

Liability of the participant to the Exchange for market manipulation by the DEA client

The Sanctions Commission concluded that participant X had breached the provisions of section 4.3.3 para. 2 of the Rule Book of SIX Swiss Exchange by not preventing, at least between [day/month] and [day/month] 2013, a Direct Electronic Access Client from breaching section 9.2 of the Rule Book of SIX Swiss Exchange and margin nos. 23, 27 and 29 of FINMA-Circular 2008/38. A fine was imposed on participant X and the costs of the procedure are charged to participant X.

This decision was challenged regarding the amount of fine and the publication by the respective participant with the SIX Swiss Exchange Court of Arbitration and the parties have reached a settlement (see amendment at the end).

Reasons for the decision of the Sanctions Commission:

A. Notes to the procedure

1. On [date 1], SIX Exchange Regulation (SER) concluded investigations against participant X in a case involving the violation of market conduct rules committed by its Direct Electronic Access Client Y AG in 2013. Due to an investigation against Y AG respectively its traders, prompted by the suspicion of market manipulation and unauthorized activity, FINMA asked SER not to commence sanction proceedings against participant X until [date 2] in order to not jeopardize the FINMA proceedings. Accordingly, the initiation of the sanction proceedings by SVE [independent trading surveillance department, Surveillance & Enforcement] against the participant was delayed. On [date 3] SER informed participant X of the initiation of sanction proceedings against it.
2. On [date 4], SER submitted to the Sanctions Commission the proposal to sanction participant X with a fine of CHF 150'000. Participant X commented the proposal and the Sanctions Commission gave both SER and participant X the opportunity for statements in a second round of correspondence.
3. Participant X did not dispute the violation of market conduct rules by Y AG. But it petitioned on the one hand, that its pre-trade filters and controls are in line with the practices of other industry participants, and that there is no regulatory requirement which obliges participant X to perform pre-trade surveillance monitoring. It would not be possible for a participant to implement a pre-trade misconduct filter to prevent order entries and deletions that may eventually result in manipulated trades. On the other hand, participant X acknowledges its responsibility for the conduct of its DEA Y AG but petitioned to mitigate the sanction which it considers to be disproportionate.
4. According to section 2.5 para. 1 of the Rules of Procedure of SIX Exchange Regulation, no sanction proceedings may be initiated if the alleged violation was committed more than two years in the past. In the present case the violation took place over a prolonged period, with the first incident of relevance to the present case occurring on [day/month] 2013. The sanction proceedings against participant X were initiated on [date 3], which means that the statutory period of limitations was adhered to. Once sanction proceedings have been initiated a sanction must be imposed within a further two years (section 2.5 para. 2 of the Rules of Procedure of SIX Exchange Regulation). This statutory period of limitations has thus also been adhered to at the present date (and would expire on [date 3 plus 2 years] only).

B. Market manipulation by the DEA client

5. According to section 4.3.3 para. 1 of the Rule Book of SIX Swiss Exchange, a participant can grant its clients direct market access (= DEA) to the trading system. Section 4.3.3 para. 2 of the Rule Book provides that in those cases, the participant must have suitable systems in place to monitor and filter DEA client orders. The participant remains liable to the Exchange for all actions and non-actions on the part of its DEA clients. The participant is responsible for ensuring that clients do not engage in abusive market behavior using the participant's trading infrastructure.

6. Accordingly, not only the participant and its traders, but also its DEA clients must comply with applicable market codes of conduct, in particular those laid down in the FINMA Circular "Market Behaviour Rules" (FINMA-Circ. 2008/38, as in force in 2013): Margin nos. 23 (creating the appearance of market activity), 27 (creating an overhang) and 29 ("spoofing"). They must refrain from unfair trading practices. Section 9.2 para. 2 of the Rule Book of SIX Swiss Exchange describes the forbidden trading practices. According to its lit. a, is forbidden "concluding securities transactions and entering orders to give the impression of market activity or liquidity, or to distort market prices or the valuation of securities, as well as fictitious trades and orders".
7. In the present procedure, it is not disputed that Y AG committed market manipulations. For reasons of procedural economy, the proceedings are limited to five incidents taken over several months. These five incidents are examples of the large number of order entries, deletions and trades by the DEA client. There is no reasonable doubt that SER's remark is correct that the trading behavior was applied by this DEA client repeatedly, and also in relation to other securities.
8. The following incidents were presented by SER in details:
 - a. Registered shares of AA AG (ISIN: AAA) on [day/month] 2013 in the period from 09:03:09 a.m. to 09:21:22 a.m.
 - b. Registered shares of BB AG (ISIN: BBB) on [day/month] 2013 in the period from 09:32:33 a.m. to 09:41:06 a.m.
 - c. Registered shares of CC AG (ISIN: CCC) on [day/month] 2013 in the period from 11:30:34 a.m. to 11:40:00 a.m.
 - d. Registered shares of DD AG (ISIN: DDD) on [day/month] 2013 in the period from 09:37:18 a.m. to 10:04:12 a.m.
 - e. Bearer shares of EE AG (ISIN: EEE) on [day/month] 2013 in the period from 11:04:54 a.m. to 12:15:02 p.m.
9. For reasons of procedural economy again, only two examples of market manipulations are described in details in the present considerations.

Example 1: Order entries, deletions and trades in registered shares of BB AG ("B") on [day/month] 2013 between 09:32:33 a.m. and 09:41:06 a.m.

- a. At 09:32:33.027, the DEA client of participant X with the Bank Internal Reference BIR (Y AG) did not have any orders at the ten best price levels on the bid side or at the ten best price levels on the ask side in "B"'s order book. The order volumes of the ten best price levels on the bid and ask sides were 9'987 and 11'055 respectively. There were 21 buy orders and 50 sell orders. The bid-ask spread was CHF 0.20 (CHF 128.30 - CHF 128.50), with the orders at the ten best price levels on the bid side ranging from CHF 127.20 to CHF 128.30 and those on the ask side from CHF 128.50 to CHF 129.40.
- b. At 09:33:55.076, the volume of orders at the ten best price levels on the bid side has risen from 9'987 to 40'559, while the number of buy orders at these price levels has risen from 21 to 60. The spread is now CHF 0.10, the inside market is CHF 128.80 - CHF 128.90, the ten best price levels on the bid side range from CHF 127.90 to CHF 128.80 and those on the ask side range from CHF 128.90 and CHF 129.90. BIR (Y AG) is present at all of the ten best price levels on the bid side, with shares of between 54% and 100%. Since BIR (Y AG) entered orders at different price levels, another investor or electronic trading program could have assumed that the demand overhang in "B" relative to 09:32:33.027 was attributable to multiple investors looking to buy. BIR (Y AG) has a sell order at the best price level (221 "B" for a price of CHF 128.90) on the ask side in the order book. His percentage share of orders at this price level is 100%.

- c. At 09:33:55.076 another participant places a buy order for 221 "B" at the best ask price of CHF 128.90. A single sell order for 221 "B" is available at this price level, entered by BIR (Y AG) shortly before this at 09:33:55.076. This results in the execution of a transaction with a volume of 221, at a price of CHF 128.90. Following the execution of BIR's (Y AG) sell order (221 "B" at CHF 128.90), BIR (Y AG) has no remaining sell orders on the ask side. BIR (Y AG) is present on the bid side with the same orders as at 09:33:55.076, with 100% at the first price level. At this time, BIR's (Y AG) buy orders accounted for around 77% of the ten best price levels on the bid side.
- d. After 09:33:55.076 until 09:34:44.665, BIR (Y AG) has canceled the 24 buy orders in the ten best price levels on the bid side and entered sell orders into the "B" order book. At the ten best price levels on the ask side, between 23% and 92% of the order volume [at 09:34:44.665] is accounted for by BIR (Y AG). While BIR's (Y AG) cumulative volume at the ten best price levels on the bid side fell from 31'053 "B" to 367 "B", his cumulative volume at the ten best price levels on the ask side rose from 0 "B" to 14'078, as a result of which BIR (Y AG) accounts for almost 57% of the volume at the ten best price levels on the ask side at this time. The inside market is CHF 128.10 - CHF 128.20, compared to CHF 128.80 - CHF 129.10 at 09:33:55.076.
- e. At 09:34:44.665, a third participant enters a sell order for 160 "B" at a price of CHF 128.10. This sell order is executed entirely against BIR's (Y AG) buy order at this price level, resulting in only the partial execution of BIR's (Y AG) order. Of BIR's (Y AG) original 367 "B" on the bid side, 207 remain at a price of CHF 128.10. Following BIR's (Y AG) purchase of 160 "B" at a price of CHF 128.10, the inside market stays at CHF 128.10 - CHF 128.20, as it was at 09:34:44.665. Following the buy transaction at 09:34:44.665, BIR (Y AG) has at 09:34:44.671 the remaining 207 "B" on the bid side in the order book. His presence on the ask side remains unchanged.
- f. Following what has now become a pattern, the orders entered by BIR (Y AG) have triggered an overhang on the bid side of the order book. BIR (Y AG) has canceled all of his sell orders that had still been at the ten best price levels at 09:34:44.671. BIR (Y AG) is now present at eight of the ten best price levels on the bid side, accounting for shares of between 24% and 88%. The inside market is CHF 128.70 - CHF 128.80 at 09:38:40.357, compared to CHF 128.10 - CHF 128.20 at 09:34:44.671. The cumulative bid volume of the ten best price levels is 17'389 "B" at this time, up from 4'355 at 09:34:44.671. BIR (Y AG) is present on the ask side with a buy order for 221 "B" at the best price level, which he placed in the order book at 09:38:40.352.
- g. At 09:38:40.357 another participant enters a buy order for 221 "B" at CHF 128.80. This results in the full execution of BIR's (Y AG) transaction at a price of CHF 128.80. As a result of the execution of BIR's (Y AG) sell order for 221 "B" at a price of CHF 128.80, the best price level on the ask side is now CHF 129.00. At this point, BIR (Y AG) does not have any more orders on the ask side. His presence on the bid side remains strong.
- h. After 09:38:40.357 until 09:40:08.932, BIR (Y AG) has changed sides again in the order book, from the bid side to the ask side. BIR (Y AG) has canceled all of his buy orders that had still been at the best price levels at 09:38:40.357. Instead, he has entered sell orders, assuming a dominant position at various price levels. BIR's (Y AG) percentage share of the cumulative sell volume at the first five price levels is more than 67% [at 09:40:08.932]. The inside market has fallen from CHF 128.70 - CHF 129.00 to CHF 128.10 - CHF 128.20 since 09:38:40.357. At this time, BIR (Y AG) has a buy order in the order book at the best price level (CHF 128.10). The cumulative bid volume at the ten best price levels fell from 17'389 "B" to 6'989. The cumulative ask volume at the ten best price levels rose from 10'547 to 17'061.
- i. At 09:40:08.932, the same participant as at 09:38:40.357 enters a sell order for 172 "B" in the order book at a price of CHF 128.10. This results in the immediate partial execution of BIR's (Y AG) buy order at CHF 128.10. As a result of this partial execution of BIR's (Y AG) buy order (172 "B" at CHF 128.10), at 09:40:08.933, he still has 49 "B" on the bid side. His presence on the ask side remains unchanged. As was the case at 09:40:08.932, his

percentage share of the sell volume up to the fifth price level (CHF 128.60) is more than 67%.

- j. After this until 09:41:05.337, BIR (Y AG) cancelled all orders on either side of the order book. Compared to 09:40:08.933, the cumulative bid volume of the ten best price levels on the bid side rose from 6'817 "B" to 7'554. The cumulative ask volume of the ten best price levels changed more substantially in relation to 09:40:08.933, falling from 17'061 "B" to 10'778. BIR (Y AG) did not conduct any further activity in "B" on this day of trading.
10. In summary, on [day/month] 2013 participant X for client placed a total of 193 orders in the order book of "B" in the space of eight minutes and 33 seconds (from 09:32:33 to 09:41:06). These comprised 105 buy orders and 88 sell orders. In the same time period, 94.10% of the buy order volume and 90.24% of the sell order volume of participant X for client were cancelled and participant X for clients was successively creating an overhang on the bid or ask side of "B"'s order book, which influenced the price level of the share (level of inside market) favorably. The orders entered by participant X for client were placed at different price levels, as a result of which other market participants or electronic trading programs were erroneously led to assume that the overhang in question was attributable to several different investors. Fact is that during eight minutes and 33 seconds, the order book of "B" was dominated by participant X for client on two occasions on the bid side of the order book as well as on two occasions on the ask side of the order book. Participant X for client switched sides in the order book four times within these eight minutes and 33 seconds.

Example 2: Order entries, deletions and trades in bearer shares of EE AG ("E") on [day/month] 2013 between 11:04:54 a.m. and 12:15:02 p.m.

- a. At 11:04:54.248, BIR (Y AG) had an order of 132 "E" at a price of CHF 66.40 in the order book on the ten best price levels on the bid side. There were no orders in the order book on the ten best price levels on the ask side. The order volumes of the ten best price levels on the bid and ask sides were 9'767 "E" and 1'810 "E" respectively; there were 22 buy orders and 16 sell orders. The bid-ask spread was CHF 0.15 (CHF 66.55 - CHF 66.70), with the orders at the ten best price levels on the bid side ranging from CHF 65.85 to CHF 66.55 and those on the ask side from CHF 66.70 to CHF 67.20.
- b. At 11:15:06.548, the volume of orders at the ten best price levels on the bid side has fallen from 9'767 "E" to 7'386, while the number of buy orders has risen from 22 to 26. The spread is now CHF 0.05, the inside market is CHF 66.85 - CHF 66.90, the ten best price levels on the bid side range from CHF 66.40 to CHF 66.85 and those on the ask side range from CHF 66.90 and CHF 67.55. BIR (Y AG) is present at all of the ten best price levels on the bid side, with shares of between 34% and 100%. Since BIR (Y AG) entered orders at different price levels, another investor or electronic trading program could have assumed that the demand overhang in "E" relative to 11:04:54.248 was attributable to multiple investors looking to buy. BIR (Y AG) has a sell order at the best price level (156 "E" for a price of CHF 66.90) on the ask side in the order book. His percentage share at this price level is 100%.
- c. At 11:15:06.548, another participant places a buy order for 156 "E" at the best ask price of CHF 66.90. A single order for 156 "E" is available at this price level, entered by BIR (Y AG) immediately before this at 11:15:06.548. This results in the execution of a transaction with a volume of 156 "E", at a price of CHF 66.90. Following the execution of BIR's (Y AG) sell order (156 "E" at CHF 66.90), he has no remaining sell orders on the ask side. He is present on the bid side with the same orders as at immediately before 11:15:06.548, with 100% at the first, fourth and seventh price level. At this time, BIR's (Y AG) buy orders accounted for around 81% of the ten best price levels on the bid side.
- d. After 11:15:06.548, BIR (Y AG) has canceled the 14 buy orders in the ten best price levels and entered sell orders into the "E" order book. He placed a buy order for 520 "E" on the bid side at 11:17:07.501. At the eight best price levels on the ask side, between 71% and 100% of the order volume is accounted for by him. While his cumulative volume at the ten best price levels on the bid side fell from 6'000 "E" at 11:15:06.548 to 520 "E", the cumulative volume of the ten best price levels on the ask side rose from 0 "E" to 9'580 "E", as a result of

which BIR (Y AG) accounts for almost 69% of the volume at the ten best price levels on the ask side at this time. The inside market is CHF 66.65 - CHF 66.70, compared to CHF 66.85 - CHF 66.95 11:15:06.548.

- e. At 11:17:07.501, the same other participant enters a sell order for 520 "E" at a price of CHF 66.65. This sell order is executed entirely against BIR's (Y AG) buy order at this price level. Following BIR's (Y AG) purchase of 520 "E" at a price of CHF 66.65, the inside market widens from CHF 66.65 - CHF 66.70 to CHF 66.45 - CHF 66.70. BIR (Y AG) has no more orders on the bid side in the order book following the transaction at 11:17:07.501. His presence on the ask side remains unchanged.
- f. After 11:17:07.501, all of BIR's (Y AG) sell orders have been canceled again. Immediately before 11:25:48.380, the order book was filled with buy orders by BIR (Y AG) on the bid side. BIR (Y AG) accounts for between 17% and 100% of the volume at each of the best ten price levels. His cumulative buy volume on the bid side amounts to 8'186 "E", compared to no buy order at all at 11:17:07.501. The inside market has recovered again to CHF 66.85 - CHF 66.90, compared to CHF 66.45 - CHF 66.70 at 11:17:07.501.
- g. At 11:25:48.380, BIR (Y AG) placed a single order (his only one at that time) on the ask side (156 "E" at a price of CHF 66.90). This order belongs to the best price level (CHF 66.90) at 11:25:48.380. At 11:25:48.380, the same other participant enters a buy order for 156 "E" at CHF 66.90. This results in the execution of BIR's (Y AG) entire sell order. Immediately after the execution of BIR's (Y AG) sell order for 156 "E" at a price of CHF 66.90, the best price level on the ask side is now CHF 67.00. At this point, BIR (Y AG) does not have any more orders on the ask side. His presence on the bid side remains strong.
- h. Until 11:29:34.887, BIR (Y AG) has changed sides again in the order book since 11:25:48.380, from the bid side to the ask side. BIR (Y AG) has canceled all of his buy orders that had still been in the order book at 11:25:48.380. Previously, BIR (Y AG) has entered sell orders, assuming a dominant position at various price levels. His percentage share of the cumulative sell volume at the first eight price levels is almost 60%. The inside market has fallen from CHF 66.85 - CHF 67.00 to CHF 66.70 - CHF 66.75 since 11:25:48.380. BIR (Y AG) entered a buy order for 156 "E" at CHF 66.70 in the order book at 11:29:34.887 (at the best price level). The cumulative bid volume at the ten best price levels fell from 11'917 "E" at 11:25:48.380 to 9'502. The cumulative ask volume at the ten best price levels rose from 5'257 "E" at 11:25:48.380 to 9'192. At 11:29:34.887, the other participant enters a sell order for 156 "E" in the order book at a price of CHF 66.70. This results in the immediate execution of BIR's (Y AG) buy order at CHF 66.70. Immediately after the execution of BIR's (Y AG) buy order (156 "E" at CHF 66.70), BIR (Y AG) does not have any other orders on the bid side. His presence on the ask side remains unchanged. As was the case at 11:29:34.887, his percentage share of the sell volume up to the eighth price level (CHF 67.10) is around 60%.
- i. After 11:29:34.887 [until 11:33:46.250], BIR (Y AG) has canceled all of his sell orders in the order book and entered buy orders, as a result of which BIR (Y AG) accounts for between 49% and 100% of the bid volume at nine of the ten best price levels. On the ask side, he has not placed any sell orders. The inside market increased from CHF 66.45 - CHF 66.75 at 11:29:34.887 to CHF 66.95 - CHF 67.00. The cumulative bid volume of the ten best price levels decreased from 9'459 "E" at 11:29:34.887 to 7'838 "E", with BIR (Y AG) accounting for a share of 6'700 "E" (85%).
- j. At 11:33:46.250, BIR (Y AG) enters a sell order for 352 "E" in the order book at a price of CHF 66.95. This results in the partial execution of a transaction with a volume of 302 "E" at a price of CHF 66.95 against an existing buy order of a third participant on the bid side. Immediately after the partial execution of BIR's (Y AG) sell order (302 "E" at CHF 66.95), 50 "E" of BIR (Y AG) remain at the best price level on the ask side. His presence remains dominant on the bid side. His percentage share of the buy volume up to the tenth price level (CHF 66.45) is more than 87% at 11:33:46.250.

- k. At 11:39:39.542 and following what has now become an pattern, the orders entered by BIR (Y AG) have triggered an overhang on the ask side of the order book. BIR (Y AG) has canceled all of his buy orders that had still been in the order book at 11:33:46.250. He is now present at each of the ten best price levels on the ask side, accounting for shares of between 60% and 100%. The inside market is CHF 66.60 - CHF 66.65 at 11:39:39.542, compared to CHF 66.90 - CHF 66.95 at 11:33:46.250. The cumulative ask volume of the ten best price levels is 8'653 "E" at 11:39:39.542, up from 5'433 "E" at 11:33:46.250. BIR (Y AG) is present on the bid side with a buy order for 156 "E" at the best price level, which he placed in the order book at 11:39:39.542.
- l. At 11:39:39.542, an aforementioned participant enters a sell order for 156 "E" at a price of CHF 66.60. This is executed against BIR's (Y AG) order at this price level on the bid side. After 11:39:39.542 [until 11:45:16.411], BIR (Y AG) has canceled all of his sell orders except for one (74 "E" at CHF 67.95) in the order book and entered buy orders, as a result of which he accounts for between 37% and 100% of the order volume on the bid side at eight of the ten best price levels. BIR's (Y AG) cumulative buy volume of the ten best price levels amounts to more than 79%. The inside market increased from CHF 66.55 - CHF 66.65 at 11:39:39.542 to CHF 66.95 - CHF 67.00.
- m. At 11:45:16.411, BIR (Y AG) enters a sell order for 260 "E" in the order book at a price of CHF 66.95. At this point, there are two orders on the bid side, one for 2 "E" and one for 265 "E". This results in the execution of a transaction with a volume of 2 "E" at a price of CHF 66.95 against another participant and the partial execution of a transaction with the remainder of 258 "E" at a price of CHF 66.95 against the buy order of a third participant. Immediately after the execution of BIR's (Y AG) sell order for 260 "E" at a price of CHF 66.95, the best price level on the ask side at 11:45:16.412 is CHF 67.00. At this time, as was the case at 11:45:16.411, BIR (Y AG) has a sell order for 74 "E" at CHF 67.95 on the ask side. His presence on the bid side remains strong.
- n. Until 11:51:01.561, BIR (Y AG) has once again triggered an overhang on the ask side in the order book by entering orders, moving the inside market as a result of the combination of his cancelations and entries. BIR (Y AG) has canceled all of his buy orders that had still been in the order book at 11:45:16.412. BIR (Y AG) is now present at nine of the ten best price levels on the ask side, with shares of between 45% and 100%. The inside market is CHF 66.65 - CHF 66.70 at 11:51:01.561, compared to CHF 66.95 - CHF 67.00 at 11:45:16.412. At 11:51:01.561, BIR (Y AG) has placed a buy order for 156 "E" on the bid side at CHF 66.65 and thus constitutes the best price level on the bid side. At 11:51:01.561, another participant enters a sell order for 156 "E" in the order book at a price of CHF 66.65. This is therefore executed in full against BIR's (Y AG) existing buy order which has the same order size. Immediately after the execution of BIR's (Y AG) buy order for 156 "E" at a price of CHF 66.65, the best price level on the bid side is now CHF 66.45. At this point, BIR (Y AG) does not have any more orders on the bid side. BIR's (Y AG) cumulative sell volume at the first ten price levels on the ask side still amounts to around 64%.
- o. Until 12:03:35.656, BIR (Y AG) has once again triggered an overhang on the bid side in the order book by entering orders, moving the inside market in his favor as a result of the combination of his cancelations and entries. BIR (Y AG) has canceled all of his sell orders that had still been in the order book at 11:51:01.561. The cumulative bid volume of the ten best price levels is 11'865 "E" at 12:03:35.656, up from 9'538 "E" at 11:51:01.561. BIR (Y AG) is now present at all ten price levels on the bid side, accounting for shares of between 59% and 100%. BIR's (Y AG) share of the cumulative bid volume of the ten best price levels amounts to more than 89%. The inside market is CHF 66.85 - CHF 66.90 at 12:03:35.656, compared to CHF 66.45 - CHF 66.70 at 11:51:01.561. BIR (Y AG) places a sell order for 156 "E" at CHF 66.90 and constitutes thus the best price level on the ask side. At 12:03:35.656, the other participant enters a buy order for 156 "E" at CHF 66.90. This results in the immediate execution of BIR's (Y AG) sell order. Immediately after the execution of BIR's (Y AG) sell order (156 "E" at CHF 66.90), no BIR (Y AG) sell orders remain at the ten best price levels on the ask side. His presence remains dominant on the bid side. His percentage share of the buy volume up to the tenth price level (CHF 66.40) is more than 89% at 12:03:35.656.

- p. Until 12:07:15.148 and following the established pattern, the orders entered by BIR (Y AG) have triggered an overhang on the ask side of the order book. He has canceled all of his buy orders that had still been in the order book at 12:03:35.656. BIR (Y AG) is now present at six of the ten best price levels on the ask side, accounting for shares of between 49% and 100%. The inside market is CHF 66.60 - CHF 66.65 at 12:07:15.148, compared to CHF 66.85 - CHF 66.95 at 12:03:35.656. The cumulative ask volume of the ten best price levels is 8'091 "E" at 12:07:15.148, up from 5'808 "E" at 12:03:35.656. BIR (Y AG) is present on the bid side with a buy order for 156 "E" at the best price level. At 12:07:15.148, the other participant enters a sell order for 156 "E" at a price of CHF 66.60. This is therefore executed in full against BIR's (Y AG) existing buy order. Immediately after the execution of BIR's (Y AG) buy order for 156 "E" at a price of CHF 66.60, the best price level on the bid side is now CHF 66.45, compared with CHF 66.60 at 12:07:15.148. At this point, BIR (Y AG) does not have any more buy orders in the order book. His presence on the ask side remains strong. His share of the cumulative asks volume at the first six price levels is more than 76%.
- q. At 12:10:42.041, BIR (Y AG) has changed sides again in the order book since 12:07:15.149, from the ask side to the bid side. He has canceled most of his sell orders that had still been at the ten best price levels in the order book at 12:07:15.149. The cumulative ask volume at the ten best price levels fell from 8'091 "E" at 12:07:15.149 to 5'657 "E". Instead, BIR (Y AG) has entered buy orders, assuming a dominant position at various price levels. BIR (Y AG) is now present at six of the ten best price levels on the bid side, accounting for shares of between 57% and 100%. The inside market has increased from CHF 66.45 - CHF 66.65 to CHF 66.75 - CHF 66.80 since 12:07:15.149. At 12:10:42.041, a third participant enters a buy order for 85 "E" in the order book at a price of CHF 66.80. This results in the immediate execution of BIR's (Y AG) sell order for 71 "E" remaining in the order book at CHF 66.80. Immediately after the execution of BIR's (Y AG) sell order (71 "E" at CHF 66.80) remaining in the order book, BIR (Y AG) does not have any other orders on the ask side. His presence on the bid side remains unchanged. His percentage share of the buy volume up to the seventh price level (CHF 66.50) is more than 80%.
- r. At 12:15:01.669, BIR (Y AG) has one order each on the bid side and the ask side. Compared to 12:10:42.041, the cumulative bid volume of the ten best price levels on the bid side rose marginally from 5'913 "E" to 6'127 "E". The cumulative ask volume of the ten best price levels also changed little in relation to 12:10:42.041, falling from 5'686 "E" to 5'678 "E". But in the further course of the trading day, BIR (Y AG) maintained the same pattern of activity in "E".
11. In summary, on [day/month] 2013 participant X for client placed a total of 847 orders in the order book of "E" in the space of 70 minutes and eight seconds (from 11:04:54 a.m. to 12:15:02 p.m.). These comprised 444 buy orders and 403 sell orders for "E" shares. In the same period, a total of 80.67% of the buy order volume and 74.19% of the sell order volume that had been entered by participant X for client were cancelled. Furthermore, during this period participant X for client successively generated an overhang either on the bid side or on the ask side of the order book of "E", which influenced the inside market in each case. Since the orders entered by participant X for client were placed at different price levels, other market participants or electronic trading programs could have erroneously been led to assume that the overhang in question was attributable to several different investors. Fact is that following this pattern, the order book of "E" was dominated by orders from participant X for client a total of six times on the bid side and a total of five times on the ask side.
12. The fact that participant X for client cancelled in the 1st example 94.10% of the buy order volume and 90.24% of the sell order volume and cancelled 80.67% of the buy order volume and 74.19% of the sell order volume in the 2nd example suggests that the bulk of the orders were only placed in the order book to create a misleading impression. As a result of the behavior of participant X for client, other market participants reacted to the increase in supply and increase in demand, and the buy and sell orders placed by participant X for client on the opposed side of the order book were thus executed at better terms.

13. In addition, during the time period of example 1 of eight minutes and 33 seconds, 72 trades (each for two "B") and during the time period of example 2 of 70 minutes and eight seconds 150 trades (each for two "E") were carried out by participant X for client, which also suggests that these transactions were likewise conducted solely to create the impression of market activity. In addition to the generated overhangs, these small transactions also pushed the price and/or the order book in one direction so that the relevant order could be placed and executed at a price that was as low respectively as high as possible on the other side of the order book.
14. There is no reasonable doubt that the five examples of abusive market behavior are examples of a large number of order entries, deletions and trades by the DEA, as mentioned SER. Therefore it was not necessary to extend the procedure to other repeated behavior of the DEA.
15. Accordingly, the trading conduct described on the part of participant X DEA client is abusive market behavior and it violates section 9.2 para. 1 and section 9.2 para. 2 lit. a (impression of market activity) of the Rule Book of SIX Swiss Exchange, as well as margin nos. 23 (creating the appearance of market activity), 27 (creating an overhang) and 29 ("spoofing") of FINMA-Circular 2008/38.

C. Insufficient monitoring of the DEA client

16. According to section 4.3.3 para. 2 of the Rule Book of SIX Swiss Exchange, the participant must have suitable systems in place to monitor and filter DEA client orders. According to section 9.2 of the Rule Book, the participant must comply with the applicable market conduct rules, in particular those laid down in Article 33f SESTA and the FINMA-Circular "Market conduct rules". Thus, the participant's monitoring and surveillance activities must prevent the aforementioned abusive market behavior by DEA. According to the practice in the material published by SIX Exchange Regulation on the internet, participants have a duty to parameterize their order systems to prevent any manifestly unfair trading via a DEA. Section 4.3.3 of the Rule Book is a clear and unambiguous regulatory requirement which obliges participant X as a DEA provider to perform pre-trade market surveillance monitoring to prevent abusive market behavior.
17. It is the participant's responsibility to monitor not only trades, but also orders of its DEA clients. The participant must have order data in an appropriate form. As the DEA client trades via the trading infrastructure of the participant, all entries transmitted by the DEA client go through the trading systems of the participants and should therefore be recorded and/or made available in the participant's systems.
18. Participant X stated that it had in place effective pre-trade filters and all orders, amendments and deletions were subject to these filters. According to participant X, these filters were in line with established ESMA guidelines and using Independent Software Vendors widely used by other DEA providers, but they do not possess pre-trade monitoring capabilities that could have prevented the present market behavior of Y AG. Participant X stated that it is not possible for a participant to implement a pre-trade misconduct filter to prevent order entries and deletions that may result in the described market behavior.
19. This argument is not acceptable. A participant, whether by its own traders or by trades of DEA clients, must comply with the applicable market conduct rules, including the obligation to refrain from unfair trading practices as described in the Rule Book and in particular those laid down in FINMA-Circular "Market conduct rules". If really a participant would be unable to detect and prevent these unfair practices, it must stop offering DEA. Otherwise unfair trading practices - as creating the appearance of market activity, creating an overhang and "spoofing" - would be in the market without limits. Which combination of pre- and post-trade controls and other monitoring and additional information or indications a participant uses lies within its discretion. In the present case it has to be noted that SER drew the attention of participant X end 2012 to the suspicion of violation of the market rules by Y AG. Thus, when the facts here at hand occurred, participant X was already aware that a monitoring system was to be in place.

The SIX requirements are in line with those of other exchanges and financial markets as for example the requirements of the FCA in the UK obligating the DEA providers to ensure that they have appropriate systems and controls to identify and prevent spoofing and layering. It has to be

added that SIX Swiss Exchange is neither a software vendor nor a consultant for monitoring systems.

20. The present procedure concentrates on the incidents described between [day/month] and [day/month] 2013. Despite a slightly doubting statement by participant X there is no doubt that the aforementioned abusive market behavior occurred over a longer period. Despite this and in the interest of a due process, only the described incidents are considered for sanctioning the matter at hand.
21. Participant X argued that [external audit firm] in the SIX-imposed annual audit report 2013 concluded that nothing came to their attention that participant X “was not in compliance with the provisions regarding customers with direct market access”. Indeed the audit stated that participant X has pre-trade surveillance systems for filtering orders from its DEA customers. According to the auditors, these checks “contain several parameter for each trade, including but not limited to collateral position, trade size and price deviation from previous price”. But obviously, these filters were not sufficient to prevent the unfair practices as the entering of misleading data by Y AG. The fact that undisputed market manipulations by Y AG occurred is evidence itself for the insufficient monitoring by participant X.
22. In line with section 4.3.3. para. 1 of the Rule Book, participant X acknowledges its responsibility for the conduct of its DEA clients. (“The participant remains liable to the Exchange for all actions and non-actions on the part of DEA clients.”). Even if the result of the procedure would have been that participant X had performed an effective control (which is not the case), the described market manipulations would nevertheless be of the responsibility of participant X itself. Consequently, participant X should be sanctioned for the violation of section 9.2 of the Rule Book with the fine described below.

D. The sanction

23. 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 million. In order to set a sanction, the Commission takes into account the gravity of the offence and the degree of fault and any previous sanctions imposed on the participant (section 18 lit. a and section 19 para. 1 and 2 of the Rule Book). When setting the level of fines, the Commission will also take into account the impact of the sanction on the participant involved. In reaching its decision, the Commission is not bound by the sanction proposals submitted by the investigative bodies (section 4.4 Rules of Procedures - RP). Any previous sanction is not taken into account when three years have elapsed since. This applies as no sanction had been imposed on participant X in the last three years.
24. A wrongful act under the forbidden trading practices as described in section 9.2. of the Rule Book (Market conduct) is per se a serious matter. The expressly forbidden activities have no economic justification for securities transactions, and they do not reflect a genuine relationship between supply and demand. Avoiding these activities is essential for ensuring fair trading. Only in this way the trust of other participants and investors in the SIX Swiss Exchange markets can be protected. Even if – as in the present case – the amounts of the trades (at prices that did not reflect the real market) were not enormous, any manipulation is a grave offence.
25. To assess the degree of fault it has to be considered that the obligations set by the Rule Book are generally accepted duties of DEA providers (see for ex. FSA Market Watch Issue 33/2009: “providers should ensure that they have appropriate systems and controls in place to identify and prevent layering and spoofing.”). Participant X is among the world’s leading providers of services and participant of a large number of exchanges. It offers DEA worldwide as a business and not only in exceptional cases. Consequently, it is all the more important to have effective systems and controls. If the participant does not so, the degree of fault is high.
26. In the present case and as mentioned before, it has to be noted that between [month] 2012 and [month] 2013, SER had contacts with participant X Compliance concerning queries regarding market behavior. On 21 December 2012, participant X thanked “very much for the detailed information”. Responding to an e-mail of SER of 19 February 2013, participant X answered that it

has "investigated the client and continued to monitor behaviour". Moreover, SER sent a CD to participant X showing selected trade activities (mentioned in enclosure 3 of SER). The fact that participant X has been alerted by SER before February 2013 and despite this, at least between [day/month] and [day/month] 2013, the documented market manipulations continued without participant X stopping them is an aggravating factor in assessing the gravity of the fault.

27. In order to have an overall impression, it has to be noted that participant X was sanctioned by another exchange for causing market disturbance through a sponsored access client in [month/year] and in [month/year].
28. As both the gravity of the offence and the degree of fault are severe, a fine has to be imposed. Participant X argued that the proposed fine by SER is disproportionate to precedents matters. In two earlier cases with market manipulation cited in the present procedure the sanctions concerned the suspension of a trader (generally a severe penalty for the person concerned) and not a participant and thus not comparable. In another case where a fine of CHF 30'000 was imposed to a participant, the violation was a single trade by an employee quickly detected by SER and declared void. The gravity of the offence was not severe and the small company was sensitive to fines. These cases are not comparable to the present one.
29. In recent years it became clear that it was necessary to impose stronger sanctions to violations of the rules of the exchange. The Sanctions Commission therefor tends to raise the inflicted fines and the practice of earlier years cannot be used for comparison. The purpose is not only to penalize the past, but also the prevention in the future and the sanction should have a preventive effect. Only slight penalization of violations of an important rule would be arbitrary.
30. As the Sanctions Commission stated in earlier cases, the amount of the fine has to be correlated to the size (and financial parameters) of the relevant company. Participant X is part of the XX Group and its size is significant. The amount of the fine has to take this into account. Participant X (as part of the XX Group) is least sensitive to a sanction.
31. In favor of participant X, it has to be taken into consideration that it contributed to the investigation and gave all necessary information. In view however of what is said in no. 30 above, and of the severity of the breach and the degree of fault, it is appropriate to set a fine in the amount of CHF 250'000.
32. According to the Rules of procedure, the costs of the procedure of CHF 28'000 (CHF 8'000 for SER, CHF 20'000 for the Commission) are imposed on participant X.
33. In accordance with the provision of Art. 6.3 para. 1 RP, the decision of the Sanctions Commission has to be published. A publication is waived only in minor cases, where a reprimand or a small fine were imposed and where there was no public interest to be informed on the person concerned. This is not the case in the present procedure.

Zurich, 26th May 2016

This decision was challenged by the respective participant with the SIX Swiss Exchange Court of Arbitration and the parties have reached a settlement, providing for a reduction of the amount of the fine to the originally proposed CHF 150'000.-- and further providing that the decision may be published in anonymized form only. The parties further agreed that the Sanctions Commission's decision should not be interpreted to mean that pre-trade controls, as of the date of the settlement agreement, can detect and prevent the incidents at hand. Furthermore, the conclusion should not be that the participant must stop offering DEA services as stated in the decision.

Zurich, 21st November 2016

(Original text)