

Violation of the General Conditions of SWX Swiss Exchange

Decision:

The Sanction Commission has established that the participant X has violated section 1.16 para 6 of the General Conditions of the SWX Swiss Exchange by neglecting to ensure keeping a log-book in which orders could be entered under one trader's identification number by another registered trader. A reprimand is issued against X. The costs of the procedure of CHF 8'000 are charged to X.

Reasons for decision:

Violations

1. The department Surveillance and Enforcement (SVE) of the SWX requested that a sanction be imposed on X for having neglected to comply with the provisions of the General Conditions (GC) regarding the keeping of a log-book. The auditors had informed SVE in the 2006 audit report of X's failure to keep a log-book on deputisations. The facts of the case are not disputed. X regretted the violations and, having received the auditors' report detailing the omissions on 20 March 2007, introduced a log-book on 2 April 2007.

Sanction

2. In the event of a violation of SWX regulations or a breach of agreements with SWX, the sanctions are imposed on participants pursuant to section 1.29 para 2 GC and shall take into account the gravity of the offence and the degree of fault. The sanctions pursuant to section 1.29 para 2 GC range from a reprimand to a fine of up to CHF 10 mio.
3. It is essential that a log-book is kept, as this alone makes it possible, in the event of an investigation, to identify with certainty the trader who made entries into the SWX system. If deputisations are not recorded in a log-book, it becomes impossible for SWX to determine who actually made entries into the SWX system. Under these circumstances, this offence is not so negligible as not to require a sanction.
4. However, it has to be considered that X admitted the failure to keep a log-book and remedied this omission immediately on receiving the auditor's report. Moreover, according to X's affirmations and the extract from the log-book covering one week of every month from April to September 2007, X acts now correctly in accordance with section 1.16 para 6 GC. This was verified by the auditor in 2008. In view of this and according to the application for sanction submitted by SVE, the most lenient of the possible sanctions, a reprimand, is appropriate.
5. According to section 1.29 GC, SWX may publish sanctions against participants, but this is not necessary where, as in this instance, the offence is a minor one. However, SWX will publish the decision once it has acquired legal force (section 6.3 para 3 of the Rules of procedure) in anonymous form on its website in order to inform other participants of its practice.
6. In light of the foregoing, the costs of the procedure are imposed to X (CHF 5'000 for SVE and CHF 3'000 for the Sanction Commission).

23.05.2008
(Translation)