

Breach of the duty to register to use the stock exchange system (sections 1.7 c and 1.14 para. 2 GC)

Summary

Trader IDs are personal and may not be used by others. Only a registered trader admitted by the SWX Swiss Exchange may deputise for another registered trader. The participant is responsible for ensuring that ID numbers are used properly. The Disciplinary Commission has issued a formal warning to one participant which permitted the trader ID of a registered trader to be used by another member of its staff. This constituted a breach of sections 1.7 c and 1.14 para. 2 of the General Conditions of the SWX Swiss Exchange.

Decision:

The Disciplinary Commission found that participant X had infringed sections 1.7 c and 1.14 para. 2 of the General Conditions of the SWX Swiss Exchange (GC) by failing to prevent the use of a registered trader's trader ID by a member of staff who was not registered as a trader during the former's absence in spring of 2006. Participant X is to be issued with a formal warning. Participant X is also required to pay the costs of proceedings, which total CHF 8,000 and are broken down into CHF 5,000 to the supervisory office and CHF 3,000 to the Disciplinary Commission.

Deliberations on the part of the Disciplinary Commission:

X accepted the charges and the corresponding findings of the supervisory office, Surveillance & Enforcement (SVE). The Disciplinary Commission shared the view of SVE and has issued a formal warning. X was given ten days in which to request that the Commission explain the grounds for this warning but chose not to exercise this right.

Excerpt from SVE's deliberations:

1. In its audit report for the 2005 calendar year, the audit firm responsible for participant X notified SVE that the personal trader ID of a registered trader had been used by a member of staff who was not registered as a trader to make entries in the order system of the exchange while the registered trader was absent. The registered trader's duties included trading in a special security and he had given a member of staff in his department access to his workstation in order to ensure that trading continued while he was away on holiday. This arrangement was repeated on several occasions between 14 March 2005 and 7 February 2006.
2. Participant X did not dispute the facts. In its response, it claimed that the special nature of the security was the only reason for the particular arrangement in this case. X also stated that the substitute trader in question, who was not registered in the SWX, did in fact hold licences to trade on virt-x and on Eurex. Overall, the trader who was not registered on the SWX (but on virt-x and Eurex) had conducted several transactions in this security while the responsible trader was on holiday. X affirmed, however, that it had taken action to ensure that this would not happen again.

3. These declarations do not absolve X. The statement that the entries had been made only because of the special nature of the security is inadmissible. Furthermore, the fact that the entries were made while the registered trader was away on holiday is not the key point here. That the member of staff who made the entries was licensed to trade on virt-x and Eurex is also irrelevant. X should have had the necessary structure in place to guarantee that another SWX-registered trader would deputise for the registered trader during the latter's absence. It is incumbent upon the participant to ensure that the ID numbers of its registered traders are not misused. Consequently, X committed multiple breaches of sections 1.7 c and 1.14 para. 2 GC.
4. When imposing disciplinary measures, the SWX takes into account the gravity of the offence and the degree of fault (section 1.26 para. 3 GC). Strict compliance with the provisions on trader identification is of vital importance, as only then can entries be allocated reliably to the individuals who made them. In the case under investigation here, each and every breach of these provisions might have thwarted the clear identification of the person responsible for the entry in question. Practices such as those followed at X make it impossible for the SWX to trace who is actually making entries in the exchange system. In view of these circumstances, the present breach of the rules and regulations cannot be regarded as minor.

Participant X nonetheless cooperated fully with the investigative proceedings. It submitted its response within the set period and itself brought to our attention further, previously unknown transactions that were in breach of the rules; furthermore, it has never had disciplinary measures imposed upon it in the past. In addition, X has taken organisational measures to prevent further abuses of trader IDs. There is therefore sufficient reason to believe that, in the future, X will take care to prevent any further breach of rules and regulations in general, and the provisions concerning trader IDs in particular. In the light of these considerations, an official warning is to be issued as the most lenient of all possible disciplinary measures.

(Decision of 17 November 2006)