

Press release

Date:
25 September 2019

Embargo:
25 September 2019

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FINMA proceedings: HNA Group commits serious breach of disclosure obligations

The Swiss Financial Market Supervisory Authority FINMA finds that HNA Group repeatedly provided false reporting of the beneficial owners of the company's former stake in Swiss-listed company Dufry AG. This constitutes a serious breach of disclosure obligations under Swiss financial market law.

In recent enforcement proceedings, FINMA has investigated the stake taken by HNA Group Ltd. in Dufry AG and compliance with the corresponding disclosure obligations. Various legal entities of HNA Group purchased Dufry shares from 2017 onwards, before selling these in January 2019. During this timeframe, HNA Group held a cumulative stake amounting to as much as 21 per cent of all Dufry shares. As a result of proceedings carried out by the Swiss Takeover Board in respect of the ownership situation at HNA Group, FINMA initiated its own investigation.

Incorrect reporting of beneficial owner

FINMA's investigation showed that during this build-up and reduction of the stake in Dufry AG, the beneficial owners were repeatedly not reported correctly (see also [Report](#)). In its disclosure reports, HNA Group consistently cited the Cihang Foundation as the beneficial owner of the stake in Dufry, rather than the two Co-Chairmen of the conglomerate. However, these Co-Chairmen, Feng Chen and the now deceased Jian Wang, retained wide-ranging powers of control, and together bore the greatest economic risk in connection with the Dufry stake as a result of their indirect holdings in HNA Group (14.98 per cent in each case). Accordingly, the six reports submitted to the Disclosure Office of SIX Swiss Exchange between April 2017 and February 2019 were incorrect.

Serious breach of Swiss financial market law established

As such, Feng Chen and the Cihang Foundation seriously breached both the disclosure obligation and the associated transparency requirement under Swiss financial market law. FINMA has established this in the corresponding ruling, and will additionally be registering a complaint with the Federal Department of Finance.

Swiss disclosure regulations must be taken into account when acquiring stakes in listed companies

In Switzerland, shareholders must disclose their holdings in Swiss-listed companies whenever they reach or breach (either upwards or downwards) certain voting right thresholds. When determining the beneficial owner for disclosure purposes, what matters is who controls the voting rights associated with the stake in question, and who bears the economic risk associated with this stake.

Patric Eymann, Head of FINMA's Enforcement division, underlines the point clearly: "The market needs transparency when it comes to who is actually behind qualified stakes taken in listed companies. Accordingly, the actual control situation must be disclosed in Switzerland so that the stakeholders in question cannot be concealed through opaque structures and technicalities, as was the case here." He continues: "Proper disclosure is important for market transparency. We therefore scrutinise cases like this consistently so that all market participants can have confidence in disclosure reports."