

## **Violation of duty to register for utilisation of the Exchange System (Points 1.8 lit. c, 1.10 para. 4 and 1.15 para. 2 GC)**

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### **Summary**

**Trader identification numbers are personal and may not be used by other individuals. Otherwise, entries could not be clearly attributed to a specific trader at the given participant institution. Individuals whose provisional trader IDs have expired are no longer entitled to make entries into the Exchange System. The Disciplinary Commission has issued a warning to a participant that had allowed multiple use of a trader ID by other employees (violation of Points 1.8 lit. c, 1.10 para. 4 and 1.15 para. 2 of the General Conditions).**

### **Decision**

The Disciplinary Commission has determined that participant X AG violated Points 1.8, 1.10 and 1.15 of the General Conditions of the SWX Swiss Exchange. A reprimand is issued to X AG and the costs of the proceeding in the amount of CHF 7,000.— were charged to X AG.

### **Considerations**

1. The Surveillance & Enforcement unit of SWX (SVE) has petitioned the Disciplinary Commission to issue a warning against X AG for violating the General Conditions of SWX. Between 10 April 2004 and 16 March 2005, X AG permitted a total of 10 unauthorised employees (traders) to use the trader identification number of another trader in order to execute transactions on SWX. X AG has acknowledged the findings and conclusions of SVE.
2. The Commission confirms (and does not repeat) the facts and the findings of law including the assessment of the degree of fault and the gravity of the breach described in the petition of SVE of 13 June 2005.
3. According to the Rules of procedures of the Commission, the costs of the procedure of CHF 7'000 (CHF 5'000 for SVE, CHF 2'000 for the Commission) are imposed to X AG. Sanctions against participants are published in anonymous form on the SWX website.

### **Considerations of SVE**

#### **1. Facts of the case**

Within the scope of its auditors' report dated 31 March 2005 for the 2004 calendar year, XY, as responsible auditors of the participant institution X AG, brought the following facts to the attention of Surveillance & Enforcement (SVE):

During the period between 10 April 2004 and 16 March 2005, a total of ten traders at X AG, whose provisional trader registrations had expired, were authorised by X AG to execute transactions on the SWX Swiss Exchange through use of the trader identification number of another individual. This measure was taken because the provisional trader registrations of those ten traders had expired. The intention was to maintain this situation only until those traders had passed the SWX trader examination and thereby received definitive trader registration. In actual fact, however, several of those individuals continued to use the trader ID of a registered trader even though they did not pass the trader examination. Others had left the firm.

Even prior to receipt of the aforementioned auditors' report, X AG informed SVE of these facts via telephone on 16 March 2005. However, in that conversation, mention was made of only two individuals (...) whose provisional trader registrations had expired and who had made entries into the Exchange System of the SWX Swiss Exchange by means of the trader ID of a registered trader. Moreover, SVE was in-

formed that the responsible head trader and both of the involved persons had been told that such dealings were in violation of the relevant rules of the SWX Swiss Exchange. Both of those individuals were scheduled to take the trader examination on (...). SVE instructed X AG to ensure immediately that the two individuals no longer be granted access to the Exchange System of the SWX Swiss Exchange.

Both of those traders have in the meantime taken and passed the trader examination. Consequently, their trader IDs have been reactivated.

In a letter dated 12 May 2005, X AG was informed that, due to these facts, SVE had initiated disciplinary proceedings and, in the spirit of granting a legal hearing, gave X AG the opportunity to state its position on the matter. In addition, SVE requested disclosure of the names of the eight other individuals who had used the trader ID of a registered trader, as well as the names of those traders whose trader IDs had been used by said individuals.

## 2. Response of the party involved

In a letter dated 26 May 2005, X AG essentially did not dispute the facts of the case as presented in Point 1 above. It acknowledged that, in the period between 10 April 2004 and 16 March 2005, it had enabled ten traders to use the trader ID of another trader to execute transactions on SWX, and that this was in contravention of the rules of the SWX Swiss Exchange. This was done in the erroneous assumption that order entry by means of the trader identification number of another person registered with the SWX Swiss Exchange is permissible as is the case with other European securities exchanges. X AG allegedly became aware of this mistake only on 11 March 2005 as a result of its auditors' examination of the company, at which point it immediately took steps to comply with the applicable rules.

In its position statement, X AG included a chronological synopsis of the relevant events, along with a list of those traders who had used the trader ID of another person, the time frame in which that had occurred, as well as the total number of related transactions. All traders involved had used the trader ID of the same SWX-registered person (...). Moreover, one trader who in fact is registered with the SWX Swiss Exchange also entered input until 24 May 2005 under the trader ID of (...).

X AG concluded by confirming that all of its traders are now properly registered with the SWX Swiss Exchange and their entries are being made via their own trader IDs.

## 3. Legal considerations

### a. Formal

(...)

### b. Substantive

#### i. Violation of rules and regulations of the SWX Swiss Exchange (Point 1.24 lit. b GC)

Pursuant to Point 1.8 lit. c and Point 1.10 para. 4 of the General Conditions of the SWX Swiss Exchange (GC), the participant must ensure that all traders who have access to the Exchange System are registered with the SWX Swiss Exchange and that only such individuals use the system.

According to Directive 14 of the SWX Swiss Exchange, two types of registration are possible: provisional and definitive. A provisional registration for a maximum of 1 year can be applied for if a person who effectively fulfils the professional requirements for being a trader does not actually have a trader licence (Point 2.2.1 of Directive 14). If a provisionally registered trader does not receive a trader licence within one year of the original application, the provisional registration will be suspended. For the duration of the suspension, the formerly provisionally registered individual is no longer entitled to be active as a trader on SWX (Point 2.6.1 of Directive 14).

The SWX Swiss Exchange allocates a personal registration number to each registered trader. All entries made under that number are attributed to the trader personally. The participant must ensure that the identification numbers of its registered traders are not misused (Point 1.15 para. 2 GC).

The position statement of X AG is not conclusive in all aspects. For example, reference is made to 10 individuals who used the trader ID of (...) to make entries into the Exchange System of the SWX Swiss Exchange. However, in the overview, it is noted that one individual (...) had not traded on the SWX Swiss Exchange. Because the factual situation is incontrovertible and X AG does not contest the accusations, there is no need for further investigation. On the same grounds, SVE has waived an examination of the detailed information provided by X AG (e.g. time frame, number of transactions).

The fact is uncontested that, between 10 April 2004 and 24 May 2005 over varying lengths of time, numerous traders or, as it were, non-registered individuals used the trader ID of (...) – an SWX-registered trader at X AG – in order to enter input into the Exchange System of the SWX Swiss Exchange. Multiple and continual violations of Point 1.15 para. 2 GC were committed.

Moreover, individuals who for the lack of a valid SWX registration were not entitled or no longer entitled to access the Exchange System of the SWX Swiss Exchange were in fact enabled to do so, upon which multiple and continual violations of Point 1.8 lit. c and Point 1.10 para. 4 GC as well as Point 2.6.1 of Directive 14 were committed.

c. Conclusion

In summary it can be stated that, after taking into account all available documentation – and specifically the position statement of X AG – the accusation of a violation of SWX Swiss Exchange rules and regulations has been confirmed. Thus pursuant to Point 1.24 lit. b GC, disciplinary measures can be imposed on X AG.

d. Dispensation of penalty

In imposing disciplinary measures, the SWX Swiss Exchange takes into account the gravity of offence and the degree of fault (Point 1.24 para. 3 GC).

Consistent compliance with the SWX Swiss Exchange provisions cited in Point 3.2.1, above, regarding trader identification is essential because it is the only way to ensure unequivocal attribution to the specific traders who have made entries into the Exchange System. In the case of a subsequent investigation, each violation of these provisions could thwart the identification of the individual responsible for a questionable entry. Given that normative purpose, a systematic violation of those rules committed over a long period of time by numerous employees of a participant firm cannot be taken lightly. To make matters worse, this culpable conduct occurred with the consent of the participant.

Irrelevant on the other hand is X AG's indication that it assumed this reproachful conduct was permissible on the SWX Swiss Exchange. The relevant provisions of the SWX Swiss Exchange rules are authoritative and must be upheld.

However, upon its identification and realisation of this abuse, X AG immediately took steps to reestablish compliance with the rules. It informed SVE in a timely manner, even though it was not yet fully aware of the relevant facts of the case. Moreover, during the proceedings, X AG demonstrated cooperation and no previous disciplinary measure has been imposed on the company. Hence there are sufficient grounds to assume that X AG in future will commit no further violations of SWX rules and regulations in general and in particular the provisions governing the use of trader identification numbers.

Given these considerations, a warning – as the least severe of the potential disciplinary measures – is to be issued.

4. Cost consequences

Pursuant to Art. 9 of the Rules of Conduct of the SWX Swiss Exchange Disciplinary Commission, the Disciplinary Commission in its decisions must rule on the procedural costs that are to be imposed on participant X AG. The costs incurred by SVE in the amount of CHF 5,000.-- are to be charged to the participant because its improper conduct was the cause of the SVE investigation and further proceedings.

(Decision of 13 July 2005)