

an SWX Group company



ZUL-RLE-XIV/05

**Decision of the Executive Committee of the
Admission Board
concerning
X.**

The Executive Committee of the Admission Board reached a decision:

[...]

The decision is based on the following considerations:

Facts

1. X. ("X." or "company") [...] is listed in the main market of the SWX Swiss Exchange (SWX).
2. The company applies the International Financial Reporting Standards (IFRS) as its accounting standard.
3. The office of the Admission Board of the SWX ("office") reviewed X.'s semi-annual report [...]. The SWX sent a letter containing a list of questions to X. in an attempt to clarify the circumstances.
4. The preliminary investigation centred on the fact that, unlike X's annual report, X's semi-annual report [...], which was submitted to the office and published on the Internet, did not disclose the two business segments. Under IAS 34p16(g), the semi-annual report [...] should have disclosed the segment revenues and results of the two business areas for the period.
5. X. responded, explaining its failure to disclose the information required under IAS 34p16(g) by stating that, due to a harmless mistake, it had neglected to disclose the segment revenues and results in the semi-annual report submitted to the SWX and published on the Internet. Enclosed was an audited semi-annual report [...] showing that the company's segment revenues and results were known to the company, when the semi-annual report [...] was approved, at the latest. Unlike the published version, the semi-annual report that had been reviewed by the auditors contained the segment information required under IAS 34p16(g).

6. [...] the segment results changed significantly between the first semester of [...] and the first semester of [...].
7. The office requested the Executive Committee of the Admission Board to reprimand X., to publish the reprimand and to charge to X. the costs of the proceedings.
8. In accordance with the company's right to be heard, the office forwarded to X. the application for the Executive Committee of the Admission Board to apply sanctions so that the company would have the opportunity to state its position. Within the allowed period, X. stated its position.
9. X.'s main arguments were the following: it emphasised again that the failure to provide information was due to a technical harmless mistake. No details were given as to the nature of this *technical mistake*. X. also stated that [...] the authoritative version of the semi-annual report [...] was in the possession of the company and was available to all shareholders upon request.
10. Furthermore, X. noted that it had not acted with a direct or indirect intent, with malice or negligence, but that its failure was due to a technical mistake committed in good faith.
11. Finally, the company asked the Executive Committee of the Admission Board to refrain from imposing any sanctions, mentioning that no sanctions had been imposed on X. in the last five years.

Points to consider

I. Responsibility

12. Conduct of issuers possibly deserving to be sanctioned because it violates the duty to provide information or the duty to publish or notify is judged according to Art. 81 para 1 Points 1 and 3 Listing Rules (LR) in combination with Art. 82 para 3 LR by the Admission Board or the Disciplinary Commission of the SWX, depending on the sanction to be imposed. Sanctions pursuant to Art. 82 para 1 Points 1-3 and 9 LR are decided by the Executive Committee of the Admission Board (see the Internal Regulations of the Admission Board, Point 3.5.3).

II. Basis

13. Based on Art. 67 para 3 LR, the Directive on Enforcement of Financial Reporting Regulations and the Registration of Auditing Bodies entered into force on 1 June 2000. Margin reference number 10 of the Directive stipulates that the SWX must verify that a set of recognised accounting standards was applied.
14. Pursuant to Art. 70 LR and Admission Board Communiqué No. 20/2000, IFRS is an accounting standard recognised by the SWX.
15. Under Admission Board Communiqué No. 12/2002, from the financial year beginning on or after 1 January 2003, the same accounting standards must be used in connection with presentation and disclosure in semi-annual reports as in connection with presentation and disclosure in the annual results. Since the annual report was drawn up in accordance with IFRS, the company was required to apply IAS 34 on "Interim Financial Reporting" in its interim reporting.
16. In Admission Board Communiqué No. 14/2004 of 22 November 2004, the SWX defined compliance with IAS 34 as one of the main focal points in connection with reviewing financial reports [...].

III. Material aspects

17. According to IAS 14, "Segment Reporting", financial segment information expressly contributes to an understanding of profitability, the ability to assess risk and revenues and the ability to assess the company as a whole.
18. Failure to disclose segment revenues and results deprives readers of crucial information for assessing a given company. With its actions in connection with its semi-annual report [...], X. has breached IAS 34p16(g) and IAS 14 and, hence, the "true and fair view" principle pursuant to Art. 66 LR.
19. X.'s statement that [...] the authoritative version of the semi-annual report [...] had been in the possession of the company and was available to all shareholders upon request, does not change the fact that X. was not in full compliance with the relevant listing provisions. It should also be noted that, in principle, selective provision of information regarding potentially price-sensitive facts may constitute a breach of the principle of equal treatment pursuant to Art. 72 para 4 LR. For reasons of practicality, an investigation into a possible breach of provisions pertaining to ad hoc publicity was dispensed with in connection with these proceedings.

IV. Decision-making

20. Art. 82 para 1 LR stipulates that, when imposing a sanction, the degree of fault and the gravity of the breach are to be taken into account.

Gravity of the breach

21. Segment reporting is a key aspect of financial reporting, because the segment results are crucial in assessing the current state and future development of individual segments and the group as a whole.
22. Hence, X.'s claim of a harmless mistake is false. On the contrary, this breach must be deemed serious.
23. It constitutes a clear breach of applicable accounting principles. The SWX has, on previous occasions, imposed sanctions on issuers whose segment reporting was deficient (Decision of the Disciplinary Commission of 29 June 2005, DK/RLE/II/05; Decision of the Executive Committee of the Admission Board of 7 January 2005, ZUL/RLE/IV/04; Decision of the Executive Committee of the Admission Board of 29 January 2004, ZUL/RLE/III/04). In each of the three cases mentioned above, the deficiencies were less serious than in this case and yet each case was deemed a serious breach of the LR.
24. The deficiency relating to missing segment reporting is a clear breach of applicable accounting provisions and the "true and fair view" principle. It is a serious breach in terms of both quantity and quality. Thus, it must be deemed a **serious breach** of applicable provisions of the Listing Rules (Arts. 65 ff. LR).

Degree of fault

25. According to the practice of the Executive Committee of the Admission Board and the Disciplinary Commission, imposing a sanction pursuant to Art. 81 para 1 Points 1 and 3 LR in combination with Art. 82 para 3 LR is conditional upon the issuer or the persons acting on its behalf being guilty of breaching the provisions of the LR due to negligence.
26. Negligence is constituted by failure, due to delinquent carelessness, to consider or make provision for the consequences of one's actions. The duty of diligence can only be deemed to be breached and guilt can only be assigned if success or the offence was foreseeable. The developments leading to success or the offence must be foreseeable in their general outline. Omissions are associated with a violation of the duty of diligence in cases where the care required by specific circumstances is not taken, i.e. when no action is taken although, in the normal course of events and according to general life experience, the point under discussion, i.e. the breach of Arts. 65 ff. LR and the applied accounting standards, was foreseeable and avoidable at the time of omission.
27. An act of indirect intent has been committed if the issuer deemed it possible that success would be achieved or the offence would occur and acted nonetheless because it accepted the risk of success being achieved or the offence occurring. Even though the issuer did not want the offence to occur, it was willing to resign itself to the fact that it might.
28. In regard to the missing segment reporting, X. contends that this omission was "due to a technical harmless mistake" and that X. did not have the intention of deceiving the public, nor was it guilty of negligence.
29. The company does not indicate the nature of this harmless technical mistake, nor does it describe any circumstances that would make the omission seem pardonable. Rather, the fact that segment reporting had already been missing in the semi-annual

report of the prior year indicates that the duties pertaining to financial reporting were performed carelessly and incompletely.

30. The above considerations show that, if X. had performed its duties with due diligence, it could have avoided being in breach of provisions of Art. 65 ff. LR. This means that X. is guilty of **negligently breaching** applicable provisions.

Sanction to be imposed

31. In imposing the sanction, it must be taken into account that the SWX has not imposed any sanctions on X. in the last five years. Any sanctions imposed previously are not to be taken into account.
32. In view of the degree of fault of X. and the gravity of the breach, X. should be issued a **reprimand with publication** as an appropriate sanction (Art. 82 para 1 Points 1 and 9 LR).

V. Costs of the proceedings

33. In the case of sanction proceedings conducted pursuant to Art. 81 ff. LR, the costs are determined according to the involved expenditures. In this case, a fee in the amount of CHF [...] is justified in view of the cost of the proceedings. This fee shall be charged to the company.

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Decision

In view of these considerations, the Executive Committee of the Admission Board announces the following decision:

1. X. shall be **reprimanded** (Art. 82 para 1 Point 1 LR).
2. The sanction imposed on X. shall be **published** by the SWX Swiss Exchange (Art. 82 para 1 Point 9 LR and Art 82 para 2 LR; publication after termination of the period during which appeals may be lodged pursuant to Art. 82 para 4 LR).
3. The **costs of the proceedings** in the amount of CHF [...] for the investigation and the decision in the first instance shall be charged to X. (Point 7.8 of the List of Charges appurtenant to the Listing Rules).