

## **Violation of the General Conditions and of a Directive of SIX Swiss Exchange and Scoach Schweiz AG**

### **Decision:**

The Sanction Commission has established that participant X has violated section 1.24 of the General Conditions of SIX Swiss Exchange (GC SIX) in conjunction with section 2.2.2 of Directive 22 of SIX Swiss Exchange as well as section 1.20 of the General Conditions of Scoach Schweiz AG (GC Scoach) in conjunction with section 2.2.2 of Directive 22 of Scoach Schweiz AG (Scoach) by failing to take measures to prevent a client from carrying out 61 agent-agent cross trades via its order-routing system between 1 January and 31 August 2008. A reprimand is issued to X. The costs of the procedure in the amount of CHF 9'000 are charged to X.

### **Reasons for decision:**

#### Breaches

1. The SIX Swiss Exchange Surveillance and Enforcement department (SVE) requested the issuance of a reprimand to X for failing to prevent a client from executing 61 agent-agent cross trades between 1 January and 31 August 2008 via its order-routing system (reference BIR [...]). X has admitted these facts.
2. Cross trades are prohibited under section 1.24 GC SIX and section 2.2.2 of SIX Swiss Exchange Directive 22. A "prohibited agent-agent cross trade" involves the simultaneous buying and selling of a security for the same customer. According to section 1.17 para. 5 GC SIX participants are responsible for all entries added to the Exchange System via their order systems. Participants are required to ensure that any order systems provided for their clients are not misused. As a result, participants are responsible for parameterising their order systems to preclude the execution of "agent-agent crosses" on the system of SIX Swiss Exchange. They are also responsible for taking appropriate steps to monitor and prevent prohibited "agent-agent cross trades". In the present case, the foregoing provision was violated, with which X is responsible for complying. The same applies in respect of section 1.20 GC Scoach in conjunction with section 2.2.2 of Scoach Directive 22. X is responsible according to section 1.13 para. 5 GC Scoach.
3. In addition, SVE charges X with engaging in unfair trading practices in the two following instances:

On [...] 2008, upon the occurrence of "non-opening" respective after "delayed opening" status on a call warrant [...], a client placed a sell order for [number] securities at CHF [...] via X's order-routing system. This order was matched immediately with a market order (with no price limit) for [number, security] at [time], which had been in the Order Book since [time]. SIX Swiss Exchange declared this trade null and void because the price of CHF [...] was not in line with the market (mistrade).

On [...] 2008, the same client was involved in a transaction concerning a stock option [...] for which there was no market maker quote. Following a transaction error on the part of a participant (sale of [number, security] with no price limit) at [time], the total bid order, i.e. [...] securities, was matched to prices ranging from CHF [...] to CHF [...]. With no more than [number, security] on the sell side, the same client entered a buy order for the same number ([number]) of [securities] with a price limit of CHF [...] at [time], which was matched immediately. SIX Swiss Exchange again determined that a mistrade had occurred.

Although X admitted the facts, it argued that it was not for the bank to determine whether a particular price was in line with the market.

4. SIX Swiss Exchange and Scoach may declare an executed trade null and void if the price of the deal resulting from the trade deviates significantly from the market price (section 2.1 of SIX Swiss Exchange Directive 15 and section 2.1 of Scoach Directive 15). In addition, SIX Swiss Exchange and Scoach reserve the right to determine the market price and to rule whether the price of a transaction deviates significantly from it (section 3.1 of both Directives).

If SIX Swiss Exchange or Scoach decides to declare a transaction null and void, it will instruct the parties involved to cancel the relevant deal on the same day by means of a trade reversal. SIX Swiss

Exchange, or Scoach, as the case may be, will confirm the cancellation of the trade to the parties involved via the newsboard

Just because SIX Swiss Exchange cancels a transaction (considering that the price deviates from the market price), this does not in itself imply unfair trading practice such as to give rise to sanctions against the participant in addition to cancellation of the trade. According to the GC, a mistrade is deemed to occur where, in the opinion of SIX Swiss Exchange, a price entered into the system differs significantly from the market price and the transaction is declared null and void. If all mistrade decisions because of prices deviating from the market prices amounted to unfair trading practice, the GC should define this. However, this is not the case. Not all mistrades are automatically unfair. They are only unfair if there are additional factors to suggest deceptive market practice.

5. In the present case, there is nothing in the facts submitted to the Sanction Commission to indicate the existence of unfair trading practice. Other than the price discrepancy, there is no specific evidence, based on the facts of this case, on which to bring a charge of unfair practice against the participant. While it is true that SIX Swiss Exchange is entitled to determine the market price, participants are still responsible for all data sent to the Exchange System through order systems used by them. Participants are therefore responsible for assessing the risk of their clients exceeding a simple non-market price. However, it is not possible to establish, based on the facts, whether X can be charged with failing to prevent such practices via its order-routing system.

#### Sanction

6. In the event of a violation of rules of SIX Swiss Exchange or any agreement with SIX Swiss Exchange, any sanctions imposed against participants under section 1.29 para. 2 GC SIX must consider the gravity of the offence and the degree of fault. The sanctions set out under section 1.29 para. 2 GC SIX range from a simple reprimand to a fine of CHF 10 mio. The same applies in respect of the sanctions laid down in section 1.24 GC Scoach.
7. In failing to parameterise its order-routing system or to take other appropriate measures, X suffered cross trades to be executed via its system. X is responsible for all data transmitted to the system of SIX Swiss Exchange. X failed in its duty of care to prevent the execution of prohibited cross trades via its system, thus warranting the imposition of a sanction. Taking into account the particular circumstances and the fact that no previous sanction has been imposed against X, a reprimand is appropriate.
8. According to section 1.29 GC SIX, SIX Swiss Exchange may publish sanctions against participants. Given that this is a minor breach on the part of the participant and that the dossier does not allow clarifying the question of any unfair trading practices, the sanction will not be published in this instance. However, in accordance with section 6.3 para 3 of the Rules of procedure, SIX Swiss Exchange may 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 of SVE and the costs of the Sanction Commission in the amount of CHF 4'000).

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(Translation)