

Violation of the General Conditions and of a Directive of SIX Swiss Exchange

Decision:

The Sanction Commission has established that the participant X has violated section 3.37 of the General Conditions (GC) of the SIX Swiss Exchange in conjunction with Directive 11 by having programmed its systems in a manner that all off order book transactions with a counter value of more than CHF 10 million were automatically labelled with the B5 function and the mandatory prior consultations with SIX Swiss Exchange were not made. A fine of CHF 100'000 is inflicted upon X. The sanction will be published by SIX Swiss Exchange once it is in force. The costs of the procedure in the amount of CHF 16'000 are charged to X.

Reasons for decision:

1. Pursuant to sections 3.1 and 3.3 of SIX Swiss Exchange Directive 11 (Reporting requirement with respect to sensitive block transactions), sensitive block transactions including all related details must be reported to the SIX Swiss Exchange by means of the Reported Trade (RT) function at latest 30 minutes after execution. In justified cases and subject to prior consultation with the SIX Swiss Exchange (department SVE-MSI), a 120-hours delay (time of trade + 5 trading days) before publication is permissible, if the following conditions are fulfilled cumulatively: a) booking into an actual nostro account; b) opening of a position – i.e. the liquidation of a position does not qualify as a sensitive block transaction; c) the transaction must be in equity securities; and d) it must involve a counter value of at least CHF 10 million, or constitute more than 5% of the outstanding equity securities of the stock in question (section 2 of Directive 11). These transactions are to be flagged with the Trade Type Code (TTC) B5.
2. On (...), X programmed its systems in such a way that off order book transactions involving a counter value of more than CHF 10 million were automatically designated with TTC B5. The rule that a delayed publication is permissible only upon prior consultation with department SVE-MSI of SIX Swiss Exchange (and only in justified cases) effectively obviates any programming of the B5 function. As a result thereof, X was unable to comply with the aforesaid SIX Swiss Exchange block trade requirements. This indeed resulted in repeated breaches of sections 3.1 and 3.3 of the SIX Swiss Exchange Directive 11. Said breaches were discovered following a request for information by SVE-MSI on (...). In response there to, X corrected its software program on (...). The investigations performed by SVE-MSI showed that in 2008 five transactions were reported in misuse of the TTC B5 function.
3. X agreed with the findings and did not challenge the facts set out by SVE. X was informed that the Commission was considering a publication of its decision by naming the bank. X was invited to put forward possible reasons why this should not be done. X did not object to the principle of a publication, but requested that the publication be made in an "anonymous form", without giving particular reason therefore (e-mail of...).
4. In view of the aforesaid, X has violated section 3.37 of the General Conditions of the SIX Swiss Exchange in conjunction with the aforementioned Directive 11.
5. If a participant does not comply with the rules and regulations, SIX Swiss Exchange applies sanctions ranging from a reprimand to a fine of up to CHF 10 millions. In order to assess the sanction, SIX Swiss Exchange takes into account the gravity of the offence and the degree of the fault (section 1.29 GC).
 - a. It shall be taken into consideration that X cooperated with the department of surveillance and immediately initiated system corrections.
 - b. X programmed its systems in such a way that off order book transactions involving a counter value of at least CHF 10 million were automatically designated as TTC B5 transactions. In all enterprises, programming has to go through a control procedure. It is not by coincidence that a certain system is set up and implemented. The user and its compliance function have to approve the proposition of the technical staff. The competent persons at X did obviously not control the conformity of the programme with the applicable rules of the exchange. As there is however no indication that the staff of X acted intentionally, the lack of control is to be considered as negligent.

- c. Art. 5 of the Swiss Federal Act on Stock Exchanges states that the stock exchange shall ensure that all information necessary to maintain a transparent market is made public. This shall apply, in particular, to the volume of securities. The General conditions of SIX Swiss Exchange provide for some exemptions of the general obligation to report all transactions without delay. It is stated that sensitive block transaction may be published not immediately, but after a delay, provided that the participant informs SIX Swiss Exchange of the details of the transaction, as set out in the Directives and the conditions set forth in section 2 of Directive 11 are fulfilled. This applies inter alia to the present case, where some transactions volumes were by large over the relevant size of a block trade (for example the transaction in Y bearer shares of CHF 213 Mio. on [...] or the transaction in Y for an amount of CHF 190 Mio. on [...]). These transactions were indeed of remarkably high size and it is evident that a special attention was required to ensure correct reporting, including the prior consultation with SIX Swiss Exchange. This could not have been ignored by the person in charge at X. The organisation of X did not provide for an appropriate control. This negligence must therefore be deemed severe.
- d. It is not the first time that X does not comply with SIX Swiss Exchange rules. On (...), the Sanction Commission inflicted to X a fine of CHF 10'000 for breach of the rules concerning trader admission and the admission of order systems to the Exchange system. It now appears that this sanction did not induce X to draw the necessary attention to comply with all SIX Swiss Exchange rules. The case at hand is therefore a case of repeated breach which justifies and calls for an increase in the severity of the sanction.

In view of these circumstances, a fine of CHF 100'000 is declared appropriate by the Sanction Commission.

6. Section 1.29 para 4 GC states that SIX Swiss Exchange "may" disclose sanctions inflicted on participants and/or the public. According to this rule issued by the SIX Swiss Exchange Board of Directors, the publication is thus not necessarily mandatory. In contrast, the Rules of procedures, issued by the same Board and the Swiss Admission Board, provide that the Commission has to publish its sanctions that are in force (section 6.3, para 1 – in the authoritative language: "Die Sanktionskommission *publiziert* die in Rechtskraft erwachsenen Sanktionsentscheide."). In earlier cases, the Commission decided not to publish a sanction when as such it was to induce the participant to prevent any further violation of the rules of the exchange. This does not apply in cases of severe violations or recidivism.

The publication of a decision has to be distinguished from the publication of decisions in an anonymized form as stipulated in various places by the Rules of procedures. The purpose of this form of publication is to give guidance to all participants. Therefore SIX Swiss Exchange may publish all sanctions in a completely anonymous form on its website.

7. According to the Rules of procedures, the costs of the procedure of CHF 16'000 (CHF 5'000 for SVE, CHF 11'000 for the Commission) are imposed to X.

30.12.2008
(Original text)