

Updated financial guidance (PANDORA A/S)

A company disclosed an announcement in the beginning of August from which it appeared that the company downgraded the financial guidance for 2011. The updated financial guidance from the company led to a significant price drop from the opening of the market of up to 70 % and took place only 3½ months after the company in April had updated the financial guidance in a positive direction.

From rule 3.1.1 in Rules for issuers of shares it appears that a company shall, as soon as possible, disclose information that are “price sensitive”, in case these information directly concerns the company.

Furthermore it appears from rule 3.1.2 in Rules for issuers of shares that information disclosed by the company shall be correct, relevant and clear, and must not be misleading. From the commentary to rule 3.1.2 it appears that the information the company discloses must reflect the company’s actual situation and may not be misleading or inaccurate in any manner.

Furthermore it appears from rule 3.3.1 in Rules for issuers of shares that if a company reasonably expects that its financial result or financial position will deviate significantly from a forecast disclosed by the company and such deviation is price sensitive, the company shall disclose information about the deviation.

On this basis the exchange requested the company to concretely and in detail explain the process leading up to the disclosure of the company’s announcement. The company has furthermore replied to supplementary questions from the exchange, handed out material and has held a meeting with the exchange.

From the company’s explanation it appeared that the board and the management carefully followed the financial development in the company. Thus, the board and the management had regular dialogue during the ongoing evaluation of second quarter 2011.

Furthermore it appeared that it was the assessment of the board and the management during the second quarter that the needed growth in revenue to achieve the company’s announced expectations still was a reasonable objective even though there were deviations between the actual development and the budget. The company regularly assessed that it was not relevant to disclose one or more updated guidance during the second quarter 2011. In July a considerable reduction of the revenue occurred whereupon the company disclosed the downgrading in the beginning of August.

The company stated a number of factors which formed the basis for the company to maintain the updated guidance during the second quarter 2011 and in July 2011, disclosed in April. For example the company was behind plan on store openings, the development in sales-in versus sales-out indicated restocking to come in second half of 2011, the impact of price increases expected to ease in second half of 2011 and the company has historically seen more than 60% of its yearly revenue in second half of 2011.

The exchange found that the turnover in the second quarter of 2011 generally remained well below budget. The exchange also noted that the company’s statement indicated that the preliminary high-level expectations for 2011 was available in the beginning of July and that a draft internal management report was available in the middle of July 2011.

Furthermore the exchange found that the company in April was able to determine an updated financial guidance during a relatively short time. Moreover the updated financial guidance was not based on a specific event but took place approximately one month before the disclosure of the company's interim financial report for the first quarter 2011.

Based on the explanations etc. from the company the exchange found;

- that the company's procedures and reporting systems in the opinion of the exchange was adequate to ensure a fast and frequent reporting to the management and the board,
- that the company in April was able to determine an updated financial guidance during a relatively short time and based on turnover figures for the first quarter and two weeks in April 2011,
- that the turnover figures for second quarter 2011 were available at the beginning of July. The preliminarily high- level expectations for 2011 were available in the beginning of July while the draft management report for the second quarter was available in the middle of July 2011.

The exchange assessed that the company continuously had knowledge of the negative trend in revenue in the second quarter 2011 and that the company should have had enough data to assess the impact of falling sales – in spite of the factors stated by company.

Based on the explanations etc. from the company, the exchange concluded that it must have been clear to the company at an earlier stage that the guidance disclosed in April 2011 could not be reached and that the company therefore at this earlier stage should have downgraded the guidance for the year. With reference to the significant deterioration in revenue in July 2011 the company could subsequent have made a further downgrade.

Based on the abovementioned the exchange reprimanded the company that the company did not at an earlier stage – primo/medio July 2011 – as soon as possible after the company had become aware that the result would differ significantly from previously disclosed guidance, disclosed an announcement regarding the deviations, cf. Rules for issuers of shares, rule 3.3.1.