Violation of the Transitional Rule Book (Swiss Blue Chip Segment) of SIX Swiss Exchange as well as SIX Swiss Exchange Blue Chip Segment Directive 19

Decision:

The Sanction Commission has established that the participant X violated section 2.1.1.2 para 1 of the SIX Swiss Exchange Blue Chip Segment Directive 19 (in force until 31 March 2010) and section 2.5 lit. a and 2.10 lit. a, c and d of the Transitional Rule Book for Blue Chip trading of SIX Swiss Exchange (in force until 31 March 2010) in that one of its traders entered a purchase order on [XY] March 2010 on the second trading line for A shares at a price of CHF 1 deviating significantly from the reference price on the first trading line of CHF 292.80. A fine of CHF 30'000 was inflicted upon participant X. The costs of the procedure of CHF 12'000 are charged to X.

Reasons for the decision

1. On [XY] March 2010, a trader of the participant X placed a purchase order in the order book of SIX Swiss Exchange, through the order routing system of another participant, for 90 registered A shares via the second trading line at a price of CHF 1. On that day, A shares (shares on the second trading line) were in non-opening status due to a surplus of "at best" sales orders. This non-opening status was resolved by the purchase order from X, as a trade was executed for 90 A shares at the price of CHF 1 per share immediately after the order was entered by X at [AA:BB:CC] p.m. This trade was declared void (mistrade) by SIX Swiss Exchange's market controls since the price of this transaction of CHF 1 deviated significantly from the fair market price (reference price on the first trading line on [XY] March 2010 at [AA:BB:CC] p.m.: CHF 292.80).

2. On 30 June 2011, the Surveillance & Enforcement (SVE) petitioned the Sanction Commission to impose a fine on X in the amount of CHF 40'000 for having violated section 2.1.1.2 para. 1 of SIX Swiss Exchange Blue Chip Segment Directive 19 and sections 2.3, 2.5 lit. a and 2.10 lit. a, c and d of the Transitional Rule Book.

3. X agreed with the findings and did not challenge the facts set out by SVE, but considered that (i) the proposed sanction is disproportionate. X alleges that (ii) there were contributory fault from other parties that should mitigate the sanction, that (iii) the mistake did not constitute a market integrity breach and that (iv) the duration of the SVE-procedure was inappropriately long for submitting a sanction proposal to the Sanction Commission.

4. According to section 2.5 para 1 of the Rules of Procedures of SIX Exchange Regulation, SVE may initiate sanction proceedings within two years after the alleged violation of a rule. The reason of this duration is, on one hand, to conduct investigations correctly. Shorter time limits would ask for an inappropriate size of the SVE organization. On the other hand, too long proceedings would harm the legal security. In the present case, SVE requested initial information by X on 24 April 2010. This information was given by letter of 21 May 2010. The formal investigation was initiated on 6 December 2010 and X was invited to provide further information. X submitted its comments by letter of 26 January 2011. The proposal for a fine was submitted to the Commission on 30 June 2011. The final statement of X to the Commission was received on 6 September 2011 (after having received an extension of the due date).

5. The proceeding of SVE had a duration of 15 months which is clearly within the permissible time limit of 24 months. Quicker proceedings would certainly be more appropriate, especially when there is an interest for information to the general public (concerning the present case, cf. to ch. 23). But it would be inappropriate to engage larger SVE staff only to assure shorter proceedings in every case. As by far the time limit was respected, there is no reason not to proceed to the proposal of SVE.

6. X stated that it makes no sense that SVE asks the Commission to impose a sanction after such a long time and that SVE should have decided not to initiate sanction proceedings against X. SIX Swiss Exchange is an exchange under the Stock Exchange Act (SESTA). The law states that a stock exchange and its senior officials give an assurance of proper business conduct (art. 3 SESTA). Thus as long as SVE respectively its officials have a justifiable suspicion for a breach of rules that could require a sanction procedure, they are obliged to initiate the procedure. Otherwise, there would be a risk of unequal treatment and legal uncertainty that is incompatible with the requirement of the SESTA. In the present case, a renouncement by SVE to a procedure would exceed its scope of administrative power.

Considerations concerning the violated rules

7. Pursuant to section 2.3 of the Transitional Rule Book, the participants are responsible for the genuineness and accuracy of orders directed to the exchange system. They and not their employees - the traders - are responsible for all orders entered into the order book. Consequently, blame for all violations of rules and regulations rests with the participant. The participant is also responsible, pursuant to section 2.5 lit. a. of the Transitional Rule Book, for ensuring that every transaction carried out in the Blue Chip Segment is conducted in accordance with the rules in force at the time of the transaction.

8. Pursuant to section 2.1.1.2 para. 1 of Blue Chip Segment Directive 19, only participants responsible for buybacks may post bid prices in the order book, and may do so solely on behalf of the company executing the buyback. In the present case, it was [AB] that was responsible for the buyback of A shares on the second trading line. Thus, the entry of a purchase order by the X trader on [XY] March 2010 on the second trading line violated section 2.1.1.2 para. 1 of Blue Chip Segment Directive 19. As mentioned, the participant X is liable for this breach.

9. Section 2.10 of the Traditional Rule Book states that a participant shall not inter alia
   a) act in a way that gives or is likely to give a false or misleading impression of the value or price of a security,
   b) cause a false price to be input into the exchange system,
   c) effect a transaction or enter an order at a price which differs to an unreasonable extent from the prevailing market price if this is likely to give a false or misleading impression to other market users.

   The practice note to section 2.10 explains more specifically the meaning of this rule. Pursuant to point 2 of this practice note, a participant acts in a way that gives or is likely to give a false or misleading impression of the price of a security if he enters an order into the order book at a price that is unreasonably high or low in the circumstances. Point 8 sets out examples of where prices are likely to differ to an unreasonable extent from the prevailing market price, such as: the input of the intended size of a transaction in the price field; the input of price limits at levels such as CHF 1’000’000; or the positioning of the decimal point in the wrong place. This list of examples is intentionally not exhaustive. It is clear from this list that no intent is required to breach section 2.10 of the Transitional Rule Book but that instead, an unintentional mistake will suffice to constitute a breach.

10. X explained that on [XY] March 2010 the A shares caught the attention of the involved trader because he considered the orders contained in the order book to be highly unusual given the liquidity of these shares (on the first line). He assumed that the A securities might not be shares, but rather certificates or warrants. He viewed the situation in the market as a non recurring trading opportunity and placed the purchase order for 90 A at CHF 1 “with extreme haste and without controlling amounts”, which immediately caused a trade at a price of CHF 1. X further stated that there had been no intention on the part of the trader to manipulate the market or mislead other market users.

11. As set out above, even an accidental entry is considered to be a breach of the rules of section 2.10 of the Transitional Rule Book. A deliberate act or intention is not required. Entering a purchase order

in the order book at a price of CHF 1 is unreasonably below the reference price of CHF 292.80 on the first trading line and constitutes breach of the aforementioned lit. a of section 2.10.

12. X stated that it is highly improbable that a false or misleading impression in the sense of lit. a of section 2.10 is given to other market participants when a price of CHF 1 is entered when the reference price is at CHF 292.80. “The more the price of the entered order is away from the market price, the more unlikely it will be that other market participants will get a false or misleading impression.” This argument is not in line with the non exhausted list of point 8 of the practice note of section 2.10, citing a price limit of CHF 1’000’000 instead of the desired price limit. This makes clear that an order of CHF 1 in the present case is also likely to create false or misleading impression. (This argument will be considered when defining the severity of the breach for measuring the sanction.)

13. The aforementioned lit. c of section 2.10 was breached in that the X trader caused a clearly false price for a security in the exchange system. In addition, lit. d of this section 2.10 was also breached: The order at CHF 1 differed to a great, unreasonable extent from the market price (it is the reference price on the first trading line) and was thus likely to give a false impression of the value of the security to other market users.

14. According to section 2.3 of the Transitional Rule Book, these breaches of market integrity by the trader are to be attributed to the participant, which means that X has breached section 2.10 lit. a, c and d of the Transitional Rule Book.

15. The order of CHF 1 for A [shares] was forwarded by X via another participant’s routing system. X took the position that this other participant is also responsible for not taking systematic measures to prevent entries as in the present case. Theoretically, this argument would be subject of consideration if X itself would not be a direct participant (but then it would not have been subject of a sanction procedure of SIX Exchange Regulation). As X is itself a participant of SIX Swiss Exchange, it is itself responsible and may not refer to a contributory negligence of the other participant. X had accepted the General conditions of the exchange and is submitted to have an appropriate organization and to issue itself appropriate internal guidelines and monitor compliance with the rules. Thus, it is irrelevant whether the other participant should have intervened or not on that [XY] March 2010. The same apply for the argument of X that the third participant that placed a market sell order in the empty order book should be included in the procedure. It would not exonerate X.

16. According to a constant practice of the Commission, possible errors of other participants are not a free pass for the exploitation of these errors and thereby earn profits that are not in line with real market conditions. Thus, possible breaches of rules by other participants that did not prevent entries of best sales order in an empty order book are not taken into consideration when sanctioning participants as X in the present case (cf. decisions against „snake trading“, 1998, referred to in: http://www.six-exchange-regulation.com/enforcement/participants/sanction_decisions/sve_en.html).

17. X pleaded that there is a contributory fault of SIX Swiss Exchange as it did not simply block the separate line for other than the responsible participant for the buyback to post bid prices. It is clearly not part of a sanction procedure to statue on possible future changes of the system. The Commission is not competent. The rule was simple and unambiguous and one can expect from every trader to understand and follow it.

<u>Considerations concerning a sanction</u>

18. 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, the Commission takes into account the gravity of the offence and the degree of fault (section 1.24 para 3 of the General Conditions of SIX Swiss Exchange, in force until 31 March 2010). 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 1.22 GC SIX Swiss Exchange).

19. X emphasized the principle of equal treatment. It argued that in 2009 the Commission sanctioned X with a fine as the practice started to be more severe. But later, in 2010, another participant was only reprimanded for having violated trader registration rules similar to the violation of X the year before. Sanctioning X with a fine would constitute unequal treatment. The argument is incorrect. The cited reprimand for misuse of trader ID of the other participant was considered less severe by the Commission than misuse of Trader ID by X in its decision of 2009.

20. X stated that a fine of CHF 40'000 would be a draconic punishment compared with the fine of CHF 100'000 that has been inflicted on another participant in January 2011. It is to remember that this other participant was not fined as a participant but as an issuer (Ad-hoc publicity) based on the listing rules. At that time, the frame for fines for violating the listing rules listing was limited to CHF 200'000. The fine for this other participant was fixed at 50 % of the maximum and showed that the violation was severe. The rulebook for issuers has since been revised and the limit was increased to CHF 10 Mio., the same amount as is applicable for participants.

21. In considering a sanction in the present case, it is taken into account that the gravity of the offence was not severe. It was easy to detect and to declare the trade invalid. SIX Swiss Exchange declared immediately the trade being a mistrade. The false or misleading impression to other market users did not have any consequences. But the degree of fault was considerably high. It is neither acceptable that a trader breaches simple rules nor that a trader enters orders at highly unusual prices simply to achieve a profit. The statement of X was that the trader acted in "a non recurring trading opportunity and placed … (the order) … with extreme haste and without controlling amounts". Therefore, the degree of fault is not light. Considering both the gravity of the offence and the degree of fault in the present case and taking into account the measures taken by X to ensure that its traders do not enter inappropriate orders any more (and no breach of rules was registered since), a fine in the amount of CHF 20'000 as inflicted on X in 2009 would be deemed appropriate.

22. But it has to be considered that X has received a sanction of CHF 20'000 by SIX Swiss Exchange in 2009. According to section 1.24 para 4, this sanction has to be taken into account. As again a fine is to be fixed, its amount has to be reasonably increased. The increase by half the sum that would be inflicted if X would not have had a previous conviction accords to the Commissions best judgment.

    The time elapsed since [XY] March 2010 is completely in the two years limit for initiating proceedings by SVE ending on [XY] March 2012 and in the limit for the Commission to make a decision ending on [XY] December 2012 only. Thus the lapse of time is not taken into consideration for defining the sanction in the present case.

    In view of these circumstances, a fine of CHF 30'000 at the lower limit of the fine frame is deemed appropriate.

23. The General Conditions give SIX Swiss Exchange the right, but not the obligation to disclose sanctions to the public (section 1.24 in fine). This discretionary clause prevails on the one of section 6.3 of the Rules of procedures asking the Commission to publish its sanction decisions that have acquired legal force. In earlier cases of minor importance, the Commission did not publish the sanction when as such it was to induce the participant to prevent any further violation of the rules of the exchange. This does apply when there is no public interest in publishing the name of the participant and when the sanction is a fine fixed at the lower limit of the fine frame. As petitioned by SVE, this decision has no specific public interest and is not to be published by SIX Exchange Regulation.

24. According to the Rules of procedures, the costs of the procedure of CHF 12'000 (CHF 5'000 for SVE, CHF 7'000 for the Commission) are imposed on X.

Zurich, 18 November 2011
(Original text)