payments in the amount of [currency] [amount] (approximately [currency] [amount]). However, the agreement reads that the amount should have been paid by [reporting period-end] [20X1]. The license agreement with E. ___ Inc. was transferred to A. ___ Inc. on [date] [20X2] and the outstanding amount for the royalties due from E. ___ Inc. was settled in exchange for A. ___ Inc. shares in the amount of [currency] [amount], subject to a valuation determined by an independent valuer.

25. In order to calculate the equity value of A. ___ Inc. and to determine the amount of A. ___ Inc. shares to be transferred from E. ___ Inc. to X. ___ in exchange for the assets contributed, the independent valuation firm [Valuer] ([Valuer]) was mandated with the A. ___ Inc. valuation. In this regard, X. ___ submitted to SER the limited scope valuation report from [Valuer] dated [date] [20X2] (**first [Valuer] report**), which valued the A. ___ Inc. investment at [currency] [amount] by adopting a Discounted Cash Flow method. However, the valuer discloses that he did not perform a full valuation of the assets, as he did not have access to external financial data about A. ___ Inc.. He further discloses that he did not have access to any financial statements of A. ___ Inc., neither current nor past, neither audited nor unaudited. Finally, he declared that he never met A. ___ Inc.'s management and never performed any site visits.

26. For the Discounted Cash Flow model, the valuation report forecasted product sales of A. ___ Inc. for the half-year to [reporting period-end] [20X2] amounting to [currency] [amount]. For the full year [20X3], such revenues were forecasted at [currency] [amount]. According to the report, these product sales will be generated exclusively by products purchased from and delivered by X. ___, as described in the first [Valuer] report: *"We understand that for all direct-to-consumer product sales* [i.e. B2C] *(which are expected to initially account for greater than [high two-digit number]% of total revenues) A. ___ Inc. will acquire these products directly from X. ___ at agreed wholesale prices and on-sell the products at standard retail prices."*

27. X. ___'s track record for direct sales amounted to [currency] [amount] for the full financial year [20X0]/[20X1] and [currency] [amount] for the full financial year [20X1]/[20X2]. The direct sales revenues for the first half-year [20X2]/[20X3], amounted to [currency] [amount] (approx. [currency] [amount]).

28. Further, X. ___ also submitted an updated valuation report from [Valuer] dated [date] [20X3] (**second [Valuer] report**). The valuer expressed the same limitation as in the first [Valuer] report. Once more, the valuer expressed that the valuation is mainly based on forecast financial information as provided by A. ___ Inc. Management and that this information has not been further verified for accuracy or completeness. Further, again no financial statements were available to the valuer. Despite these limitations, it shall be noted that the report in any case does not cover the period under scrutiny.

29. X. ___ stated it its responses of [date] [20X4] and [date] [20X5] that "*these allegations are denied as an independent valuation was obtained according to IFRS standards and provided to the auditors*". X. ___ states, among others, "*that its historical track record prior to commencement of the new arrangement with A. ___ Inc. is irrelevant. … It makes no logical sense from a valuation perspective to assume a continuation of X. ___'s past sales when there is a clear plan to change strategy from [month] [20X2] onwards. …*"

2.1.2. Valuation of the financial asset, B. ___ Inc.

30. SER is concerned about the value placed on B. ___ Inc. on [reporting period-end] [20X2]. The carrying value of this financial asset in B. ___ Inc. represents around [two-digit number]% of total assets of the group as of [reporting period-end] [20X2]. Furthermore, the B. ___ Inc. investment was classified as a financial asset being measured at fair value through profit or loss.

31. During the preliminary investigation, SER asked for the excerpt from the commercial register for B. ___ Inc.. However, no such excerpt was submitted. X. ___ only provided a confirmation letter dated [date] [20X3] issued by the management of B. ___ Inc.. The only evidence supporting the existence of B. ___ Inc. is the fact that B. ___ Inc.'s shares were formerly traded on [the stock exchange], [place] (**[stock exchange]**). This listing however ceased on [date] [20X0 -1], the date on which B. ___ Inc.'s shares were delisted from the [stock exchange], after the [place] Financial Supervisory Authority (**[…]**) withdrew [the stock exchange]'s market operator license. The last traded share price amounted to [currency] [amount].

32. SER has not been provided with evidence for the existence of the Company's holding in B. ___ Inc. as of the reporting date. X. ___ determined the fair value for B. ___ Inc. as [currency] [amount]. The valuation was based on the last traded share price of [currency] [amount] on [date] [20X0 – 1]. No explanation was provided as to why this share price (which was almost three years old at the time of the valuation) should still reflect the fair value of the investment.

33. SER repeatedly requested information regarding the financial situation of B. ___ Inc. as of [reporting period-end] [20X2]. However, no financial statements of B. ___ Inc. were provided. X. ___ only submitted a confirmation letter issued by the Management of B. ___ Inc. itself according to which there is no need to change the valuation of [currency] [amount] per share. No external evidence for this value was submitted.

34. The Company submitted to SER a [Valuer] report for B. ___ Inc. (which is now called C. ___ Inc. as this is the name on the report and also used in the [20X2]/[20X3] interim financial statements) (**third [Valuer] report**) which valued the financial asset as of [reporting period-end] [20X3] and is therefore outside of the relevant period of the [20X1]/[20X2] IFRS annual financial statements. The valuer disclosed that he did not verify the completeness and accuracy of the financial data provided by management with external sources. Further, the valuer declared that he did not have access to any financial statements of B. ___ Inc., neither current nor past, neither audited nor unaudited.

35. X. ___ denies these allegations relating to the appropriate value of B. ___ Inc. as an independent valuation was obtained and provided to the auditors. Among other matters, the Company states in its response of [date] [20X5] that "*B. ___ Inc. management provided the company verification of investment into B. ___ Inc. for the period in question which confirmed the investment amount and price per share. …The standard also does not prescribe as to which valuation a company should pick, so long as it is consistent, which is the case.*"

2.2. Governance over financial reporting, presentation and disclosures

36. According to the Company's published Corporate Governance report[5], chapter […], the Board of X. ___ has established an Audit Committee to monitor the financial integrity of the Company's financial statements and the involvement of the Company's auditors in that process.

37. However, despite being requested, no meeting minutes of the Audit Committee for the period from [date] [20X1] until [date] [20X2] were submitted to SER by the Company. In three separate attempts, SER requested the relevant documentation relating to the review of the financial statements by the Board of Directors, respectively the Audit Committee as part of the process of issuing the audited [20X1]/[20X2] IFRS annual financial statements. The only document received were the "Key Audit Matters" contained in the audit report, but SER received no document evidencing these were discussed by the Board of Directors or Audit Committee.

38. Besides the issues outlined above, SER noted various additional issues in the presentation and disclosure of X. ___'s audited [20X1]/[20X2] IFRS annual financial statements, which raises concerns about the quality of the Company's financial statements and the procedures used to produce them, which can be summarized as follows:

a. Calculation and presentation of basic and diluted earnings per share (**EPS**)

b. Presentation of other comprehensive income

c. Presentation of the consolidated cash flow statement

d. Disclosures about credit and liquidity risks of financial instruments

e. Numerous typographic mistakes

39. X. ___ conducted a capital increase of [amount] shares during [month] [20X2] respectively [month+ 1] [20X2]. Therefore, X. ___'s outstanding shares increased from [amount] to [amount]. According to note […], X. ___ calculated the basic and diluted EPS by dividing the profit with the number of shares outstanding at the end of the period, i.e. [amount] shares and not using the weighted average number of shares outstanding as required by IFRS.

40. In the consolidated statement of profit or loss and other comprehensive income, X. ___ presented other comprehensive income (**OCI**) of [currency] [amount] for the period ended [reporting period-end] [20X2]. In contrast, in the consolidated statement of changes in equity, the Company presented [currency] [amount] as a movement of the currency translation adjustment (**CTA**). The CTA is the only item recognized in OCI for the period ending [reporting period-end] [20X2], however, the amounts presented are not the same as in the consolidated statement of profit or loss.

41. X. ___ presented the cash flow from operating activities according to the direct method in its consolidated statement of cash flows for the year [20X1]/[20X2]. In addition, a table of operating cash flows according to the indirect method is disclosed in note […]. This table contains non-cash

[5] The Corporate Governance report was not reviewed examining the compliance with the Directive on Information relating to Corporate Governance.

transactions (e.g. conversion of debt to equity) and presents financing transactions (e.g. increase in other borrowings) as cash flows from operating activities. Furthermore, in the cash flow from financing activities as presented in the consolidated statement of cash flows [20X1]/[20X2], proceeds from borrowings amounting to [currency] [amount] were presented on a net basis.

42. X. ___ presented trade and other receivables amounting to [currency] [amount], trade and other payables of [currency] [amount] as well as borrowings in the total of [currency] [amount] as of [reporting period-end] [20X2]. In note […], no quantitative information about credit risks (i.e. past due analysis) and liquidity risks (i.e. maturity analysis) are available.

43. SER noted the following missing disclosures about the B. ___ Inc. financial asset:

a. For the financial asset in B. ___ Inc., no information about the nature and extent of the exposure to equity price risk was provided nor was a sensitivity analysis disclosed.

b. For B. ___ Inc., no indication of the fair value hierarchy level, no description of the fair value measurement technique and relevant observable/unobservable inputs to the fair value measurement were provided.

44. SER noted missing disclosures in connection with the A. ___ Inc. investment.

45. SER notes that there are numerous typographic errors in the financial statements. eg. Note […] A. ___ Inc. is referred to as D. ___ Inc.; Note […] uses [currency A] whereas the rest of the financial statements use [currency B].

46. X. ___ denies this allegation "and always maintains and updates its corporate governance policies as disclosed and published on its website and furthermore as disclosed in the Listing Prospectus reviewed and approved by SER only three months prior to the accounts in question".

2.3. Concerns relating to the unaudited interim financial statements [20X2]/[20X3]

47. The [20X2]/[20X3] IFRS interim financial statements are dated [date] [20X3] and cover the time period from [first day of the reporting period] [20X2] to [reporting period-end] [20X2].

48. These financial statements are now presented in [currency] ([currency]) and no longer [currency].

49. As of [reporting period-end] [20X2], financial assets and investments in B. ___ Inc. and in A. ___ Inc. amount to [currency] [amount] and to [currency] [amount][6], respectively. Together, these assets account for [high two-digit number]% of the total assets of the Company.

50. In note […] of the [20X1]/[20X2] audited annual financial statements it is said that a new IFRS standard, IFRS 9, related to Financial Instruments will be introduced from [first day of the reporting period] [20X2]. The substantial impacts of introducing this standard are explained.

51. Despite this, note […] in the interim financial statements states that "for the current, interim financial period, the Group has noted no amendments to International Accounting Standards that will be effective for the first time" so the Company has not introduced the new "Financial Instruments" standard. X. ___ described that all unrealized gains/losses on financial assets are calculated and recognized on an annual basis only in the full year audited report. SER requested that X. ___ provided information as to whether or not the remeasurement of the financial assets for the half-year was significant, however, X. ___ did not provide any answer. For information purposes it should be noted that according to the audited [20X2]/[20X3] IFRS annual financial statements issued on [date] [20X3], X. ___ performed a revaluation recognizing a revaluation loss amounting to [currency] [amount] on the A. ___ Inc. investment.

52. In the interim consolidated statement of profit or loss and other comprehensive income and statement of changes in equity for the period ending [reporting period-end] [20X2], X. ___ presented the

[6] As of [first day of the reporting period] [20X2], X.___ changed its presentation currency to [currency] ([currency]).

comparative periods from [first day of the reporting period] [20X1] to [reporting period-end] [20X2] (full financial year [20X1]/[20X2]) and from [first day of the reporting period] [20X0] to [reporting period-end] [20X1] (full financial year [20X0]/[20X1]) and not for the respective prior year 6-month period.

53. In the statement of cash flows for the period ending [reporting period-end] [20X2], X. ___ presented the comparative period from [first day of the reporting period] [20X1] to [reporting period-end] [20X2] (full financial year [20X1]/[20X2]).

54. In summary, as a result of its investigations, SER has observed the following major issues in the unaudited [20X2]/[20X3] IFRS interim financial statements of X. ___:

a. No remeasurement of financial investments at fair value through profit or loss

b. Incorrect presentation of comparative periods

55. X. ___ denies these allegations "*as evidence was provided, including independent valuations which is conducted every 12 months, As disclosed in the annual report, foreign exchange rate fluctuations for the period is also taken into account as reflected on the balance sheet.*"

2.4. Concerns relating to appropriateness of direct sales revenues [20X1]/[20X2]

56. In note […] of its audited [20X1]/[20X2] IFRS annual financial statements, X. ___ presents revenues from direct sales amounting to [currency] [amount]. This figure should represent revenues generated from the sale of products between [first day of the reporting period] [20X1] and [reporting period-end] [20X2], the period covered by X. ___'s [20X1]/[20X2] IFRS annual financial statements. In other words, these revenues would, according to X. ___'s distribution model, be generated by selling its products via X. ___ stores, internet sales or similar distribution channels.

57. According to X. ___, these revenues have been generated based on distribution agreements entered with six partners, namely H. ___ Inc., I. ___ Inc., J. ___ Inc., F. ___ Inc. (**F. ___ Inc.**), K. ___ Inc. (**K. ___ Inc.**) and L. ___ Inc..

58. SER consider that they have received insufficient supporting documentation concerning the direct sales revenue of [currency] [amount] and the appropriateness of recognizing this amount in the [20X1]//[20X2] financial statements.

59. On [date] [20X0], X. ___ signed a distribution agreement with H. ___ Inc. (so-called **[place] Agreement**). SER had concerns about whether or not X. ___ actually sold and delivered products, i.e. generated revenues from direct sales under the [place] Agreement, as well as to whether any transactions would fall within the period covered by the financial statements [20X1]/[20X2].

60. Regarding the agreements with I. ___ Inc. and J. ___ Inc., SER states that the agreements themselves have never been submitted despite a corresponding request by SER. It is therefore unknown whether the agreements actually exist. The only evidence in this regard is two Company-generated excel spreadsheets entitled "order forms". Since these order forms are dated [date] [20X0] and [date] [20X1], SER has a concern as to whether any resulting sales was correctly recorded as direct sales revenue in the financial statements covering the financial period from [first day of the reporting period] [20X1] to [reporting period-end] [20X2].

61. On [date] [20X2], X. ___ concluded a distribution agreement with F. ___ Inc., whereby X. ___ was to act as franchisee and distributor of F. ___ Inc. products. Relevant for the financial year [20X1]/[20X2] are only the first four months of the agreement, i.e. from [date] [20X2] to [reporting period-end] [20X2]. Evidence for actual sales in connection with this agreement was requested by SER but has not been filed by the Company. The only other document submitted by the Company relating to F. ___ Inc., but not to the aforementioned distribution agreement, is a purchase order confirmation from F. ___ Inc. for X. ___ products dated [date] [20X3]. However, this is after the accounting period of the financial statements under scrutiny which ended on [reporting period-end] [20X2].

62. Further, X. ___ refers to two additional agreements, with K. ___ Inc. and with L. ___ Inc., which were announced on [date] [20X3] and on [date] [20X3]. Both these agreements therefore fall (approximately 12 respectively 13 months) outside the relevant time period ending on [reporting period-end] [20X2].

63. X. ___ stated it its responses of [date] [20X4] and [date] [20X5] that "these allegations are denied as proof was provided to the auditors".

2.5. Concerns relating to appropriateness of the licensing fee revenues [20X1]/[20X2]

64. In note […] of its audited [20X1]/[20X2] IFRS annual financial statements, X. ___ presents revenues from licensing fees also amounting to [currency] [amount]. This figure should represent revenues generated from the licensing of products between [first day of the reporting period] [20X1] and [reporting period-end] [20X2], the period covered by X. ___'s [20X1]/[20X2] IFRS annual financial statements.

65. SER consider that they have received insufficient supporting documentation concerning the licensing fee revenue of [currency] [amount] and the appropriateness of recognizing this amount in the [20X1]//[20X2] financial statements

66. To substantiate the existence of licensing fee revenues in the amount of [currency] [amount], X. ___ submitted various license agreements. Namely those concluded with E. ___ Inc. (**E. ___ Inc.**) dated [date] [20X0], with A. ___ Inc. dated [date] [20X2] and a distribution agreement with F. ___ Inc. dated [date] [20X2].

67. The license agreement with E. ___ Inc. was signed on [date] [20X0]. The agreement reads that until [reporting period-end] [20X1], X. ___ had a right to receive a fixed royalty payment in the amount of [currency] [amount] (approximately [currency] [amount]), which had to be paid until [reporting period-end] [20X1]. For the period running from [first day of the reporting period] [20X1] until [date] [20X2], the agreement contains no indication showing that X. ___ was entitled to any licensing fees under this agreement. Further, the agreement reads that as of [date] [20X2], X. ___ was entitled to receive a [two-digit number]% royalty fee based on gross sales of X. ___'s products generated by E. ___ Inc., however it is unknown whether i) any sales have been generated and ii) whether royalty fees were paid. According to SER, no evidence was provided in this regard. The outstanding amount for the royalty payment due from E. ___ Inc. of [currency] [amount] was eventually settled in exchange for A. ___ Inc. shares.

68. The license agreement signed with A. ___ Inc. covers the period from [first day of the reporting period][20X1] to [reporting period-end] [20X2]. It reads that in this period, X. ___ is entitled to receive [currency] [amount] (approximately [currency] [amount]) royalty payments.

69. Finally, the third agreement which was submitted as proof of the existence of licensing fees revenue, was the F. ___ Inc. franchise agreement dated [date] [20X2] where X. ___ is to act as a franchisee. It says that X. ___, as distributor for F. ___ Inc. products, is owed franchise opening and development fees and royalties on gross sales to F. ___ Inc..

70. X. ___ stated in its responses of [date] [20X4] and [date] [20X5] that "these allegations are denied as proof was provided to the auditors".

2.6. Inadequate going concern assessment and related disclosure

71. X. ___ was holding [currency] [amount] in cash and cash equivalents as of [reporting period-end] [20X2]. The liabilities due within one year (current liabilities) amount to [currency] [amount] as of [reporting period-end] [20X2]. In addition, the net cash outflow from operating activities amounted to [currency] [amount]. As a result, SER had concerns that the Company was a going concern when the [20X1]/[20X2] consolidated financial statements were issued.

72. SER requested X. ___ to provide a consolidated (forward-looking) liquidity plan for the next 12 months. X. ___ did not provide documentation in this regard. X. ___ submitted vague plans regarding future cash inflows. However, no consideration was made concerning the future cash outflows and no contemporary evidence was submitted that a going concern assessment was made at the time it was due, i.e. on or before [date] [20X2], the date of publication of the audited [20X1]/[20X2] IFRS annual financial statements. In the [20X1]/[20X2] IFRS annual financial statements X. ___ nevertheless declared that it had no significant doubt about its ability to continue as a going concern (see disclosures in note […]).

73. In order to demonstrate that the going concern assumption as of [reporting period-end] [20X2] was correct, X. ___ outlined to SER various measures that had been undertaken in order to secure additional cash inflows. Namely, the placement of convertible instruments which occurred on [date] [20X3]; an offer for trade finance facilities received on [date] [20X2] and finally letters of comfort from institutional shareholders issued on [date] [20X3] and on [date] [20X3]. No proof was submitted that these measures were already planned and known to X. ___ before [date] [20X2] (date of issuance of the audited [20X1]/[20X2] IFRS annual financial statements).

74. SER mentions that it has been informed that the sole known and certain measure before [date] [20X2] was a loan facility granted by M. ___ Inc. (a company fully controlled by the wife of the CEO of X. ___) in the amount of [currency] [amount]. However, as of [reporting period-end] [20X2], [currency] [amount] (approximately [currency] [amount]) were already drawn down. In addition, X. ___ referred to cash inflows from a […] store in [place] generating average monthly revenues of [currency] [amount] (approximately [currency] [amount]). The store was opened on [date] [20X2] (i.e. around 4 months before the date of the issuance of the [20X1]/[20X2] IFRS annual financial statements) however the corresponding cash outflows related to the running of the new store are unknown.

75. X. ___ denies this allegation; "*As disclosed in the financial statements the report was prepared on a going concern basis*". The Issuer further referred to loans secured and capital increase undertaken**.** SaKo noted the explanations by X. ___ notably in its statement of [date] [20X5]. SaKo notes that the Company is still operating at the time of this Decision.

2.7. Summary

76. In summary, SER has observed the following major issues in the [20X1]/[20X2] IFRS annual financial statements of X. ___:

a. Concerns over the valuation of the investment in A. ___ Inc.

b. Concerns over the valuation of the financial asset B. ___ Inc.

c. Inadequate governance and diligence over financial reporting and issues concerning presentation and disclosures

d. Concerns relating to the appropriateness of the direct sales revenues

e. Concerns relating to the appropriateness of the licensing fee revenues

f. Inadequate going concern assessment and related disclosure

77. In addition to the points raised above concerning the [20X1]/[20X2] IFRS financial statements, SER has observed the following additional major issues in the [20X2]/[20X3] interim IFRS financial statements for the six months to [reporting period-end] [20X2] of X. ___:

a. Lack of introduction of new accounting policy for financial instruments from [first day of the reporting period] [20X2]

b. Incorrect comparative financial information

3. Considerations

78. As a general comment, it shall be noted that the core aim of accounting practice is to produce reliable financial statements. In order to achieve this, every claimed accounting transaction must be backed by supporting documents. This principle is fundamental and *inter alia* expressly outlined by the Swiss Manual of Auditing ("*Schweizer Handbuch der Wirtschaftsprüfung*"). Compliance with this principle is essential to control the complete and correct recording and processing of business transactions. The verifiability based on supporting documents must be always guaranteed. The supporting document must stand as evidence of the economic facts for every transaction that has an impact on accounting. The fulfillment of this requirement is an indispensable prerequisite for the functioning of the accounting system.

3.1. Investment in A. ___ Inc.

79. The Company engaged [Valuer] to perform a limited scope valuation report to determine the Fair Market Value of an equity stake as of [date] [20X2] in anticipation of the Company acquiring a minority stake (finally a [two-digit number]% non-voting interest) in A. ___ Inc..

80. SER has concerns about the compliance of the valuation approach used with IFRS 13. According to IFRS 13.61: *"**An entity shall use valuation techniques that are appropriate in the circumstances and <u>for which sufficient data are available</u> to measure fair value (emphasis added),** maximising the use of relevant observable inputs and minimising the use of unobservable inputs."* Pursuant to IFRS 13.62, the "income approach" as valuation technique may be applied to measure fair value if sufficient data is available. The "present value technique" is an example of the income approach (IFRS 13B11(a)).

81. In the first [Valuer] report provided, [Valuer] has applied a Discounted Cash Flow-method (**DCF-method**) to measure the fair value for the A. ___ Inc. investment as of the valuation date [date] [20X2]. The DCF-method is representing a "present value technique". However, with the first [Valuer] report being a limited scope valuation report this is unsatisfactory, as the valuer did not have sufficient data available to accurately measure fair value. According to the valuation report, page […], section […], revenue forecasts of A. ___ Inc. are mainly based on direct-to-consumer product sales (**B2C**). These are representing around [high two-digit number]%-[high two-digit number]% of total A. ___ Inc. revenues and therefore must be considered the main revenue stream for A. ___ Inc.. As a result, the revenue from such sales forms the basis of the calculated fair value.

82. As further outlined in the valuation report, page […], section […], these products will be exclusively purchased from and delivered by X. ___ directly to A. ___ Inc.. A. ___ Inc. forecasts product sale revenues for the half-year to [reporting period-end] [20X2] at [currency] [amount]. For the full year [20X3], such revenues were forecasted at [currency] [amount]. Such assumptions seem overstated when compared to X. ___'s track record for direct sales. According to its [20X1]/[20X2] IFRS annual financial statements, X. ___ only generated revenues from direct sales in the amount of [currency] [amount] (for the full financial year [20X0]/[20X1]) and [currency] [amount] (for the full financial year [20X1]/[20X2]). This was confirmed by the interim financial statements [20X2]/[20X3]. For the first half-year [20X2]/[20X3], direct sales revenues from X. ___ only amounted to [currency] [amount] (approx. [currency] [amount]). The valuation report does not use any probability-weighted scenarios to adjust for the risks involved in the A. ___ Inc. revenue and other projections, however the valuation report does use a terminal value discount rate of between [two-digit number]%-[two-digit number]%. The valuer states that this discount rate is appropriate in view of:

a. A. ___ Inc.'s absence of trading history

b. The significant risk associated with any early phase business

c. The significant risk associated with formalization of high-level agreements

d. The probability of achieving the forecast take up of customers

e. The high level of dependence on X. ___

f. The effect of potential competition on future revenue streams

However, by the time the Company's audited [20X1]/[20X2] financial statements were issued on [date] [20X2] the Company and its directors should have known that deliveries to A. ___ Inc. were at a much lower level than anticipated and that therefore the revenue projections of A. ___ Inc. included in the [date] [20X2] valuation report were not going to be achieved. Including a relatively conservative discount rate does not adjust for the fact that the underlying sales projections for the second half year to [reporting period-end] [20X2] and the following years were implausible. These periods contribute considerable amounts in the total DCF calculation and resulting valuation.

83. Forecasted sales revenues of A. ___ Inc. must be considered implausible. As a result, the main revenue stream of A. ___ Inc. should be estimated at a significantly lower level. SaKo concludes

that the appropriate value of the A. ___ Inc. investment as of [reporting period-end] [20X2] was materially lower than recorded in the financial statements.

84. As the first [Valuer] report failed to provide a reliable valuation of the fair value of the A. ___ Inc. investment, SER considered alternative ways to justify the fair value. SER has tried to evaluate the existence and correct valuation of the assets contributed into A. ___ Inc., i.e. items a) license rights for [product] with E. ___ Inc., b) F. ___ Inc. distribution rights, c) advertising prepayments and d) royalties due from E. ___ Inc..

85. These assets have been contributed to the newly established company A. ___ Inc. and hence form the sole basis for the future cash flow streams of A. ___ Inc. and eventually, the fair value of A. ___ Inc. as of acquisition date (which per the agreement between the Company and E. ___ Inc. of [date] [20X2] stated that the transfer of the various intangible assets for the equity interest in A. ___ Inc. should be no later than [date] [20X2]). If the applicable recognition and valuation criteria according to IFRS are met, it is potentially possible that future economic benefits or cash flows will flow to A. ___ Inc. that will generate value.

86. Regarding the contributed items a) and b), i.e. the license rights for [product] with E. ___ Inc. and the F. ___ Inc. distribution rights, it shall be noted that both assets represent intangible assets (assuming they meet the recognition criteria as assets). As such, the requirements of IAS 38 apply to conclude on the initial recognition and valuation of these assets. Licenses and distribution rights potentially fall under the definition of an intangible asset (IAS 38.9). **In order to be recognised as an intangible asset, an entity needs to demonstrate that the item in question (a) meets the definition of an intangible asset and (b) fulfills the recognition criteria** (IAS 38.18). **One of the cumulative criteria to be fulfilled to meet the recognition criteria is the probability of an inflow of future economic benefits to the entity (IAS 38.21(a)).** If this criterion is not met, the item does not meet the recognition criteria of an intangible asset and hence cannot be recognised. In such cases, the expenditure to acquire the item or generate it internally is recognised as an expense when it is incurred (IAS 38.10). X. ___ was not able to demonstrate based on relevant documentation that the license rights for [product] and the F. ___ Inc. distribution rights can generate probable future economic benefits, so SER concludes that their collectability was doubtful. Furthermore, X. ___ was not able to prove that any cash payments were made to acquire or internally generate these alleged intangible assets. **In conclusion, the recognition criteria for intangible assets are not fulfilled.**

87. Regarding the contributed item c), i.e. the advertising prepayments, the recognition and valuation also needs to be assessed under the requirements of IAS 38 for intangible assets. **In order to be recognized as an intangible asset, an entity needs to demonstrate that the item in question (a) meets the definition of an intangible asset and (b) fulfills the recognition criteria** (IAS 38.18). **One of the cumulative criteria to be fulfilled to meet the recognition criteria is the probability of an inflow of future economic benefits to the entity (IAS 38.21(a)).** X. ___ provided the underlying agreement with G. ___ Inc. (**G. ___ Inc.**) concerning the advertising prepayments. According to clause […], the agreement with G. ___ Inc. shall terminate upon the earlier occurrence of the media credit being redeemed in its entirety, or five years from the date of the agreement. The agreement was signed on [date] [20X0 – 4], hence the agreement lapsed at the latest on [date] [20X1]. However, X. ___'s financial year [20X1]/[20X2] started on [date] [20X1]. Pursuant to clause […] of the same agreement, all consideration given to G. ___ Inc. is non-refundable after the agreement has been signed. **In conclusion, the agreement has expired before [reporting period-end] [20X1] and was non-recoverable as of that date. Therefore, the recognition criteria for intangible assets are not fulfilled and this asset cannot be recognised on the balance sheet of X. ___ as of [reporting period-end] [20X1]. This raises further significant doubts about the correct valuation of the advertising prepayment contributed into A. ___ Inc. and the final valuation of the A. ___ Inc. financial asset as of [reporting period-end] [20X2].**

88. Regarding item d), i.e. the royalties due from E. ___ Inc. and the corresponding valuation for the settlement in A. ___ Inc. shares, IFRS 13.61 applies: *"**An entity shall use valuation techniques that are appropriate in the circumstances and <u>for which sufficient data are available</u> to measure fair value (emphasis added),** maximising the use of relevant observable inputs and minimising the use of* *unobservable inputs."* Pursuant to IFRS 13.62, the "income approach" as valuation technique may be applied to measure fair value if sufficient data is available. The "present value technique" is an example of the income approach (IFRS 13B11(a)).

89. In the first [Valuer] report provided, [Valuer] has applied a DCF-method to measure the fair value for the A. ___ Inc. investment and hence also for the amount of A. ___ Inc. shares to be exchanged for the royalties due from E. ___ Inc. (item d)). The DCF-method is representing a "present value technique".

90. As the royalties due from E. ___ Inc. were overdue since [reporting period-end] [20X1], it follows that these receivables were past due for about 150 days as of [date] [20X2]. Nevertheless, these receivables were thereafter settled in exchange for A. ___ Inc. shares "valued" at [currency] [amount]. The valuation was based on the first [Valuer] report. However, this report contains too many limitations and is based on implausible assumptions. Therefore, it cannot be used as basis for assessing the value of the transferred shares.

91. Overall, SER concludes, and SaKo concurs, that the valuation report provided is not sufficient to provide external evidence to substantiate the fair value as of the acquisition date in [month] [20X2] and therefore the value used as of [reporting period-end] [20X2]. Furthermore, the assets contributed to exchange for equity of A. ___ Inc. do not substantiate the claimed fair value. This results in a material misstatement of the audited [20X1]/[20X2] IFRS annual financial statements.

3.2. Financial asset B. ___ Inc.

92. X. ___ qualified its "financial asset" in B. ___ Inc. as a financial instrument held for trading. According to the definitions of IAS 32.11:
*"A **financial instrument** is any contract that gives rise to <u>a financial asset of one entity</u> and a financial liability or <u>equity instrument of another entity</u>.*
*A **financial asset** is any asset that is: (a) […], (b) an equity instrument of another entity; […].*
*An **equity instrument** is <u>any contract that evidences</u> a residual interest in the assets of an entity after deducting all of its liabilities. […]*

93. It is unknown whether B. ___ Inc. still exists. X. ___ did not provide convincing evidence that would substantiate a contractual agreement between X. ___ and B. ___ Inc. as of [reporting period-end] [20X2] that would give rise to a financial asset. X. ___ solely submitted an internal confirmation letter issued <u>from B. ___ Inc. management itself</u>.

94. Assuming that the B. ___ Inc. investment does exist, the valuation of this asset is misleading. The respective IFRS rules are as follows:
According to IFRS 13.61: *"**An entity shall use valuation techniques that are <u>appropriate in the circumstances</u> and <u>for which sufficient data are available</u> to measure fair value. […]**"* **(emphasis added)**
According to IFRS 13.76: *"Level 1 inputs are **quoted prices (unadjusted)** in **active markets** for identical assets or liabilities **that the entity can access at the measurement date." (emphasis added).***

95. In fact, B. ___ Inc. shares were delisted on [date] [20X0 – 1], when the [place] Financial Supervisory Authority (**[…]**) had withdrawn [stock exchange]'s market operator license. However, X. ___ still based the fair value measurement of B. ___ Inc. on the quoted share price from [date] [20X0 – 1] of [currency] [amount]. Valuation by using an (unadjusted) quoted share price (level 1 input) would theoretically be possible, but only if the data is available in the sense of IFRS 13.76, i.e. if the share price reflects a quoted price in an active market that can be accessed **at the measurement date**. The share price applied by X. ___ is neither a quoted price nor has it been derived from an active market at the measurement date. X. ___ did also not provide a reason why the three years old share price should still reflect the fair value. Because of that, the almost three years old share price is not in compliance with the requirements of IFRS 13 and cannot be used as basis for the fair value measurement of B. ___ Inc..

96. Further, no (alternative) information about the financial situation of B. ___ Inc. as of [reporting period-end] [20X2] has been provided. Therefore, neither SER nor X. ___ are in a position to make a valuation of the financial asset, let alone to assess whether the estimated fair value based on the former share price is justifiable at all. The submitted confirmation letter provided by B. ___ Inc.'s management does not elaborate on the valuation technique applied making it impossible to assess the appropriateness of the valuation.

97. The third [Valuer] report aiming at valuing the B. ___ Inc. (now called C. ___ Inc., Inc.) investment is of limited value as the valuation date of [reporting period-end] [20X3], falls outside the relevant period ending on [reporting period-end] [20X2]. In addition, the third [Valuer] report - being a calculation of value report - is unsatisfactory, **as the valuer did not have sufficient data available** to accurately measure fair value. The valuation is mainly based on forecast financial information as provided by B. ___ Inc. Management, i.e. no external evidence for underlying input data was considered. The report refers to a number of limitations.

98. SaKo concludes, and SaKo concurs, that the carrying amount for the financial asset in B. ___ Inc. shares is not substantiated as of [reporting period-end] [20X2]. This leads to a significant misstatement in the audited [20X1]/[20X2] IFRS annual financial statements.

3.3. Governance and diligence over financial reporting

99. According to the "Swiss Code of Best Practice for Corporate Governance"[7] and internationally accepted principles of Corporate Governance, it is best practice to establish an Audit Committee. The Audit Committee should form its own opinion of the quality of the external audit, the internal control system and the annual financial statements. Specifically, the Audit Committee should assess the effectiveness of the internal control system and critically review the consolidated financial accounts intended for publication.

100. X. ___ states that it has an Audit Committee. However, SER has not received any evidence proving the existence thereof as of the date of sign off of the [20X1]/[20X2] IFRS annual financial statements. The only relevant documentation provided by the auditors is the "Key Audit Matters" in their audit report however, despite requests, the Company has not provided any minutes or correspondence showing that the Board of Directors respectively the Audit Committee reviewed these Key Audit Matters and discussed the financial statements as part of the process of issuing the [20X1]/[20X2] IFRS annual financial statements.

101. In its submission of [date] [20X5], X. ___ declares to have established an Audit Committee and correspondence existed throughout the audit process. However, X. ___ neither submitted the composition of the Audit Committee, proof of meetings nor copies of relevant correspondence. The Company merely refers to the corporate governance policy published on the website and the documents submitted during the listing process. SER reiterated in its response on [date] [20X5] that "*the information in the prospectus has undergone a formal examination with regard to completeness only. … Any irregularities which might be discovered in the said [ordinary] review cannot be justified with reference to the listing prospectus.*"

102. The material B. ___ Inc. investment was classified as a financial asset held for trading and valued at fair value through profit or loss. Out of this classification it follows that the disclosure requirements of IFRS 7 and IFRS 13 apply. Although the B. ___ Inc. investment is material to a reader of the financial statements, X. ___ failed to provide relevant risk and fair value disclosures about its investment in B. ___ Inc. as summarised in the below table:

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[7] https://www.economiesuisse.ch/sites/default/files/publications/economiesuisse_swisscode_e_web_2.pdf

Element of the annual report	IFRS requirements	Error in presentation / disclosure	Conclusion
Note […]	IFRS 7.33 requires qualitative disclosures about the exposure and the managing for each type of risk arising from financial instruments. According to IFRS 7.40(a), an entity shall disclose for each type of market risk (e.g. equity price risk) a sensitivity analysis, showing how profit or loss and equity would have been affected by reasonable possible changes in relevant risk variables.	Missing description of the exposure to and management of equity price risks from the B. ___ Inc. shares. Missing sensitivity analysis regarding financial investment in B. ___ Inc..	No information available to investors about equity price risks of the Company. Missing risk transparency for investors.
Note […]	For financial instruments measured at fair value, IFRS 13.93(b) requires to disclose the level of the fair value hierarchy. For financial instruments categorized within Level 2 and Level 3 of the fair value hierarchy, a description of the fair value measurement technique and relevant observable/unobservable inputs to the fair value measurement must be provided (IFRS 13.93(d)).	No disclosure of fair value level for the financial investment in B. ___ Inc. shares. No description of measurement techniques applied for determining the fair value B. ___ Inc.. No qualitative / quantitative description of observable / unobservable input parameters used in the fair value determination of B. ___ Inc..	No information available to investors about the measurement basis of fair value and related measurement techniques and inputs applied. No information about the sensitivity of the fair value of B. ___ Inc. to highly subjective (i.e. unobservable) inputs.

103. The A. ___ Inc. investment valued at [currency] [amount] is significant, however neither the accounting policy note nor note […], clearly state whether it is an equity interest held for trading or “available-for-sale”. In order to comply with the IFRS requirements the financial statements should clarify this matter. If it is an equity interest held for trading with fair value differences to be recorded in the profit and loss account then the disclosures noted above for B. ___ Inc. are required. SER considers this to be the required treatment. SaKo considers that it could also be classified is “available-for-sale” in which case there should be a statement that it is valued at acquisition cost and not at fair value at [reporting period-end] [20X2]. It should then state either that the fair value adjustment between the acquisition date and [reporting period-end] [20X2] is not material or cannot be determined as there is no trading in the A. ___ Inc. shares.

104. **Because of the missing disclosures, financial statement readers were not informed about the nature and extent of risks arising from the financial asset and related implications on fair value and the classification of the investment in the [20X1]/[20X2] IFRS annual financial statements.**

105. Further, X. ___ committed various obvious errors in the presentation and disclosure of the [20X1]/[20X2] IFRS annual financial statements, which could have been avoided with an appropriate governance regime. These numerous deficiencies are related to several IFRSs as can be seen in the below table:

Element of the annual report	**IFRS requirements**	**Error in presentation / disclosure**	**Conclusion**
Note […]	IAS 33.10 requires that basic earnings per share shall be calculated by dividing profit or loss attributable to ordinary equity holders of the parent entity (the numerator) by the weighted average number of ordinary shares outstanding (the denominator) during the period.	Erroneous calculation of basic / diluted earnings per share. Key figure was erroneously calculated with the number of shares outstanding at the end of the period instead of applying the weighted average number of shares outstanding during the period.	Erroneous presentation of key performance figure to investors.
Statement of profit or loss and other comprehensive income Statement of changes in equity	IAS 1.82A requires that: "The other comprehensive income section shall present line items for the amounts for the period of: (a) items of other comprehensive income (excluding amounts in paragraph (b)), classified by nature and grouped into those that, in accordance with other IFRSs: (i) will not be reclassified subsequently to profit or loss; and (ii) will be reclassified subsequently to profit or loss when specific conditions are met. […]" IAS 1.106(d) requires: "for each component of equity, a reconciliation between the carrying amount at the beginning and the end of the period, separately (as a	The movements in other comprehensive income are not consistent between the two elements of the primary financial statements.	Error in the presentation of other comprehensive income.

	minimum) disclosing changes resulting from: (i) profit or loss; (ii) other comprehensive income; and […]”.		
Cash flow statement Note […]	According to IAS 7.10: “The statement of cash flows shall report cash flows during the period classified by operating, investing and financing activities.” IAS 7.43 states that: “Investing and financing transactions that do not require the use of cash or cash equivalents shall be excluded from a statement of cash flows. Such transactions shall be disclosed elsewhere in the financial statements in a way that provides all the relevant information about these investing and financing activities.” IAS 7.18 requires that cash flows from operating activities shall be reported <u>either</u> using the direct method or the indirect method. Cash flows from financing activities may be reported on a net basis for items for which the turnover is quick, the amounts are large and the maturities are short (IAS 7.22(b)).	Erroneous inclusion of non-cash transactions and financing transactions within cash flow from operating activities (Note […]). The cash flow from operating activities has been reported based on two methods, i.e. the direct <u>and</u> indirect method. In the cash flow from financing activities, proceeds from borrowings amounting to [currency] [amount] were presented on a net basis, although the cash flows do not fulfill the cumulative criteria for a net presentation.	Distortion of the cash flows from operating activities and misinformation of investors regarding cash flows from financing activities for the period.
Note […] Note […]	According to IFRS 7.37: “An entity shall disclose by class of financial asset: (a) an analysis of the age of financial assets that are past due as at the end of the reporting period but not impaired; and […]” IFRS 7.39(a) requires that an entity shall disclose: ”a maturity analysis for non-	Missing quantitative disclosures regarding credit risk (i.e. receivables past due) and liquidity risk (i.e. maturity analysis).	No information available to investors about credit and liquidity risks of the Company. Missing risk transparency for investors.

	derivative financial liabilities ([…]) that shows the remaining contractual maturities.”		

106. SaKo also concurs with the comments of SER that the numerous typographic errors in the financial statements. (eg. Note […] A. ___ Inc. is referred to as D. ___ Inc.. ; Note […] uses [currency A] whereas the rest of the financial statements use [currency B]) indicate that the financial statements under review were not prepared with the required diligence.

107. As a result, SaKo concurs with the SER conclusion that there was a lack of governance over the financial reporting process and that no effective internal control system was in place for the preparation of the [20X1]/[20X2] IFRS annual financial statements. Furthermore, SaKo is unable to determine the correctness of the disclosure in the Corporate Governance report of X. ___ that an Audit Committee was in existence and hence that a proper governance over financial reporting was in place.

3.4. [20X2]/[20X3] IFRS interim financial statements

108. Pursuant to IAS 34.15, interim financial reports shall provide an explanation of significant changes in the entity’s financial position since the last annual reporting period. According to IAS 34.28, an entity shall *generally* apply the same accounting policies in its interim financial statements as in its annual financial statements. The measurement procedures to be followed shall be designed to ensure that the resulting information is reliable and that all material financial information is appropriately disclosed (IAS 34.41).

109. However, X. ___ stated in its [20X1]/[20X2] financial statements that it would introduce the new accounting policy on “Financial Instruments” from [first day of the reporting period] [20X2] but expressly did not remeasure the unrealized gains/losses of its financial assets held at fair value through profit or loss and investment as of [reporting period-end] [20X2] by postponing the calculation to the financial year-end as of [reporting period-end] [20X3]. However, to comply with IFRS requirements, it is inappropriate to rely on IAS 34.28 that interim financial statements “shall *generally* apply the same accounting policies in its interim financial statements as in its annual financial statements” when a major change in accounting policy has already been indicated for adoption from [first day of the reporting period][20X2], as is the case with note […] of the Company’s [20X1]/[20X2] financial statements. X. ___ should have remeasured the unrealized gains/losses on financial assets and investments under the new accounting policy at [first day of the reporting period] [20X2] and should have recognized the corresponding effects in the interim financial statements as of [reporting period-end] [20X2].

110. X. ___ did not provide an answer to the question whether the changes to the valuation as of [reporting period-end] [20X2] would have been significant. It should be noted that in its audited annual financial statements [20X2]/[20X3] X. ___ had to recognize a material revaluation loss in its statement of comprehensive income on its A. ___ Inc. investment amounting to [currency] [amount]. X. ___ knew the sales that it had made to A. ___ Inc. during the six months to [reporting period-end] [20X2]. These were substantially less than anticipated in the [date] [20X2] valuation report and therefore the resulting sales of A. ___ Inc. must also be substantially less than foreseen in the [date] [20X2] valuation report. The Company knew that these factors would have a significant impact on the appropriate valuation of A. ___ Inc. on [reporting period-end] [20X2]. X. ___ therefore did not provide an explanation of significant changes in the Company’s financial position since the last annual reporting period in its interim report. Specifically, X. ___ did not re-measure its most important financial assets held at fair value and investment and therefore did not comply with IFRS requirements.

111. Interim financial statements shall include a statement of profit or loss and other comprehensive income, a statement of changes in equity and a statement of cash flows cumulatively for the current financial year to date, with a comparative statement for the comparable year-to-date period of the previous year (IAS 34.20).

112. In the interim consolidated statement of profit or loss and other comprehensive income and statement of changes in equity for the period from [first day of the reporting period] [20X2] to [reporting period-end] [20X2], X. ___ presented the comparative periods from [first day of the reporting period] [20X1] to [reporting period-end] [20X2] (full financial year [20X1]/[20X2]) and from [first day of the reporting period] [20X0] to [reporting period-end] [20X1] (full financial year [20X0]/[20X1]). The correct comparative periods to be presented would have been [first day of the reporting period] [20X1] to [reporting period-end] [20X1] and [first day of the reporting period] [20X0] to [reporting period-end] [20X0]. In the interim consolidated statement of cash flows for the period ending [reporting period-end] [20X2], X. ___ presented the comparative period from [first day of the reporting period] [20X1] to [reporting period-end] [20X2] (full financial year [20X1]/[20X2]), thus comparing a 6 months current period to a 12 months comparative period. The correct comparative period to be presented would be the 6 months period from [first day of the reporting period] [20X1] to [reporting period-end] [20X1]. Any additional presentation of comparative periods would be optional.

113. As a result, significant elements of the primary financial statements of the [20X2]/[20X3] IFRS interim financial statements were not presented according to IFRS requirements. This makes it difficult for a reader of the financial statements to fully understand the past and actual performance, financial position and cash flows of the Company. SER therefore concludes, and SaKo concurs, that the [20X2]/[20X3] IFRS interim financial statements contain potentially material misstatements.

3.5. Direct sales and licensing fee revenues

114. SER have raised a number of issues concerning the Company’s revenue recognition policies. SER has not been provided with the requested documentation concerning the recording of direct sales and licensing fee revenues totaling [currency] [amount] in the [20X1]/[20X2] audited consolidated financial statements.

115. Instead, the Company has referred SER to the Key Audit Matters in the audit report which covers revenue recognition as follows:

“Key audit matter

X. ___, as a Group, generates revenues from sales and licensing of various […] products, including the [product] and [product] lines. The method for recognising revenue varies depending on the type of sale being made.

Retail sales

These sales are recognised at the date the stock is segregated from other inventory, ready for collection or delivery in accordance with these customers' terms of trade.

Licensing sales

These arrangements are established via contract, with clauses that specify what periods' payments relate to, and subsequent royalty percentages payable by the licensee,

There are risks around the timing of revenue recognition of retail product sales, particularly fo cused on the contractual terms of delivery and location of sale. In addition, due to the volume of transactions in the year, and the different types of revenue, we have identified revenue recogni tion as a key risk for our audit.

Response

- The audit work assessed the design and implementation of controls over the recognition of revenue. Testing In detail, a sample of completed orders around the year end date, with specific focus on recognition conditions for revenue.
- Assessment of the transfer of risk and reward to the customer by reviewing dates of

transaction completion in the Group's financial records, and dates of stock. segregation and dispatch for retail sales.

- Evaluation of the Group's contracts for licensing its products, with particular focus on the period the contracts were active for."

116. Although it would have been preferable for the Company to have provided SER with the information that it requested on the revenue recognition matters it raised, SaKo has decided that it will rely on the statements above from the Company's auditors concerning the revenue recognition issues raised by SER. Having said this, it does appear that SER was justified in raising revenue recognition as a topic since the consolidated statement of cash flows for the twelve months to [reporting period-end] [20X2] and six months to [reporting period-end] [20X2] showed cash receipts from customers of only [currency] [amount] and [currency] [amount] (approx. [currency] [amount]) respectively.

3.6. Inadequate going concern assessment and related disclosures

117. In the view of SaKo, SER was correctly concerned that uncertainties related to events or conditions may cast doubt upon the Company's ability to continue as a going concern as of [date] [20X2], and that this should have been disclosed to the readers in the [20X1]/[20X2] IFRS annual financial statements. However, SaKo is of the view that since the Company still exists, these uncertainties have proved to be of limited relevance.

118. Considering all the above aspects, SaKo concludes that X. ___ violated Art. 51 LR in combination with Art. 6 DFR and numerous standards of IFRS.

4. Sanction

119. When issuers violate the Listing Rules, the Additional Rules or their implementing provisions (Art. 60 LR), they may be sanctioned in accordance with Art. 61 LR. 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 fixing the amount of the fine.

4.1. Severity of breach

120. The annual and interim financial statements of a company 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 the financial position of a company fairly (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).

121. In SaKo's view, X. ___'s financial statements do not fulfill the above requirements. A reader of X. ___'s financial statements is led to believe that X. ___ is owning financial assets and investments in the amount of [currency] [amount] (A. ___ Inc. and B. ___ Inc. represent [high two-digit number]% of X. ___'s total assets). However, on closer examination there are serious doubts about the valuation of these assets.

122. There are also numerous other errors and lack of information required by IFRS which diminishes the reliance that can be placed on the annual and interim financial statements under review.

123. Based on the above, SaKo regards all violations mentioned as severe. It is not necessary (and not possible due to the lack of documents provided) to go through the consequence of each individual violation. The sum of all violations is considered by SaKo as extremely severe because X. ___'s financial statements do not fulfill their purpose (i.e. to provide transparent and reliable financial information) and do not provide details on the sensitivities in valuing the financial assets and investments of the Company enabling investors to make informed economic decisions.

4.2. Degree of fault

124. 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 has not taken all necessary and reasonable organisational precautions to prevent a breach of the obligations entered into under the LR. Accordingly, the assessment of fault is carried out based on 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).

125. 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).

126. In the assessment of the degree of fault the consistent 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).

127. SaKo takes note of the reasons given by X. ___ in its statements of [date] [20X4], [date] [20X5] and [date] [20X5]. SaKo recognizes that the Company asked for guidance and advice from SIX and SER. For example, the Company states on [date] [20X5] that "*it is our corporate governance procedure to ensure we check with SER first, however they do not offer any guidance which is extremely disappointing, yet they are happy for the Issuer to pay for the exchange listing and capital increase fees.*" In stating this the Company seems to have a confusion about the role of SER. It is not, and shall not be, the task of SER to advise issuers on the requirements of the regulatory framework including IFRS. The role of SER is to survey compliance with, and enforcement of, the rules. This role is not compatible in advising issuers on specific questions. If it were to do this, SER would become party instead of neutral enforcer.

128. SaKo notes that the Company outlines, notably in their response of [date] [20X5], how they relied on audit reports and external valuations by [Valuer] for some of the positions in the financial statements under review. The Company admits that these reports include various limitations, notably that they are based on declarations by the management of companies in which X. ___ invested, without further examination. SaKo is of the opinion that financial reporting is the responsibility of the listed company not of its auditors or valuers. Therefore, X. ___ remains responsible to provide the documentation to SER during the investigation and it is insufficient to refer to information that has been provided to the auditors or to external valuers. Despite numerous requests, X. ___ in many cases did not provide the requested and necessary underlying documents.

129. Whether or not the auditors performed their duty with adequate diligence is not part of the current proceeding and it is not in the competence of the Sanctions Commission to qualify the auditors' work. This is the responsibility of the Swiss Federal Audit Oversight Authority (FAOA).

130. SER concludes that despite seeking advice and attempts to improve the financial reporting, X. ___'s conduct has to be qualified as at least ***grossly negligent*** given the numerous errors and lack of compliance with IFRS contained in the annual and interim financial statements under review.

131. Based on the documents provided by SER, SaKo has no basis to establish that X. ___ acted with ***intention***. The declarations of X. ___ that it strived to act with good intentions are not to be ignored. The rule "in dubio pro reo" (the benefit of doubt) has to be applied in favour of X. ___.

132. If an issuer prepares and publishes financial statements which fail to reflect a true and fair representation of the financial situation, it has to be concluded that the erroneous financial statements lead investors to erroneously believe that the issuer has a solid foundation and that there are no doubts about the prosperity and profitability for the future.

133. Based on the SER review and the errors and concern raised about the quality of the annual and interim financial statements under review, SaKo concludes that X. ___ seems to lack the knowledge needed to apply the chosen accounting standard of IFRS correctly.

134. As X. ___ did not act with the necessary diligence, the Sanctions Commission concludes that the Issuer acted at least with gross negligence by omitting to establish a proper governance and effective internal control system over the financial reporting process despite obvious deficiencies.

4.3. Behaviour of the Issuer and earlier sanctions

135. Overall, the behaviour of the Issuer in the procedure does not require additional sanctioning in the view of SaKo. X. ___ did answer the numerous requests be SER during the procedure, however without providing the decisive documents. On the other hand, the Company accuses SER of inappropriate communications, notably concerning inconsistent use of mailing addresses and long interruptions of communications. The Sanctions Commission considers that the communications by SER have not been optimal, including the use of unnecessarily harsh language. This needs to be considered when assessing the appropriateness of SER's costs.

136. In favor of X. ___, SaKo notes that no sanctions were imposed on the Company over the last three years. Therefore, SaKo sees no need to increase the sanctions due to prior violations. However, SaKo notes that X. ___ was only listed on [date] [20X1] so that the preliminary investigation initiated on [date] [20X2] was for the first financial year following its listing.

4.4. Requested delisting and barring from future listing

137. SER requested the Sanctions Commission to **delist** X. ___ from the SIX Swiss Exchange in order to avoid that investors be misled by the heavily misstated financial statements of the Issuer. SER considered that only by delisting X. ___ could a fair and transparent market be guaranteed. Finally, and for the sake of completeness, it shall be noted that X. ___ was already delisted from the [place] Stock Exchange in [month] [20X0] after various trading suspensions and that the planned listing on the [place] stock exchange as announced in [month] [20X1] was unsuccessful.

138. SaKo notes that the Issuer requested a delisting from SIX on [date] [20X4]. This request was approved by SER by decision of [date] [20X4] which is to take effect on [date] [20X5]. The last trading day at SIX Swiss Exchange shall be on [date] [20X5].

139. In view thereof, SaKo concludes that the SER request for delisting as a sanction has become moot. However, should the Issuer withdraw its request for delisting, SaKo would reassess this decision.

140. Further, SER requested SaKo to exclude X. ___ from further listings in order to preserve the integrity of SIX's market infrastructure. This is a potential sanction provided for in the Listing Rules (Art. 61 ciff. 5 LR). **SaKo has decided not to follow this request as delisting will take place at the request of the Issuer and as the situation concerning the quality of the Company's financial statements could improve should the Company ask for another listing in future.** At this time, it would be the obligation of SIX and SER to judge whether the Issuer fulfills the conditions for listing if and when it would place a new listing request.

4.5. Conclusion concerning sanction and costs

141. Violations of the listing rules can be sanctioned with a fine. Art. 61 para. 1 LR foresees that fines imposed may amount up to CHF 1 million (in case of negligence) and up to CHF 10 million (in case of intent).

142. When quantifying the amount of the fine, the sensitivity of the issuer to the sanction has to be taken into account. For this purpose, the economic performance of the issuer is considered. Issuers with a lower economic performance will tend to be hit harder by the same fine than companies 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).

143. For the financial year [20X2]/[20X3] (presented in [currency]), X. ___ presented a net profit attributable to its shareholders of [currency] [amount] (approx. [currency] [amount]). The cash flow from operating activities was negative and amounted to [currency] [amount] (approx. [currency] [amount]), cash and cash equivalents were [currency] [amount] (approx. [currency] [amount]) and equity stood at [currency] [amount]. (approx. [currency] [amount]). The last consolidated financial statements of X. ___ are showing a similar picture for the first half of the financial year [20X3]/[20X4]. X. ___ presented a net profit attributable to its shareholders of [currency] [amount] (approx. [currency] [amount]). The cash flow from operating activities was negative with [currency] [amount] (approx. [currency] [amount]), cash and cash equivalents were [currency] [amount] (approx. [currency] [amount]) and equity stood at [currency] [amount] (approx. [currency] [amount]).

144. On the day of this Decision, the market capitalisation of the Issuer at the stock exchange amounted to [currency] [amount] (approx. [currency] [amount]). This represents a substantial value.

145. In view of the financial information described above the sensitivity of X. ___ to sanctions has to be evaluated as high.

146. Considering the ***severity of breach*** (***very severe***), the degree of fault (**at least gross negligence**) and the Issuer's **high sensitivity to sanctions**, a fine of CHF 100,000 is deemed to be appropriate.

147. In accordance with Ciph. 6 para. 2 RP, SER informed the public that an investigation had been initiated, upon dispatch of the sanction proposal to the Sanctions Commission. According to Ciph. 6 para. 7 RP, the public will be informed by a media release of any investigation concluded by a legally binding sanction decision. In addition, the legally binding decision of the Sanctions Commission will thereafter be published on SER's website in anonymous form (Ciph. 6 para. 8 RP).

148. In case of sanction proceedings, charges are determined based on the expenditure incurred by SER adopting an hourly rate of CHF 300 per person according to Ciph. 3.7 in connection with Ciph. 4.1 of the List of Charges Regulatory Bodies (**LOC**[8]). In the present case, SaKo accepts such costs incurred by SER to a reduced extent only, considering that a key sanction request concerning the request for a de-listing is moot and the delay and method used in the communications with the Issuer were unsatisfactory. Charges of SER are accepted in the amount of CHF […].

149. The costs of the Sanctions Commission shall also be borne by X. ___. They amount to CHF […].

[8] List of Charges Regulatory Bodies (LOC) dated 11 September 2019, entry into force 1 January 2020.

Sanctions Commission

[Sig.] Chairman [Sig.] Secretary

[Place], 30 March 2021