Violation of the General Conditions of SIX Swiss Exchange

Decision:

The Sanction Commission has established that participant X has violated section 1.25 para. 2 of the General Conditions (GC) of SIX Swiss Exchange because one of its traders did not observe the prescribed 15-second delay between the entry of two orders for a pre-arranged trade executed on order book. A reprimand is issued to X. The costs of the proceedings in the amount of CHF 9,000 are charged to X.

Reasons for decision:

1. According to section 1.25 para. 1 GC of SIX Swiss Exchange, pre-arranged trades with other participants must be reported as off order book trades via Trade Confirmation. Participants may also execute pre-arranged trades on order book provided they observe a delay of at least 15 seconds between the entry of the client order and the subsequent equal-but-opposite buy/sell order (section 1.25 para. 2 GC).

2. On […] at […] a trader at Y entered a client buy order from Z with a limit of CHF [price] for [number] [shares] in the order book, that corresponded to a turnover of CHF 2'321'158 or 1.07 % of the outstanding stock. Eight seconds later a trader of X entered a client sell order with the same limit and in the same amount of stocks. This order immediately resulted in a transaction with the client buy order previously entered by Y. This transaction was pre-arranged between X and Y.

3. X does not dispute the facts in its statement of position. However, X stated that the transaction was concluded as a result of the accidental failure to observe the 15-second delay before entering the sell order. The trader allegedly estimated the time period incorrectly during the conversation with the counterparty's trader. However, the traders did not deliberately enter the two orders instantaneously (simultaneously).

4. The trader acting for X had explicitly been instructed by the Head of Asset Management at X to execute a pre-arranged trade on order book. The trader was therefore required to ensure that the trade between X and the counterparty was executed as pre-arranged. The trader at X phoned a trader at Y shortly before [time]. At [time] the trader at Y entered his client buy order for […] stocks in the order book. Eight seconds later, the trader at X entered the corresponding client sell order, which resulted in a transaction with the previously entered client buy order. Before the two entries, the trader of Y reminded the trader of X to observe the 15-second delay between the entry of a client order and the subsequent equal-but-opposite buy/sell order (according to the recording of the telephone conversation: Trader Y: “We must wait 15 seconds, otherwise they'll be on the phone right away ...". Trader X: "aha").

   The participant alone is responsible and liable for persons who enter data in the exchange system through its terminals (section 1.27 GC). In the present case, it should be noted that it was X, or rather its employees, who contrived and initiated the pre-arranged transaction. It is thus established that X is responsible for violating the 15-second delay according to section 1.25 para. 2 GC.

5. If a participant violates the GC, SIX Swiss Exchange imposes a sanction (contractual penalty) in accordance with section 1.29 GC ranging from a reprimand to a fine of CHF 10 million. Sanctions are imposed principally on the participants and not primarily on natural persons or corporate bodies (e.g. Board of Directors, Audit Department, Management, other auxiliary persons). Sanctions are imposed on the participant if not all necessary and reasonable organizational precautions were taken to prevent violation of its obligations under the GC. Moreover, the participant is made liable for the conduct of persons or bodies acting on its behalf.

   The assessment of fault is based on largely objectified criteria and not on the same criteria used to assess negligence, indirect intent and deliberate intent when investigating the knowledge and intention (subjective criteria) of natural persons to behave in a manner that is unlawful or violates the regulations. The criteria used should be as objective as possible. Contractual penalties are by nature widely - to a certain degree - sanctions upon performance. When imposing sanctions, SIX

Swiss Exchange takes into account the gravity of the offence and the degree of fault (section 1.29 para. 3 GC). The participant’s ability to bear the sanction is duly taken into account.

6. Observance of the 15-second delay for pre-arranged trades is absolutely essential as it is the only way to ensure fair pricing of on exchange transactions. It is designed to prevent two participants agreeing on a transaction, possibly at a price other than the market price and nevertheless undertaking the transaction on order book, thereby giving the impression that the price was set by the exchange's pricing mechanism. The delay serves to ensure fair pricing of on order book trades. It is the only way to give other participants an opportunity to enter their own orders for the respective securities. The risk that a third party intervenes in a pre-arranged trade is inherent in exchange trading. If that is not desired, the transaction should be undertaken as an off exchange trade and reported as trade confirmation. In the present case, the chance of a third party to influence the price was greatly diminished by the fact that the trader of X only waited eight seconds, which meant he virtually halved the prescribed delay. This did not permit pricing in accordance with the regulations. Whether or not the trader estimated the time incorrectly or did not want to wait for the defined period to elapse, for whatever reason, the participant is not discharged. It is held responsible for its trader's action. Nevertheless, it should be noted that there is no indication that the trader was instructed or pushed to enter the order early by his supervisor or other employees. The 15-second delay cannot be left to a trader’s estimation; it must be respected precisely.

7. Although the delay was virtually halved, this is not a grave offence. However, this violation of the rule was not so minor that it can be dealt with without imposing sanctions. It is justified - according to the proposal - to impose a reprimand, which is the lightest possible sanction. The decision takes into account that it has never previously been necessary to take disciplinary action against X.

8. According to section 1.29 GC, SIX Swiss Exchange can publicly disclose the fact that it has taken sanctions against a participant. The name is published in the event of deliberate, repeated or severe violation of the regulations. In less serious cases, this right is not used. By contrast, in accordance with section 6.3 para. 3 of the Rules of Procedure, SIX Swiss Exchange can publish the legally binding decision in anonymised form on its website as a guide to other market participants.

9. In this case, X shall bear the cost of the proceedings in the amount of CHF 9,000 (CHF 5,000 for SVE; CHF 4,000 for the Sanction Commission).

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(Translation)