

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

Decision:

The Sanction Commission has established that participant X has violated sections 1.9 lit. d, 1.16 para 2 and 1.18 para 2 of the General Conditions of SIX Swiss Exchange (GC SIX Swiss Exchange) in conjunction with sections 2.1 and 2.6.1 of Directive 14 of SIX Swiss Exchange and sections 1.7 lit. c, 1.12 and 1.14 para 2 of the General Conditions of Scoach Switzerland (GC Scoach Switzerland) in conjunction with sections 2.1 and 2.6.1 of Directive 14 of SIX Swiss Exchange at least between 29 October 2008 and 14 November 2008 by not preventing a non registered employee C to have access to the exchange system by using the identification number of a registered trader A and by not preventing that three employees D, E and F who lost their provisional trader registration make entries into the exchange system and in failing to ensure that the identification number of a registered trader B was misused by four non registered employees D, E, F and G. A fine of CHF 20'000 is inflicted upon X. The decision will be published by SIX Swiss Exchange once it is in force. The costs of the procedure in the amount of CHF 8'500 are charged to X.

Reasons for decision:

1. Pursuant to section 1.9 lit. d GC SIX Swiss Exchange [in force at the time] in conjunction with section 2.1 of Directive 14 of SIX Swiss Exchange and pursuant to section 1.7 lit. c GC Scoach Switzerland, participants must register all persons who have access to the exchange system in their capacity as traders with SIX Swiss Exchange respectively Scoach Switzerland. The participant is obliged to ensure that the personal identification numbers of its registered traders are not misused (section 1.16 para 2 GC SIX Swiss Exchange). Registration as a trader with SIX Swiss Exchange is a prerequisite for registration with Scoach Switzerland (section 1.12 GC Scoach Switzerland, with reference to Directive 14 of SIX Swiss Exchange).
2. If a trader with a provisional registration has not received a trader's license within one year of provisional registration, he shall be suspended by SIX Swiss Exchange. The previously provisionally registered trader shall not be entitled to operate as a trader for as long as the suspension remains in force (section 2.6.1 of Directive 14 of SIX Swiss Exchange). In such cases, the participant is obliged, in accordance with section 1.18 para 2 GC SIX Swiss Exchange and section 1.14 para 2 GC Scoach Switzerland, to ensure immediately that the specific trader no longer has access to the SIX Swiss Exchange respectively Scoach Switzerland platform.
3. In October 2008, some employees of X who had a provisional trader registration for SIX Swiss Exchange / Scoach Switzerland until 21 October 2008 had been suspended as traders because they had not successfully completed the trader examination within one year of provisional registration.

According to investigations of SIX Exchange Regulation (SVE), on 29 October 2008 C used the personal trader identification number of the trader A for trading in an ETF product on gold (...). Although C took the trader examination on 7 October 2008, he obtained the status of a registered trader on 4 November 2008 only. Consequently, he did not have his own personal identification number on 29 October 2008. Further, the prices for the product [...], which is not traded by A, were set until 14 November 2008 under his trader identification number although SVE already notified X of this on 29 October 2008.

4. As stated by SVE on 29 October 2008, the personal identification number of the registered trader B was also used by the team members D, E, F and G for trading in derivatives. However, at this time none of these employees had a personal identification number for SIX Swiss Exchange respectively Scoach Switzerland. The provisional trader registrations of D, E and F had been suspended because they did not successfully complete the trader examination within one year from the date of provisional registration. G was only admitted as a registered trader with SIX Swiss Exchange respectively Scoach Switzerland on 8 December 2008.
5. X agreed with the findings and did not challenge the facts set out by SVE. Thus it is established that participant X has violated sections 1.9 lit. d, 1.16 para 2 and 1.18 para 2 GC SIX Swiss Exchange in

conjunction with sections 2.1 and 2.6.1 of Directive 14 of SIX Swiss Exchange and sections 1.7 lit. c, 1.12 and 1.14 para 2 GC Scoach Switzerland in conjunction with sections 2.1 and 2.6.1 of Directive 14 of SIX Swiss Exchange. Because this pertains to violations of the rules and regulations of SIX Swiss Exchange and Scoach Switzerland, with which the participant alone is responsible for complying, a sanction measure has to be imposed on participant X (section 1.29 para 1 lit. b GC SIX Swiss Exchange and section 1.24 para 1 lit. b GC Scoach Switzerland).

6. If a participant violates the rules and regulations, SIX Swiss Exchange / Scoach Switzerland sets sanctions ranging between a reprimand and a fine of up to CHF 10 millions. In order to set a sanction, SIX Swiss Exchange / Scoach Switzerland takes into account the gravity of the offence and the degree of fault (section 1.29 GC SIX Swiss Exchange and 1.24 GC Scoach Switzerland). The sanction is inflicted on the participant as such as it is responsible and liable for persons who enter data into the Exchange System through its terminals (section 1.27 GC SIX Swiss Exchange and 1.23 GC Scoach Switzerland).
7. X agreed with the findings, but considered that a reprimand as the mildest sanction should be issued and stated that a fine as a first sanction could be regarded as contrary to the principle of equal treatment.
8. Indeed, X has not received a sanction by SIX Swiss Exchange in the past. But neither the GC nor the established practice of the Sanction Commission provide for the issuance of a reprimand as a first sanction. X cited several precedents where only reprimands were issued. Effectively, in the first years of its practice, some of the sanctions of the Sanction commission in similar cases were warnings resp. reprimands. But in the near past, as even the – anonymous - publication of sanctions did not prevent other participants from violating rules and regulations, the practice started to be more severe.
9. Strict compliance with the provisions of SIX Swiss Exchange and Scoach Switzerland on trader registration and trader identification is important, because only then can entries in the exchange system be allocated reliably to the individual traders. X stated that its traders operate as a team under the responsibility of the senior trader. It would be difficult to allocate a personal identification number to each trader. However, these arguments do not exonerate X from its responsibility since the conditions for the registration and identification of traders are clearly described and every participant is committed to ensure compliance with these rules.
10. In the present case, it is taken into account that several employees of X who have been suspended as traders because they had not successfully completed the trader examination repeatedly used the identification numbers of other registered traders. At least two of the employees who took the trader examination in October or were in the process of registration and therefore knew that making entries without registration is contrary to the rules continued to do so. Despite notification from SIX Swiss Exchange, X did not immediately ensure that the identification numbers of its registered traders were not misused.

In view of these circumstances, a fine of CHF 20'000 is deemed appropriate by the Sanction Commission.

11. According to section 6.3 of the Rules of procedures the Sanction Commission has to publish its sanction decisions that have acquired legal force. In earlier cases of minor importance, the Commission did not publish a reprimand or a very small fine when as such it was to induce the participant to prevent any further violation of the rules of the exchange. This does not apply when the sanction is a fine as in the present case.
12. According to the Rules of procedures, the costs of the procedure of CHF 8'500 (CHF 5'000 for SVE, CHF 3'500 for the Commission) are imposed to X.

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(Original text)