

Statement on the sanction of SIX Exchange Regulation AG

Moutier, June 6, 2023

Tornos refutes reproaches from SIX Exchange Regulation

In its media release dated June 6, 2023, SIX Exchange Regulation AG reports on its sanction against Tornos Holding Ltd and the corresponding arbitration decision. Tornos is alleged that the constitution and release of provisions for pension obligations in the years 2017 and 2016 did not comply with the provisions of Swiss GAAP FER. Tornos rejected this allegation in the course of the investigation. The provisions under discussion complied with the accounting standards of Swiss GAAP FER, they were reported transparently, and they were unreservedly audited by the auditors PwC.

SIX Exchange Regulation AG accuses Tornos Holding Ltd of having violated Swiss GAAP FER by disclosing a provision for pension obligations in the consolidated financial statements for 2017 and 2016, in that it did not base the disclosure of the underfunding either on the annual financial statements of the pension fund prepared in accordance with Swiss GAAP FER 26 nor on a dynamic model permitted under Swiss GAAP FER 16. Tornos cannot understand this allegation. It booked all items to the best of its knowledge and disclosed them transparently in the relevant annual reports.

In keeping with the overall concept of Swiss GAAP FER

The procedure chosen by Tornos to recognize and present its annual financial statements for 2017 and 2016 conforms to the overall concept of Swiss GAAP FER. The auditing firm PricewaterhouseCoopers AG certified the annual and the consolidated financial statements for the Tornos Group under discussion as at December 31, 2016 and December 31, 2017. A second internationally recognized auditing company also views the procedure and discretionary decisions as to be in line with Swiss GAAP FER. An expert opinion commissioned by Tornos arrives at the same conclusion.

Changeover from IFRS to Swiss GAAP FER

As of the 2014 financial year, Tornos changed its accounting standard from IFRS to Swiss GAAP FER. Under IFRS, Tornos recognized pension obligations for the 2013 financial year amounting to CHF 20.6 million in accordance with IAS 19R. At the time of the change of accounting standards, Tornos reviewed its pension obligations. Based on a critical assessment of the financial situation of the Swiss pension fund by the expert for occupational benefits pursuant to Art. 52d of the Federal Law on Occupational Retirement, Survivors' and Disability Pension Plans (BVG), the Board of Directors of Tornos concluded that under Swiss GAAP FER, too, there was a risk of an economic obligation. Three aspects were decisive: Firstly, following a substantial reduction in headcount at the Moutier site, the pension fund of Tornos exhibited a large number of pension recipients (555) in relation to the number of active insured persons (419), which largely ruled out an internal restructuring of the pension fund. Secondly, it was deemed very likely that the technical interest rate of 3.5% applied by the pension fund will have to be revised downward significantly in future. Thirdly, owing to rising life expectancies, a changeover from period-based to generation table-based actuarial principles was imminent, which in turn impacted negatively on the pension fund's finances. Based on a report by the pensions expert and the preparatory work done by the company's own finance department, the Board of Directors created a reserve of CHF 3.996 million for the Swiss pension fund in the 2014 financial statements. As a result, Tornos recognized a pension obligation of CHF 5.969 million for all pension institution. This corresponded to around one-third of the amount required under IFRS. In the 2015 financial statements, this provision was retained at the same level after an in-depth review. In the 2016 financial statements the revision was reduced to CHF 1.5 million owing to the substantial price gains in the pension fund's investments and the resulting stabilization of its financial situation. Finally, in the 2017 financial statements the provision was reduced to CHF 0.63 million after a further positive development on the pension fund's asset side.

Aware of its responsibility towards its insured persons, Tornos endeavored to the best of its knowledge and ability to quantify the risk of an obligation in respect of the pension fund and to create reserves in the appropriate amount. Tornos relied on the assessment of the independent occupational pension experts in accordance with Art. 52d of the Federal Law on Occupational Retirement, Survivors' and Disability Pension Plans (BVG). The entire process was transparently accounted for and comprehensible at all times.

Course of the procedure

SIX Exchange Regulation AG applied to the Sanction Commission at the end of 2019 for the imposition of a fine of CHF 1.25 million – without addressing the detailed comments submitted by Tornos within the deadline and in due form. The Sanction Commission subsequently ordered a fine reduced to CHF 0.5 million. Tornos referred this decision to the arbitration court. This reduced the fine to CHF 0.3 million. Tornos appealed against the decision of the arbitration court to the Federal Supreme Court. The Federal Supreme Court dismissed this appeal with reference to the limited cognition in appeal proceedings against arbitration court decisions.

The Board of Directors of Tornos has made every effort, in the due exercise of its management discretion, to ensure that the risks of Tornos arising from pension obligations towards active employees and pensioners have been correctly determined in actuarial terms and reflected in the balance sheet. Accordingly, he regrets the resulting fine of CHF 0.3 million. It remains convinced that the accounts audited by the auditing company complied at all times with the Swiss GAAP FER framework.

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