

Violation of the General Conditions of SWX Swiss Exchange

Decision:

The sanction commission has established that 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 allowing non-registered employees to make entries into the exchange system of the SWX using the Trader IDs of two registered traders in 215 instances between 16 May and 1 December 2006 and by failing to keep a log-book of the deputisation. A reprimand is issued against X. The costs of the procedure of CHF 10'000 are charged to X.

Reasons for decision:

1. According to section 1.9 lit. d GC, participants must register with the SWX all persons who have access to the exchange system in their capacity as traders and ensure that only these persons use the system. The participant is obliged to ensure that the identification numbers (ID) of its registered traders, which are assigned by the SWX, are not misused (section 1.16 para 2 GC). In the event of deputisation, a log-book must be kept in accordance with section 1.16 para 6 GC.
2. In their auditors' report of (...) for the 2006 calendar year, the auditors of participant X stated that, in 215 instances between 16 May and 1 December 2006, non-registered employees of X made entries into the exchange system of the SWX using the Trader IDs of two other, registered employees. No log-book was kept concerning these deputisations. X has acknowledged these facts and the violation. It is established that X violated sections 1.9 lit. d and 1.16 para 2 and 6 GC.
3. If a participant violates the GC, the SWX imposes a sanction (contractual penalty) which may extend from a reprimand to a fine of up to CHF 10 million. When imposing disciplinary measures, the SWX takes into account the gravity of the offence and the degree of fault.
4. Strict compliance with the provisions regarding Trader IDs is indispensable in order to uniquely attribute entries into the exchange system to specific traders. Surveillance of trading is responsible for ensuring, among other things, that violations of the law and of exchange rules are detected. If registration requirements are violated, this prevents the persons responsible to be clearly identified and makes it impossible for the SWX to determine who made which entries into the exchange system. Trader IDs are assigned to specific individuals and may not be used by others. The participant must ensure that the employees are aware of the purpose and importance of these rules.
5. These violations of the registration requirements are not so trivial that they could be dealt with informally. However, there is no indication that they occurred in conjunction with other rule violations. X cooperated during the proceedings. X submitted its statement of position in due time, gave detailed answers to the questions asked by SVE and admitted to the violations. X has explicitly instructed traders not to provide third parties with their Trader IDs. The employees in question are now regularly informed of the prohibition on passing on Trader IDs. It has been arranged that deputisation will be permissible only in exceptional cases and after consultation with senior management. During these consultations, the traders in question will again be informed of the duty and requirement to keep a log-book.
6. The SWX has previously issued a reprimand against X because the provisions on off-exchange aggregated orders were violated by another of its organisational units, a branch in (...), in the year (...). This violation was not severe. The SWX has never imposed a sanction on the unit in (...) and by another of its organisational units. The present violation is not severe either. There is sufficient reason to assume that X will take care to ensure compliance with the rules and regulations of the SWX in general and the provisions regarding Trader IDs in particular. Therefore, the most lenient sanction, a reprimand, is appropriate.
7. According to section 1.29 GC, the SWX may publish sanctions against participants. In the present case, the violation was not serious, 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.
8. The costs of the procedure of CHF 10'000 (CHF 5'000 for Surveillance & Enforcement CHF 5'000 for the Sanction Commission) are imposed to X.