

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

Decision:

The Sanction Commission has established that the participant X has violated section 3.8 of the General Conditions of SIX Swiss Exchange (GC) in conjunction with section 2 of Directive 3 of SIX Swiss Exchange by having executed off order book during trading hours a total of 186 trades below the threshold of the obligation to trade on the exchange in the first quarter of 2008. A fine of CHF 10'000 is inflicted upon X. The costs of the procedure in the amount of CHF 9'000 are charged to X.

Reasons for decision:

1. According to section 3.8 GC, participants are obliged during trading hours to execute orders on order book, i.e. to record them in the order books of SIX Swiss Exchange. Under certain circumstances, however, exceptions to the duty to trade on the exchange are granted: Participants may execute individual orders off order book if their value exceeds the limits set by SIX Swiss Exchange in directives and if the resulting trades are not designated as on order book trades. Transactions exceeding the threshold of the obligation to trade on the exchange (for shares, CHF 200,000; for warrants, CHF 100,000) can therefore be executed at any time off order book, whereas transactions with a value lower than those thresholds must be executed on order book during trading hours (section 3.8 para. 2 lit. a GC in conjunction with section 2 of SIX Swiss Exchange Directive 3).
2. The Surveillance and Enforcement Office of SIX Swiss Exchange (SVE) submitted to the Commission an application for issuing a sanction to X for violation of these rules. Analyses and the statement of X revealed that in the first quarter 2008, 11 traders at X committed a total of 186 violations of the duty to trade on the exchange, whereby 80 % of those breaches were attributable to two traders. X agreed with the findings and did not challenge the facts, but stated that this occurred despite the fact that all traders are routinely trained on the rules and regulations of each exchange they trade on. In view of this, it is established that X has repeatedly violated section 3.8 GC and section 2 of SIX Swiss Exchange Directive 3.
3. If a participant violates the rules and regulations, SIX Swiss Exchange sets sanctions ranging between a reprimand and a fine of up to CHF 10 millions. In order to set a sanction, SIX Swiss Exchange takes into account the gravity of the offence and the degree of fault (section 1.29 GC). 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).
4. On the one hand in the present case, it is remarkable that the violations were committed by a total of 11 traders (whereby most of those breaches were attributable to two traders). Obviously, these traders have not been reasonably trained with regard to the provisions concerning the duty to trade on the exchange. Before the beginning of the present sanction procedure, X quite apparently failed to verify by means of reasonable controls that transactions below the threshold of the obligation to trade on the exchange were not executed off order book during trading hours by any of its traders. On the other hand, the violations occurred during a period of – at least – three months. Thus, the degree of fault can not be considered as light.

It is taken into account that X has already taken measures to prevent further violations of this nature. Each trader has again been reminded by Senior Management and the Compliance department of X of the duty to comply with the rules and regulations of SIX Swiss Exchange, and in particular those concerning the obligation to trade on the exchange. In addition, an alert has been implemented in the company's system in order to warn traders if they attempt an over-the-counter trade during trading hours that lies below the threshold of the obligation to trade on the exchange.

In view of these considerations, the most lenient of all sanction, a reprimand, is not appropriate. Accordingly, the Commission has decided to inflict a fine of CHF 10'000 upon X and there is sufficient reason to believe that in future X will take care to ensure compliance with the rules and regulations of SIX Swiss Exchange in general, and the provisions concerning the obligation to trade on the exchange in particular.

5. There is no need to disclose this sanction to the public. Nevertheless, in order to give guidance to the participants, SIX Swiss Exchange may publish sanctions in a completely anonymous form on the website.
6. According to the Rules of procedures of the SIX Swiss Exchange, the costs of the procedure of CHF 9'000 (CHF 5'000 for SVE, CHF 4'000 for the Commission) are imposed to X.

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(Original text)