

Violation of Market Maker Obligations

Decision

The Sanctions Commission has decided that the participant X has violated its market making obligations as stated in section 10.3 para. 2 of the Rule Book (version effective until 16 October 2016 respectively section 10.1.3 para. 2 of the Rule Book of SIX Swiss Exchange Ltd effective from 17 October 2016 onwards) in connection with section 12.2 of Directive 3 "Trading" of SIX Swiss Exchange Ltd and sections 6 of Annex G and Annex N respectively M of this Directive 3 (version effective at the relevant period) by failing to comply with the obligations as a Market Maker by committing a total of 1'895 "Time in Market" breaches in the year 2016.

A reprimand was imposed on participant X and a part of the costs of the procedure in the amount of CHF 9'500 are charged to participant X.

Reasons for the decision:

A. Procedure

1. On 20 May 2016 the Surveillance & Enforcement department ("SVE") started a preliminary investigation concerning the market maker obligations of participant X after having identified repeated breaches of its obligations and a significant increase thereof since 2013. SVE requested that participant X implement appropriate measures by not later than 30 June 2016 to ensure compliance with the Rules. Participant X replied in due time. By a letter of 29 July 2016, SVE asked for additional information until 4 November 2016 and set an observation period covering August, September and October 2016 to observe the promised improvement. SVE stated that it would have to initiate a sanction proceeding if participant X would fail to improve. In due time, participant X sent the requested information and brought evidence of a significant improvement having occurred during the observation period of August, September and October 2016.
2. It however later turned out that a significant number of breaches happened again in November and December 2016.
3. On 2 June 2017 SVE formally opened an investigation for repeated breaches of participant X's market maker obligations during the year 2016. For reasons of simplicity, SVE focused only on the breaches of "Time in the Market" obligations and not on violations of other parameters. In accordance with the Rules of

Procedure (RP), participant X was given time to state its position by not later than 29 June 2017 and did so in due time.

4. On 18 September 2018, the Sanctions Commission received from SVE the proposal for a sanction against participant X. The file does not document additional investigation activities since the end of 2016, except a table showing a significantly reduction of breaches from January 2017 to August 2018. The Sanctions Commission forwarded SVE proposal to participant X and set a deadline to submit a statement. This was followed by a second round of correspondence.
5. Participant X submits that it has not been duly notified of the opening of the investigation.
6. Section 3.2 ("Surveillance & Enforcement proceedings") of the RP states in para. 2 : "If there are sufficient indications of a violation of rules and regulations as described in Clause 1.1 para. 1 lit. a, an investigation will be initiated. The Parties Concerned (i.e. participant X and in some cases also its traders or reporting agents) will be informed in writing that an investigation has been initiated. No appeal may be lodged against the initiation of an investigation."
7. By the aforementioned letter of 2 June 2017, SVE informed participant X "that a sanction proceeding has been initiated based on section 3.2 para. 2 Rules of Procedure SIX Swiss Exchange (RP)." SVE provided the facts of the case and the regulatory considerations and invited participant X to state its position in writing, with explicit reference to section 3.2 para. 3 RP.

SVE used the wording of "initiation of a sanction proceeding" and did not use the notion of initiating an "investigation" as mentioned in section 3.2. para 2 of RP. But SVE referred explicitly to this paragraph, so that it was clear for the reader that SVE did no longer act in a preliminary examination as described in para. 3 of the same section. Moreover, SVE gave participant X the opportunity to state its position in writing as prescribed in para. 3. So the omission of explicit use of the word "investigation" was not detrimental to participant X.

8. According to section 2.5 para. 1 RP, no sanction proceedings may be initiated if the alleged violation was committed more than two years before the proceedings are initiated. The sanction proceedings against participant X were initiated on 2 June 2017, which means that all possible violations committed before 2 June 2015 are out of scope. In consequence, SVE concentrated on breaches of time in market as of 2016.

B. Violation of the Market Making Obligations

9. Participant X is a market maker at SIX Swiss Exchange. It is not disputed that participant X is subject to the RB and the Directives of SIX Swiss Exchange. The provisions for Market Makers are set out in section 10.3 RB and in section 6 of Annex G and section 6 of Annex N Directive 3.
10. Section 10.3 para. 2 RB, states that a market maker “undertakes to ensure a liquid market for the securities in question for a given period within trading hours by (a) providing bid and ask prices, (b) offering minimum bid and ask volumes and (c) not exceeding a maximum bid-ask spread”. Details about the given period are laid down in sections 6 of the aforementioned annexes to Directive 3: “The market maker contractually undertakes to meet the requirements over 90 % on a monthly basis of the official trading times.” This obligation is called “Time in Market”.
11. In the present case it is not disputed that participant X committed in the year 2016 the following breaches of the time in Market requirements (for comparison: the 2017-2018 months):

2016	“Time in Market” Breaches	2017-2018	“Time in Market” Breaches
January	225	January	19
February	286	February	34
March	353	March	7
April	209	April	19
May	181	May	19
June	208	June	13
July	115	July	5
August	13	August	5
September	37	September	5
October	37	October	1
November	135	November	0
December	96	December	0
		January	0
<i>Year 2016</i>	<i>1895</i>	February	2
		March	19
		April	18
		May	4
		June	1
		July	6
		August	12

12. By failing to ensure that the time in market obligation was met over 90% in the year 2016, participant X committed a violation of the rules and a sanction is to be considered.

C. Sanction

13. 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 violation, the degree of fault and any previous sanction imposed on the participant (section 20 RB). 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 RP). Any previous sanction is not taken into account when three years have elapsed since the last sanction. In the present case no sanction has ever been imposed on participant X since it began trading.
14. It is a fact that participant X did violate its market maker obligations in 2016. Considering all the circumstances that were at the origin of the preliminary investigation and the investigation, the matter at hand is more than a petty case. Yet SVE considered the gravity of the violation and the degree of fault as light. There are no grounds for the Sanctions Commission not to share this assessment. As the table above shows, the actions by participant X reduced the number of breaches significantly as of August 2016 and in the two following years, with the only exemptions of November and December 2016. As the present case is light in both the gravity of the violation and the degree of fault, it would be disproportionate to sanction participant X with more than a reprimand.
15. Participant X on the one hand invokes for both these months that they “were outliers in term of performance issues due to the exceptional and abnormal market volatility caused by the US presidential election”. On the other hand, participant X argues that in November it sent 43 daily “exemption requests” email communications (and 17 in December) to Swiss Exchange. It petitions that therefore a sanction should be waived.
16. It is true that during a short period around 8 November 2016 and to a certain extent there was an abnormal market volatility when it became increasingly apparent that the Republican candidate’s lead over the Democratic candidate was expanding. Soon after the markets however recalibrated and turned back to normal volatility. There is no evidence that generally in November and December 2016, the market makers could not maintain fair and orderly markets.

Consequently, it becomes non relevant to determine whether or not the aforementioned exemption requests sent to the exchange in November and December 2016 could be taken into account to further reduce the leanest sanction the Sanctions Commission might pronounce.

17. The present decision of the Sanctions Commission is not of general public interest especially since it assesses a light case that occurred two years ago. Thus, there is no need to publish this decision.
18. If a sanction has been imposed as in the case at hand, the Sanctions Commission according to section 2.9 RP may require the participant to pay all or some of the costs of the proceedings. These costs in the present procedure amount to CHF 12'500 for SVE and CHF 6'500 for the Sanctions Commission, for a total of CHF 19'000. The long duration of the proceedings in the present light case (the last violations of the RB occurred in 2016) is not due to a violation of its procedural obligations by participant X. In view of this delay and as the mildest sanction is pronounced, the Sanctions Commission reduces the costs to be borne by participant X to half of such total, thus to CHF 9'500.

Zurich, 5 December 2018

(Original text)