

Waiving of sanction

Decision:

The Sanction Commission decided not to impose a sanction on X.

Reasons for decision:

1. Pursuant to section 1.25 para. 1 of the General Conditions (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). An entry before the delay results in a violation of the GC.
2. On [...] at [...] a trader at X entered a client buy order from Z with a limit of CHF [...] for [number] [shares] in the order book (corresponding to CHF 2.3 Mio. or 1.07 % of the outstanding stock). Eight seconds later a trader of Y entered a client sell order with the same limit and in the same amount of stocks. This order immediately resulted in a transaction. This transaction was pre-arranged.

According to the recording of the phone conversation, the trader at X reminded the trader at Y to observe the 15-second delay between the entry of the client order and the subsequent equal-but-opposite buy/sell order (Trader X: "We must wait 15 seconds, otherwise they'll be on the phone right away ...". Trader Y: "Aha"). Shortly afterwards the following conversation took place:

Trader X: "Please enter them. No wait, I'll do it."

Trader Y: "If you enter them, then someone else might give them to you. You know, that can happen."

Trader X: "Now you can hit. Are you in?"

Trader Y: "Can I now, okay?"

Trader X: "Yes."

Trader Y: "Then I'll give them to you now."

Trader X: "Perfect. - Sensational, I've bought, [number], super, at [price]."

Only eight seconds passed between trader X's entry into the exchange system ("Please, enter them. No wait, I'll do it.") and trader Y's entry ("Then I'll give them to you now."). The facts are not disputed.

3. It is obvious that the contracting party whose trader entered the second order in the exchange system before the 15-second delay had passed violated the rules concerning pre-arranged trades. SIX Swiss Exchange has issued a reprimand against Y. It has to be examined whether in this case of a pre-arranged trade both participants are responsible for respecting the delay, irrespective of who enters the first order. In these proceedings it will not be discussed to what extent the flow of the conversation and the exact wording constitute a direct instruction issued by the trader at X to the trader at Y. Instead, the matter to be examined is whether a sanction should be imposed on the participant itself whose trader failed to observe the 15-second delay.
4. Under section 1.29 GC, in the event of violation of the GC, SIX Swiss Exchange may impose a sanction (contractual penalty) on a licensed trader, and in particular on the participant. This may range from a reprimand to a fine of CHF 10 million. 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 for negligence, indirect intent and deliberate intent as used when investigating the knowledge and determination (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 disciplinary measures, 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.

5. Pursuant to the plausible statement of X, the transaction was executed on Y's request. Representatives of Y had contact with the trader at X and there is no evidence that other employees at X were involved. This was a pre-arranged transaction in the remarkable amount of CHF 2.3 Mio., which was slightly more than 1 % of the company's outstanding stock. In cases of such pre-arranged trades, two traders directly enter data in the system. Under the General Conditions, such trades may be executed on order book, but a delay of 15 seconds must be observed. Participants must take all necessary and reasonable organizational precautions to ensure that their traders observe this delay. However, since the GC permit such trades on order book, a participant cannot be required to instruct its traders to execute pre-arranged trades off order book in cases where the price is not subject to the normal exchange pricing mechanism. Even trades, whose size and ratio in relation to the outstanding stock is remarkable, may be executed in this manner.

According to the transcription of the phone conversation the trader at X was aware of the 15-second rule. He even mentioned it to the counterparty's trader. He is undisputedly a trader who has held a trading license for many years. Moreover, neither several incidents nor several employees of X were involved. That would have indicated organizational shortcomings. There is thus no indication that X had not adequately taken the necessary and reasonable organizational precautions to prevent the failure to observe the 15-second delay.

In the case of an isolated incident as presented here, the proceedings against the participant do not need to establish whether the trader acted negligently or with intent when being involved in the premature order entry in the system by the trader at Y. The error was too minor to impose a sanction on the participant.

6. In view of the outcome of the Sanction Commission proceedings the costs are not charged to X.

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(Translation)