

## Summary of the decision SaKo VI/2023 of November 9<sup>th</sup>, 2023

- 1 On November 9<sup>th</sup> 2023, the Sanctions Commission rendered its decision in the proceedings SaKo VI/2023 against a participant and ordered that the decision be published in summarized and anonymized form. The following is a summary of the decision SaKo VI/2023 of November 9<sup>th</sup> 2023:

### 1. Incident background

- 2 The Surveillance & Enforcement department of SIX Exchange Regulation AG (hereinafter "SVE") became aware of unusual high sales transactions executed by the participant between 9.55 am and 10.10 am on May 2<sup>nd</sup> 2022. Initially the trader intended to sell a basket of equities and made an inputting error, while entering the basket in the participant's trading system.
- 3 The total notional of the erroneous trades executed on the venue SIX Swiss Exchange amounted to CHF 108,378,289.55, before the trader cancelled the basket. At the time of the incident, the SMI temporarily fell by -1.6388%, while the SPI fell by -1.8257% (respectively the SMIM even by -4.5%). Avalanche stop trading phases were triggered for several securities due to exceptionally strong price fluctuations.

### 2. Findings and Sanctions Commission decision

- 4 The trading system maintained by the participant authorized and enabled single traders to generate order sizes of at least CHF [...]. Although the participant's system blocked a portion of the initial order size it is even more precarious as it displayed also several warnings that the trader could override with one click by choosing to override them at once. The supplemental controls at the participant, particularly in connection with algorithmic trading, were insofar ineffective that a portion of trades on SIX Swiss Exchange amounting to at least about CHF [...].
- 5 The risk controls applying to the algorithmic trading platform of the participant were insufficient, since most of the controls only worked after a large number of orders had already been executed. More specifically, orders were only deleted, where the price of shares had changed significantly, or where too many orders were sent consecutively and executed at SIX Swiss Exchange within a certain period. Some of the orders were not deleted until the responsible trader realised his error after approximately 15 minutes. Following the incident, the participant adapted numerous control parameters and introduced new thresholds. The Sanctions Commission established that for transactions initiated by algorithms, it is even more important that the systems of the participants involving automated algorithms respect the relevant rules.
- 6 Participants must ensure compliance with the Trading Rules of SIX Swiss Exchange (hereinafter "TR"), additional rules and related implementing decrees at all times. In this case, the sanction is addressed to a legal entity and derives from the fact that the participant has not taken all necessary and reasonable organisational precautions to prevent a breach of its obligations under the TR. The conduct of the natural persons or bodies acting on behalf of the participant are attributed to the latter. Overall, the participant violated clause 4.3.1 para 1 let. b TR by failing to adequately monitor compliance with the Trading Rules and to always uphold the integrity of the market. Thereby, the participant is not only responsible for establishing an effective control system but must assume responsibility for its trader's actions and omissions.

- 7 The Sanctions Commission came to the conclusion that the participant violated clause 10 para 1 let. b and c Directive 3: Trading of SIX Swiss Exchange as it did not possess effective precautions and risk controls in order to ensure that their systems are subject to appropriate trading thresholds and upper limits and that they do not cause or contribute to any disruptions in the trading venue.
- 8 The Sanctions Commission also took into account that the participant has not been previously sanctioned and was willing to cooperate in the scope of these investigations. Therefore, there is no aggravating factor to be taken into account when determining the sanction. However, the Sanctions Commission considered the violations of the Trading Rules by the participant as very severe.

**The Sanctions Commission essentially ruled as follows:**

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- 1. The Sanctions Commission determines that the participant violated clause 4.3 Trading Rules of SIX Swiss Exchange (TR) by failing to adequately monitor compliance with the Trading Rules as stated in clause 4.3, in particular 4.3.1 para 1 let. b, TR and to always uphold the integrity of the market.**
- 2. The Sanctions Commission determines that the participant violated clause 10 para 1 let. b and c Directive 3: Trading of SIX Swiss Exchange (DT) as it did not possess effective precautions and risk controls to ensure that their systems are subject to appropriate trading thresholds and upper limits and that they do not cause or contribute to any disruptions in the trading venue.**
- 3. The participant is ordered to pay a fine of CHF 500,000.**
- 4. The participant is ordered to bear the costs of the proceedings in the amount of CHF 16'400 representing CHF [...] costs for the procedure by SVE and the costs incurred by the Sanctions Commission (clause 3.7 List of Charges Regulatory Bodies) in the amount of CHF [...].**
- 5. Once in force, this decision shall be published by SIX Exchange Regulation AG on its website in summarized and anonymous form (clause 21 para 3 TR).**

The Sanctions Commission has already warned in its decision, that it tends 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 current practice. The purpose is not only to penalize the issuer for past breaches, but also to prevent breaches of the rules in the future. The sanction should in fact have a preventive effect.

SWISS ARBITRATION CENTRE

Case No. [...]

between

**X.** \_\_\_\_\_

Plaintiff

and

**SIX Exchange Regulation AG**

Defendant

before the three-member Arbitral Tribunal:

[...] (Chairman)

[...] (Co-Arbitrator)

[...] (Co-Arbitrator)

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**AWARD ON AGREED TERMS**

**31 January 2025**

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[...]

## VIII. THE SETTLEMENT AGREEMENT

82. The Settlement Agreement was signed by the Parties on 17 December 2024.
83. The Arbitral Tribunal has been requested to embody the Settlement Agreement in an award on agreed terms pursuant to Article 6.2 paragraph 3 of the SIX Rules of Arbitration.
84. The Settlement Agreement concluded between the Parties provides as follows:

### **"WHEREAS**

*SER has investigated a trading incident that occurred on SIX Swiss Exchange ("SIX") on 2 May 2022. Following these investigations, SER recommended that the Sanctions Commission of SIX (the "Commission") issue a decision (i) holding that X. \_\_\_ had committed certain breaches of the SIX trading rules and (ii) imposing a fine of CHF 500, 000 against X. \_\_\_.*

*On 9 November 2023, the Commission issued its decision VI/2023 (the "Decision "), in which it substantially followed SER's recommendation. The Commission further ordered that the Decision be published by SER on its website in summarized and anonymous form once in force.*

*On 25 January 2024, X. \_\_\_ initiated arbitration proceedings under the Rules of Arbitration for the Court of Arbitration of SIX Group Ltd (the "Rules of Arbitration ") and subsequently submitted its statement of claim on 19 September 2024, in which X. \_\_\_ inter alia asked the Court of Arbitration of SIX Group Ltd (the "Tribunal") to set aside the Decision. The arbitration proceedings are administered by the Swiss Arbitration Centre acting as appointing authority, under the case reference [Case No.] (the "Arbitration Proceedings").*

*The Parties have regularly exchanged on their dispute regarding the Decision (the "Dispute ").*

### **THE PARTIES, WISHING TO FULLY AND FINALLY RESOLVE AND SETTLE THEIR DISPUTE, AGREE AS FOLLOWS:**

#### *1 Settlement*

##### *1.1 Condition precedent*

*The Parties' obligations under this Settlement Agreement (the "Agreement") shall be subject to the following conditions precedents:*

*this Agreement shall be considered by the Tribunal as a "settlement" in accordance with Section 6.2.2 of the Rules of Arbitration; the Tribunal shall issue an award on agreed terms within the meaning of Section 6.2.3 of the Rules of Arbitration (the "Award"), pursuant to which (a) this Agreement shall be incorporated in full into the Award and (b) the Arbitration Proceedings shall be terminated.*

### *1.2 Effect and publication of the Decision*

*On the terms and subject to the conditions of this Agreement, X. \_\_\_ withdraws its claims in the Arbitration Proceedings and accepts the prayers for relief of SER as they appear in the Response to Arbitration of SER dated 22 February 2024, whereby:*

*X. \_\_\_ shall pay to SER the fine of CHF 500, 000 and the procedural costs of CHF 16,400 under items 3 and 4, respectively, of the Decision's operative part within 14 business days from the notification of the Award. As used herein, a "business day" is a day, other than a Saturday or a Sunday, on which commercial banks are open for general business in both London and Zurich;*

*With respect to item 5 of the Decision's operative part, SER shall publish the Decision in summarized and anonymous form in accordance with the text set forth in Schedule I to this Agreement (the "Publication"). For the avoidance of doubt, SER shall neither publish nor make available a redacted or unredacted version of the Decision or a press release in addition to the Publication. SER shall be entitled to publish the Award on its website in anonymous form. To the extent that the Award would contain information or statements not contained in this Agreement, any such additional information or statements shall (in addition to the anonymisation) be redacted from the published version of the Award;*

*X. \_\_\_ shall bear the costs of the Arbitration Proceedings; and*

*X. \_\_\_ shall bear the costs of SER's legal representation in connection with the Arbitration Proceedings in the amount of CHF [amount] (inclusive of costs and VAT). X. \_\_\_ shall pay such costs within 14 business days from the notification of the Award.*

## *2 Full and final settlement*

*Pursuant to the Award and upon full payment pursuant to Section 1.2(a), the Parties hereby acknowledge and agree that the Dispute shall be fully, finally and irrevocably settled and waive any and all claims which either Party and/or any of its affiliated entities/persons have, or may have, against each other, including vis-à-vis directors, officers, employees, shareholders,*

*advisers, or any related third party in any way connected in whatsoever nature with the Dispute.*

### *3 Confidentiality*

*Unless otherwise provided herein or agreed upon in writing between the Parties, SER undertakes not to disclose any Confidential Information to third parties, whether directly or indirectly. As used herein, "Confidential Information" shall mean (i) any discussions in relation to this Agreement, (ii) the Decision, and (iii) any material relating to the investigation leading up to the Decision.*

*Notwithstanding the foregoing, SER shall be entitled to disclose Confidential Information to its affiliates, independent auditors and advisors (including external counsel), or if SER is required to disclose Confidential Information pursuant to a legal duty or a court decision.*

### *4 Amendments*

*No modification of any provision of this Agreement shall be valid unless in writing and signed by the Parties.*

### *5 Governing law and dispute resolution*

*This Agreement shall be governed by and construed in accordance with the substantive laws of Switzerland. Any dispute, controversy or claim arising out of, or in relation to, this Agreement, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Rules of Arbitration for the Court of Arbitration of SIX Group Ltd (notwithstanding Clause 1.1 of such Rules) in force on the date on which the Notice of Arbitration is submitted in accordance with those Rules.*

*The number of arbitrators shall be three.*

*The seat of the arbitration shall be Zurich.*

*The arbitral proceedings shall be conducted in English.*

### *6 Miscellaneous*

*This Agreement may be executed in counterparts. Transmission by email of a copy of this Agreement bearing an original signature in PDF format shall be valid and binding. Such signature shall have the same force and effect as the original document, which will be sent to the other Party by courier on the first business day following the day of execution." [emphasis in original]*

[...]

## XI. OPERATIVE PART OF THE AWARD ON AGREED TERMS

93. Upon the Parties' joint request, the Arbitral Tribunal renders the following Award:

1. The Settlement Agreement submitted to the Court of Arbitration of SIX Group Ltd by the Parties on 17 December 2024 is hereby ratified by the Court of Arbitration of SIX Group Ltd with consent of the Parties and incorporated in this arbitral award.
2. The arbitral procedure SAC [Case No.] is terminated.
3. Each Party is hereby ordered to perform the obligations and duties as per the Settlement Agreement referred to above.
4. In accordance with the Settlement Agreement, the costs of the arbitration in the amount of CHF [amount] shall be borne exclusively by the Plaintiff.
5. In accordance with the Settlement Agreement, Plaintiff shall bear the costs of Defendant's legal representation in connection with the Arbitral Proceedings in the amount of CHF [amount] (inclusive of costs and VAT). Plaintiff shall pay such costs within 14 business days from the notification of the Award.
6. All other motions or prayers for relief are dismissed.

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[...]

Co-Arbitrator

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[...]

Co-Arbitrator

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[...]

Chairman

Place of the Arbitration: Zurich, Switzerland

31 January 2025