

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)

Summary

Trader IDs are assigned to specific individuals and may not be used by others. Only licensed traders that are admitted to trading on the SWX Swiss Exchange may act as deputies. The participant is responsible for ensuring that Trader IDs are used correctly. The Disciplinary Commission has cautioned a participant that allowed the Trader ID of a registered trader to be used by another employee (violation of Point 1.8 lit. c, 1.10 para 4 and 1.15 para 2 of the General Conditions).

Decision

The Disciplinary Commission has discovered that the participant X SA has violated Point 1.8 lit. c, 1.10 para 4 and 1.15 para 2 of the General Conditions by allowing a registered trader who was responsible for trading in a certain securities category to instruct a non-registered employee to use the ID of an absent registered trader.

The participant X SA is cautioned pursuant to Point 1.26 para 2 of the General Conditions. The cost of the proceedings in the amount of CHF 10'000 are to be borne by the participant X SA (CHF 5'000 for Surveillance & Enforcement [SVE] and CHF 5'000 for the Disciplinary Commission).

Considerations

1. In a request dated 19 December 2005, Surveillance & Enforcement (SVE) of the SWX Swiss Exchange applied to the Disciplinary Commission to caution participant X SA for violating Points 1.8 lit. c, 1.10 para 4 and 1.15 para 2 of that version of the General Conditions (GC) which was valid through 10 November 2005. X SA has had the opportunity to state its position on the SVE proceedings and the proceedings before the Disciplinary Commission. No subsequent correspondence was necessary.
2. The SWX Swiss Exchange (SWX) has discovered that, all day on 19 September 2005, employee A of X SA, who is not registered with the SWX, used the Trader ID of registered trader B of the same bank, who was absent that day. This occurred on the instructions of C, who is registered as a trader with the SWX and responsible for warrant trading. The transactions were carried out in the name of B even though, in the opinion of X SA, they should have been carried out in the name of C.
3. X SA has not contested the facts. It has stated that it is aware of having violated the rules of the SWX. It claims that this violation of market rules was not the result of a faulty internal procedure but rather an exceptional case. It also refers to its internal procedures for managing market authorisation, i.e. the distribution of a procedural overview to all traders on a yearly basis, and to its database for managing market authorisation (which allows individual traders to be identified), its monthly reviews of such authorisation and the initial training of all employees.
4. These statements do not exonerate X SA. The company does not deny that A was not registered with the SWX (the fact that A was registered with virt-x is irrelevant). The measures implemented by X SA to ensure that no unregistered employees can use the Trader IDs of registered employees have obviously proved inadequate. Moreover, a registered line manager must not allow an unregistered employee to use the Trader ID of another employee who is absent; nor must a registered line manager instruct an unregistered employee to make entries on his or her behalf. Only another registered trader may act as deputy in such cases (see Point 1.15 para 5

GC¹). It should be noted that subsequent changes to the Trader ID of a given trader are not permissible.

5. Under Point 1.26, the SWX is required to punish violations of the GC. The severity of the punishment depends on the seriousness of the violation and the degree of fault. The mildest form of punishment is a caution. In the opinion of SVE, this is a minor violation, so the Disciplinary Commission has decided to impose the lightest sanction possible under the GC. Under Point 1.26, the SWX has the option to notify the participants and/or the public of disciplinary measures imposed on participants. In this case, such notification is neither necessary nor appropriate (please refer to the usual practice of publishing disciplinary decisions on the website of the SWX while keeping the name of the company confidential).
6. In accordance with Article 9 of the Disciplinary Commission's rules of procedure, X SA will carry the cost of the proceedings and be bound by them.

(Decision of 30. 01.2006)

¹ That version of the GC which was valid through 10 November 2005.