

Violation of the General Conditions of SWX Swiss Exchange

Decision:

The Sanction Commission has established that the participant X has violated sections 1.9 lit. d and 1.16 para 2 and 6 of the General Conditions (GC) of the SWX Swiss Exchange (SWX) by failing, in 2006, to ensure the identification number of one of its registered traders was not used by an employee not registered with SWX and by failing to keep a log book recording orders entered under a trader's identification number by another registered trader. A fine of CHF 30'000 is charged to X. The sanction will be published once the appeal period has expired. The costs of the procedure of CHF 10'000 are charged to X.

Reasons for decision:

Breaches

1. The Surveillance & Enforcement Department (SVE) of the SWX requested that sanctions be imposed on X for failure to comply with the General Conditions in respect of the registration of traders. While the facts are not contested, X believes there is no evidence of actual shortcomings in internal procedures. Its view is that it is a case of traders not having respected those procedures. X states that these breaches did not disrupt the market in any way and that no fraudulent intention was involved.
2. Section 1.9 lit. d GC requires that participants must register all persons with SWX who have access to the stock exchange system in their capacity as traders. Participants must ensure the stock exchange system is used solely by these employees. SWX assigns a personal identification number to each registered trader. All entries made under this number are attributed directly to the trader. The participant is obliged to ensure that the identification numbers of its registered traders are not misused in any way (section 1.16 para 2 GC). If a registered trader acts as deputy for another trader, both traders must be committed to keeping a log book on the deputing (section 1.16 para 6 GC).
3. Within the context of the audit report dated (...) for the 2006 calendar year, the auditor acting for X informed SVE that entries had been made in the stock exchange system using specific traders' personal identification numbers while those traders were absent. There has not been kept a log book on the deputing. The period referred to in the audit was July 2006. X admitted that, in July 2006, a total of 1'444 order entries had been made while five registered traders were absent using their identification numbers. In four cases (involving 1'006, 8, 7 and 7 transactions) these entries were made by other registered traders, who then failed to record the fact in a log book that they were deputizing for another trader. In one case involving 416 transactions, entries were made by a person who was not registered and was using the identification number of a trader who was absent. X admits that regulations in respect of the recording of deputization and the keeping of a log book were not complied with. Consequently, X has violated sections 1.9 lit. d and 1.16 para 2 and 6 GC, provisions with which the participant alone is responsible for complying.

Sanction

4. In the event of a violation of SWX regulations or a breach of agreements with SWX, the sanctions imposed pursuant to section 1.29 para 2 GC shall take into account the gravity of the offence and the degree of fault. The sanctions listed under section 1.29 para 2 GC range from a reprimand to a fine of CHF 10 million.
5. Effective surveillance of the stock market is required in order to ensure the quality of the market and under stock exchange legislation. The aim is to detect offences and other irregularities. For this reason, it is essential that participants comply fully with SWX requirements in respect of the identification of traders at all times. Failing to comply with the requirements could result in a situation where those behind suspect transactions cannot be identified. Trader identification numbers are personal and must not be used by anyone else. Participants are responsible for ensuring that their employees know what the requirements in respect of personal trader identification mean and what is involved. They must also ensure that their employees comply with these requirements. It is no excuse for a participant to admit – as is the case here – to having breached SWX regulations but

stating that the situation is due not to an error in internal processes but to non-compliance on the part of some employees.

6. It should be noted that, on (...), SWX had already issued X with a reprimand in connection with an abuse of trader identification numbers. Despite this reprimand, X failed to take the necessary steps to avoid further breaches in the same year [note: in the year in which the first reprimand was issued] of the very same requirements, i.e. those governing the registration of traders. The failure to apply the due diligence is also apparent in X's reply to the question of how to guarantee the due keeping of a log book detailing deputizations in the future. On (...), the answer it gave to the SVE was that it would apply a supplementary control filter that would allow it to ensure in future that each trader will carry out transactions using his own trader identification number. At that particular time, however, X believed that the imminent implementation of the filter meant that, as it was, keeping a log book was not necessary. According to X, keeping a log book pursuant to section 1.16 para 6 GC is only necessary in the case that the implementation of the filter will be delayed. The obligation to take adequate measures to control the use of identification numbers is, however, something that can not be decided on by the participant, nor is the obligation to take such measures immediately and ensure they are in place at all times. The fact of having declared that the licences specified (i.e. the entries made using such) did not disrupt the market in any way and that this confirmed that fraudulent use of the entries was highly unlikely (letter dated ...) shows that X did not attach sufficient importance to the shortcomings cited by SWX in the previous proceedings.
7. In light of the foregoing, it is clear that X has not proven that it applied the due diligence and that it failed to take adequate control measures, even after having been issued with a prior reprimand for abuse of trader identification numbers. Under these circumstances, the breach of the regulations in connection with this specific matter cannot be considered as a minor breach and, consequently, a fine should be imposed on X. Given the repeated nature of this breach of SWX requirements, a fine of CHF 30'000 is appropriate.
8. Section 1.29 GC states that sanctions imposed on participants may be disclosed; section 6.3 of the Rules of Procedure in force since 1 January 2007 stipulates that sanction decisions of the Sanction Commission that have acquired legal force will be published. Consequently, the SWX shall publish the decision on this matter.
9. In light of the foregoing, the costs of the proceedings shall be charged to X (CHF 5'000 for the Surveillance & Enforcement Department SVE and CHF 5'000 for the Sanction Commission).

31.01.2008
(Translation)