

Violation of the General Conditions of SWX Swiss Exchange

Decision:

The Sanction Commission has established that the participant X has violated the sections 1.17 para 5 and 1.23 lit. b of the General Conditions of the SWX Swiss Exchange by having failed to ensure that no unfair trading practices are conducted via participant's order-routing system. A reprimand is issued against X. The costs of the procedure in the amount of CHF 8'000 are charged to X.

Reasons for decision:

1. According to section 1.17 of the General Conditions (GC), participants may utilise order systems that have been registered with SWX. Para 5 prescribes that the participant is responsible for all entries added to the Exchange System via its order systems. Hence such a system may only allow entries (as the participant is responsible itself) that uphold the obligation to conduct fair and transparent trading in a manner that does not compromise the integrity of the market (section 1.23 lit. b GC). The participants are therefore obliged, by means of proper and careful parameterisation of their systems, to ensure that no abusive or market-disruptive entries are made into the Exchange System of SWX.
2. The facts of the matter are undisputed. On [...] 2007, there had existed in the shares of XY – which cannot be considered liquid – a bid price of CHF (...) since [...] 2007 for (...) shares and since [...] 2007 a further bid price of CHF (...) for (...) shares. The last reference price of CHF (...) dated back to [...] 2007. (The shares were also traded on a US exchange, where the price fluctuated within the reference price.)
3. On [...] 2007 at 10.35a.m., the entry of an unlimited sell order for (...) shares placed by a third party triggered a stop trading (5 minutes) due to the current bid side of CHF (...). 13 seconds before the end of the stop trading, a bid of CHF (...) for (...) shares was entered via the order system of X, which was added to the existing bid of CHF (...) for (...) shares. This led to a non-opening after the stop trading. 16 seconds later, the bid of the existing buy order was increased to CHF (...) for (...) shares via the order system of X. Together with the (...) other shares, the total size on both sides of the market was (...) shares, for which reason the Exchange System executed the trade at CHF (...). (In view of the reference price, SWX subsequently declared a mistrade.)
4. It is obvious that a customer wanted to use the system of X to conduct an abusive trade. This is not a matter that can be deemed a borderline case. Rather, it represents a clear case in which a participant has failed to uphold its obligation to parameterise its order systems in a manner that no such entries can be passed. Because X did not take those precautions, it violated section 1.17 para 5 and section 1.23 lit. b GC.
5. X asserted that the error was committed by the party who entered an unlimited order in the shares. That argument can be dismissed, because in this instance an obviously unfair trading practice was conducted via the order system of X and – as previously mentioned – not prevented by the system. Also, X's proposal that GC be revised is not a matter to be addressed in a sanction proceeding.
6. If a participant violates the provisions of GC, SWX imposes according to section 1.29 GC a sanction (contractual penalty) which may range from a reprimand to a fine of up to CHF 10 mio. In imposing the sanction, SWX takes into account the gravity of the offence and the degree of fault.
7. The comportment of the customer of X is obviously equal to a grave breach. X itself – and this is the central issue in this regard – must be reproached for not having taken sufficient organisational measures to prevent such orders from reaching the Exchange System. The due diligence in properly parameterizing the order system was not exercised, and adequate controls of the use of the order system were not ensured. This rule violation is too severe to be dismissed without a sanction. What must be taken into consideration, however, is the fact that no sanction has ever had to be pronounced against X. There is no indication that X itself had the intent to destabilise trading, achieve an imbalance in the market, or manipulate the market. There are sufficient reasons to assume that X will take steps to ensure that no violations of the provisions governing order systems or of any other SWX rules and regulations will occur in future. Therefore, the most lenient sanction, a reprimand, is appropriate.

8. According to section 1.29 GC, SWX may publish sanctions against participants. In the present case, the offence is a minor one, so this will not be necessary. However, in accordance with section 6.3 para 3 of the Rules of procedure, the SWX will publish its legally valid decision anonymously on its website in order to give guidance to other participants.
9. 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).

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(Translation)