

Violation of the requirements for access to the Exchange System

Decision

The Sanctions Commission concluded that participant X had breached the provisions of section 4.3.2 para. 2 of the Rule Book of SIX Swiss Exchange by failing to ensure that only registered traders have access to the exchange system of SIX Swiss Exchange: one unregistered trader performed 17'448 trades on 35 days in the period from 27 February 2014 to 18 December 2014, and another unregistered trader performed 117 trades on 5 days in the period from 8 August 2014 to 28 August 2014. A fine of CHF 15'000 was imposed on X. X was also ordered to pay the costs of the proceedings of CHF 10'500.

Reasons for the decision

A. Notes to the procedure

1. On 25 March 2015 the Surveillance & Enforcement department ("SVE") received the audit report for the calendar year 2014 concerning the participant X. SVE was made aware that there were irregularities in connection with the use of trader identification numbers (hereinafter "trader IDs") at X in calendar year 2014. Two employees who were not registered as traders with SIX Swiss Exchange had access to the exchange system of SIX Swiss Exchange and traded on the SIX Swiss Exchange.
2. On 15 July 2015, SVE asked X to answer various questions in connection with the comments in the audit report. X submitted its response in due time before 23 July 2015. X admitted that two employees executed trades on SIX Swiss Exchange in calendar year 2014 without being registered as traders with SIX Swiss Exchange. X submitted a table containing the trades executed by the two employees. The list comprises 17'565 trades in the period from 27 February 2014 to 18 December 2014.
3. On 21 August 2015, SVE informed X of the formal opening of sanction proceedings and requested responses to some questions and gave it the opportunity to submit a statement. In an extended time limit, X answered on 29 September 2015 and confirmed that a breach occurred. It *"acknowledges and deeply regrets that it was temporarily in breach of SSX Rule 4.3.2 para 1."* and explicitly stated: *"[...] that a breach occurred [...]"*.
4. On 7 October 2016, the SIX Sanctions Commission received a proposal for a fine of CHF 20'000 against X for having violated section 4.3.2 para. 2 of the SIX Swiss Exchange Rule Book. On 11 October 2016, according to the Rules of Procedure the Commission asked X to submit comments to the proposal of SVE. In its statement of 19 October 2016, X did not dispute the facts and regrets the violation of the rule on trader registration. It petitioned to reduce the proposed sanction which it considers to be disproportionate in relation to earlier sanctions in similar cases and reiterated mitigating circumstances.

5. 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 between 27 February and 18 December 2014. The sanction proceedings against X were initiated on 25 August 2015, 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.

B. The violation of the registration rules

6. In accordance with section 4.3.2 of the SIX Swiss Exchange Rule Book, the participant is required to register traders who trade on the exchange. The exchange assigns each registered trader an identification number (ID). The exchange system records all system entries together with the trader's identification number. With every single order, participants have to include the identification number of the trader who entered the trade on the exchange and is therefore responsible for the order in question. The identification number is personal but may be given to other traders registered with SIX Swiss Exchange to enable them to act as proxies. The participant is required to ensure the traceability of these proxies. Consistent compliance with the rules for registering traders is essential, since it is the only way to ensure unequivocal accountability for entries made in the exchange system. In the case of an investigation, a breach of these rules can prevent identification of the person responsible for a given entry.
7. In the present procedure, it is not disputed that two unregistered traders at X performed a total of 17'565 trades on SIX Swiss Exchange in calendar year 2014. Trader A performed 17'448 trades on 35 days in the period from 27 February 2014 to 18 December 2014. Trader B performed 117 trades on 5 days in the period from 8 August 2014 to 28 August 2014. Trader A performed 16'999 trades in the period from 27 February 2014 to 21 July 2014 with the ID [ID 1], which is assigned to another trader of X, and 442 trades in the period from 13 August 2014 to 28 October 2014 and seven trades on 18 December 2014 with the trader ID [ID 2], which is assigned to another trader of X. This makes a total of 17'448 trades. Trader B performed all 117 of his trades in the period from 8 August 2014 to 28 August 2014 with the aforementioned trader ID [ID 2], acting as a backup trader during an annual leave.
8. By failing to ensure that only registered traders have access to the exchange system of SIX Swiss Exchange, X committed a violation of section 4.3.2 of the SIX Swiss Exchange Rule Book and a sanction is to be imposed on X as described below.

C. The sanction

9. 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 (Art. 4.4 Rules of Procedure). Any previous sanction is not taken into account when three years have elapsed since the last sanction. It is not necessary to apply this period of limitation since no sanction had ever been imposed on X since it began trading.
10. SVE considered the gravity of the violation as moderate based on the number of days, the number of trades, the duration of the violations and the number of traders not registered with SIX Swiss Exchange.
11. There are no grounds for the Sanctions Commission not to share this assessment. In the present case, the trading team of X for the SIX Swiss Exchange consisted of three registered traders. Trader A joined this team and was active in 2014 on 35 days. In 28 of these days, the number of daily trades did not pass the number of 95 with an average of around 25. Trader B, by providing backup over a holiday period in August, traded on five days with a daily number of trades between 13 and 31. The lack of registration was discovered in October 2014 when X performed an internal review. The then still active Trader A ceased trading on Six Swiss Exchange, with the exception of one day in December, until, in January 2015, she was registered correctly with the Exchange. (X blocked Trader B definitively from trading with the SIX Swiss Exchange as he acted only once as a backup trader during an annual leave.)
12. Consistent compliance with the rules for registering traders is essential, since it is the only way to ensure unequivocal accountability for entries made in the exchange system. In the case of an investigation, a breach of these rules can make difficult or even prevent identification of the person responsible for a given entry. But in the present case, due to the organization of X, there was no problem to identify the two responsible employees.
13. At the time of the access by the unregistered persons, X controlled trading screen access through the use of live market data access. However, the work managed by Trader A did not require live market data in order to trade and thus, the controls of X did not prevent Trader A's trading. X admitted that the control was insufficient. Trader A (and Trader B) was described by X as a highly experienced trader, an approved person by the Financial Conduct Authority in the UK. In the present procedure against the SIX Swiss Exchange participant it need not be further examined whether such an experienced person must apply for registration on their own initiative as every SIX Swiss Exchange participant is committed to enforce internally the SIX Swiss Exchange's Rule Book. More important for the assessment is that X, as mentioned before, realized by itself the lack in the registration process and addressed the weakness prior to the audit for the year 2014. It implemented a new, more restrictive authorisation

process including an automated block preventing trades leaving X where a trader does not have the appropriate registration. The Sanctions Commission has no reason to doubt that the incident was an administrative oversight. Hence the degree of fault is assessed as low.

14. X argued that the proposed fine by SVE is disproportionate to similar precedents. In this context it should be noted that in recent years it has become clear that it is necessary to impose stronger sanctions for violations of the rules of the Exchange. The Sanctions Commission therefore is tending to raise the fines for breaches compared to the practice of earlier years so prior levels of fines do not automatically set the standard for its current practice. The purpose is not only to penalise the past, but also to prevent breaches of the rules in the future. The sanction should have a preventive effect. In favour of X, it has to be taken into consideration that it contributed to the investigation and gave all necessary information. Additionally, a mitigating factor is the fact that a whole year passed without activities in the present case after the end of the investigation in 2015 before SVE submitted the sanction proposal.
15. In view of all these considerations a sanction at the lower limit of the fine range in section 19 para 1 of the Rule Book is adequate. But since the present violation of the Rule Book case is not a petty case, a reprimand is not adequate. A reduced fine of CHF 15'000 is deemed appropriate by the Sanctions Commission.
16. In similar cases of minor general public interest, the Sanctions Commission did not publish the sanction when its purpose was primarily to prevent the concerned participant from violation of the rules in the future. This also applies when the sanction is a fine fixed at the lower limit of the fine range and where there is no public interest involved. This is the case in the present procedure.
17. According to the Rules of Procedure, the costs of this procedure of CHF 10'500 (CHF 5'000 for SVE, CHF 5'500 for the Commission) are also charged to X.

Zurich, 14 November 2016

(Original text)