



# Decision

in the procedure SaKo 099/22

Participant X  
[address]  
[place]

The Sanctions Commission – in the delegation consisting of [...], chairman, [...], [...], [...], secretary - has rendered a decision as follows:

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DECISION OF 21 DECEMBER 2022

- 1. Participant X violated section 4.3.2 para. 1 of the SIX Swiss Exchange Trading Rules because employees who were not registered as traders with SIX Swiss Exchange made entries into the exchange system of SIX Swiss Exchange from June 2020 until May 2022.**
- 2. Participant X violated section 4.3.2 para. 3 sentence 3 of the SIX Swiss Exchange Trading Rules by failing to ensure that personal Trader IDs were exclusively given to other registered traders at X from June 2020 until May 2022.**
- 3. Participant X violated section 4.5 para. 1 let. a) of the SIX Swiss Exchange Trading Rules by failing to inform the Exchange and/or SIX Exchange Regulation immediately after becoming aware of its violation of the Trading Rules.**
- 4. Participant X violated section 4.3.1 para. 1 let. b) Trading Rules by not sufficiently monitoring compliance with the Trading Rules allowing violations of section 4.3.2 para. 1, section 4.3.2 para. 3 sentence 3 and section 4.5 para. 1 let. a) of the SIX Swiss Exchange Trading Rules from June 2020 until May 2022.**
- 5. Participant X is ordered to pay a fine of CHF 75'000.**
- 6. Participant X is ordered to bear the costs of the proceedings in the amount of CHF 9'000 representing the costs for the procedure by SIX Exchange Regulations of CHF 6'000 and the costs incurred by the Sanctions Commission (Ciph. 3.7 LOC) in the amount of CHF 3'000.**
- 7. Once in force, this decision shall be published by SIX Exchange Regulation AG on its website in summarized and anonymous form (Ciph. 6 para 8 RP).**

**A complaint can be filed against this decision according to Ciph. 5.3 al. 2 LOC with the Court of Arbitration within 20 days of receiving the decision. Arbitration proceedings will be instituted according Ciph. 2.1 Rules of Arbitration upon delivery of a written notice of arbitration against the other party to the preceding instance (SIX GroupAG, Sanctions Commission, Pfingstweidstrasse 110, Postfach, CH-8021 Zürich).**

## Reasons for the decision

### 1. Procedure

1. The Surveillance & Enforcement department (hereinafter "**SVE**") of SIX Exchange Regulation Ltd. (hereinafter "**SER**") was made aware of irregularities at X (hereinafter "**X**") in connection with the access to the exchange system. Those irregularities were outlaid in the Audit Report of X to SIX Swiss Exchange dated 29 March 2022 for the calendar year 2021 of the auditor. The auditor specifies that *"five non-registered traders can intervene in trading strategies which represents a breach of applicable trading rules."* Furthermore, the auditor also held that it identified five non-registered traders who may intervene in trading strategies using the ID of a registered trader.
2. Based on these observations SVE requested further detailed information from X with letter from 2 May 2022. X was invited to respond to several questions regarding the findings of the auditor in the Audit Report.
3. X confirmed that there were occasions, when non-registered traders of X concluded trades on SIX Swiss Exchange, be it manually or by exerting algorithmic trading strategies in the response to SVE dated 20 May 2022 and forwarded a list that showed five non-registered traders of which four performed 685 transactions on SIX Swiss Exchange in total with a combined sum of trade notional value (in CHF) of approx. CHF 3.7 Mio in calendar year 2021. X further stated that all employed traders with interest in accessing the exchange system had been registered with the Exchange as of 20 May 2022.
4. SVE initiated an investigation on 5 July 2022 based on the findings above requesting further information. X was given the opportunity to provide a statement of position regarding the matter of the case.
5. X answered the subsequent questions of SVE on 29 July 2022. Amongst others, X informed SVE that in total eight non-registered individuals had conducted in total 1231 trades at SIX Swiss Exchange since the beginning of trading at SIX Swiss Exchange on 2 June 2020.
6. SVE transmitted on 24 October 2022 a sanction proposal to the Sanctions Commission (hereafter **SaKo**). SaKo invited X for a response.
7. X submitted its response on 21 November 2022, within the deadline set.
8. Sako informed the parties on the composition of the Delegation for the decision on 29 November 2022. No objection was raised.
9. The Delegation of SaKo decided the case in its session of 21 December 2022.

### 2. Formal Considerations

10. The Sanctions Commission is responsible for imposing sanctions against participants as per section 1.2 para. 3 Rules of Procedure SIX Exchange Regulation from 1 April 2020 ("**RP**").
11. According to section 2.5 para. 1 RP, no sanction proceedings may be initiated if the alleged violation of rules of SIX was committed more than three years in the past. The period for initiation begins the day on which the violation occurred. Once sanction proceedings have been initiated a sanction must be imposed within a further two years according to section 2.5 para. 2 RP. The transitional provision in section 7.2 para. 2 in connection with section 1 para. 1 RP specifies that, if the violation of the Trading Rules occurred on 1 April 2020 or later, the periods for the statute of limitations as described in clause 2.5 RP apply. For violations which occurred before this date, the periods for the statute of limitations under the applicable Rules of Procedure at the time of

the violation apply. The relevant provisions regarding the periods for the statute of limitations under previous applicable Rules of Procedure stipulated that no sanction proceedings may be initiated if the alleged violation was committed more than two years in the past.

12. Sanction proceedings are deemed to have been initiated when the investigative body takes action against the parties concerned as described in section 3.3 RP. According to section 3.3 RP an investigation will be initiated if there are sufficient indications of a violation of regulations. The parties concerned will be notified in writing of the initiation and object of the investigation. Furthermore, the Parties will be informed in writing that the results of the investigation might lead to a proposal for a sanction, a sanction notice, or the stay of the investigation.
13. Since the alleged violations have taken place from June 2020 until May 2022 the periods for the statute of limitations as described in clause 2.5 RP apply. The investigation initiated by SVE with letter dated 5 July 2022 comprises alleged violations of the Trading Rules within the three years statute of limitation, namely since June 2020.
14. SVE informed X that the results of the investigation might lead to a proposal for a sanction, a sanction notice, or the stay of the investigation. Therefore, the requirement to inform the participant about the possible outcome of the investigation was complied with. X was also granted the opportunity to state its position in writing according to section 3.3 para. 2 RP with letter from 5 July 2022. The statement of X was sent to SVE with letter from 29 July 2022.
15. Where the provisions of the Trading Rules have been violated, the Regulatory Bodies may impose sanctions on participants according to section 20 Trading Rules. The following sanctions can be issued against a participant: reprimand, suspension, or exclusion, fine and/or contractual penalty of up to CHF 10 million (section 21 para. 1 let. a) TR).

### **3. Substantive Considerations**

16. SaKo notes that the main facts are not disputed as such.

#### **3.1. Registration of Traders**

17. In accordance with section 4.3.2 TR, the participant is required to register traders who trade on the exchange. The exchange assigns each registered trader a Trader ID. The exchange system records all system entries together with the Trader ID. Participants are required to include the Trader ID of the trader who entered the trade on the exchange and who is, therefore, responsible for the order in question. To get registered on the exchange system, traders must fulfil certain requirements. They must – amongst others – possess sufficient specialist knowledge, in particular product and market knowledge required for trading on the exchange and acknowledge the rules and regulations of the exchange. At SIX evidence of sufficient specialist knowledge is deemed supplied if the trader has passed the trader examination. Expertise regarding the Exchange's rules and regulations as well as trading functions are examined.
18. The Trader ID is personal but may be given to other traders registered with SIX 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 and the proxy rules 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 violation of section 4.3.2 TR may prevent identification of the person responsible for a given entry.
19. X stresses that it is an algorithmic trading firm. All algorithmic strategies trading at the Exchange are operated by the operational trading support desk. All traders in this unit have been registered

with SIX consistent with the Firm's policy prior to the audit findings. X acknowledges that a limited number of people outside this desk incidentally closed out positions for the automated strategies strictly for risk mitigating purposes. This is where X misinterpreted SIX requirements: *"We would like to point out that the Exchange's rule book does not provide a definition of "Trader", and the activity at issue may more accurately be characterized as risk management or an administrative operation, as opposed to discretionary, risk taking "Trader" activity. In fact, X did not expect that closing out positions and reducing risk would be considered "trading" in the same fashion as a traditional trader that takes on risk."*

20. X elaborates that its strategies operational at SIX Swiss Exchange are developed and maintained by four independent research teams and that they are mostly quantitatively driven resp. executed by fully automated algorithms. Furthermore, according to X, once the development and testing cycles are completed, the strategies are handed over to the Firm's Operational Trade Support team, "OTS". The traders in this team monitor the performance and behavior of the algorithms during live trading. X further holds that for risk management purposes and only after specific compliance training, traders have historically been able to access the exchange system when their research team's strategies were brought into production and that access has been restricted only to X traders who are a member of one of the teams that develop algorithms to be deployed at SIX Swiss Exchange. X holds that there have been occurrences where a member of a research team has traded out of positions strictly for risk mitigation reasons.
21. X states: *"In general X does not limit access to employed traders in case their research group develops algorithms to be deployed on the specified market, after specific compliance training and independent risk limits are set. This gives the Firm the highest level of protection in case urgent action is required as highly qualified and trained individuals are able to quickly act to mitigate risk. However, at this moment our trading system is being modified in such a way that traders must be pro-actively enabled to access the Swiss market."*
22. X acknowledges that SIX Swiss Exchange trader IDs are strictly personal, and that SIX Swiss Exchange cannot accept any broader interpretations of their rules. X also specifies that no passwords have been shared among traders and that X has the concept of "Gateways", which are technical pipes to access the market (according to X they are pre-configured with credentials of order sessions and accessible to X traders only).
23. X further holds that the individuals historically have been free to make risk reducing adjustments (i.e., hedge or trade out of positions) and that at the time of the trading at issue, X believed that SIX Swiss Exchange trader IDs are strictly personal and anybody who accesses the exchange in a material way must be registered. X also acknowledges that it realized that regardless the type or volume of trading, a registration by the trader must be obtained and provides a list showing 1231 transactions performed by eight non-registered traders.
24. SaKo insists that any transaction at the stock exchange must be understood as "trading" irrespective of the motivation for the transaction. There is no distinction between "risk taking", "closing of positions" or "reducing risks" as far as the formalities to be respected. It cannot be the responsibility of the stock exchange to enquire for which reason a specific transaction was initiated and executed. This can only be done by the acting trading company. SaKo cannot understand why the company requests a differentiated treatment of the various kinds of transactions. All of them must be considered as "trading" and the company is obliged to ensure that all formalities are respected in detail and without exception.

25. Therefore, SaKo concludes that X failed to register the mentioned individuals with the exchange who conducted 1231 trades from June 2020 until May 2022 according to section 4.3.2 para. 1 TR using the personal Trader ID of other registered traders.

### 3.2. Proxy Regulation

26. According to section 4.3.2 para. 3 sentence 3 TR the Trader ID is personal but may be given to other traders registered with SIX Swiss Exchange to enable them to act as proxies.
27. The auditor highlights in the Audit Report under the Examination Point 2 "Trader Substitutions": *"As set out in section 2.1, we identified five non-registered trader who may intervene in trading strategies using the ID of a registered trader. According to art. 4.3.2 of the SIX Swiss Exchange Rule Book registered traders may only be represented by other SIX registered traders. We refer to our notice of reservation in section 2.1."*
28. Apart from the obligation to ensure traceability in case of representation, there is the personal character of the Trader ID, and even more importantly, the principle that Trader IDs according to section 4.3.2 para. 3 sentence 3 TR can only be used by other registered traders within the same organization and only for purposes of proxy. This component of section 4.3.2 para. 3 sentence 3 TR must be distinguished and is separate from the obligation to register traders who trade on the exchange according to section 4.3.2 para. 1 TR.
29. X argues that each order session with SIX has a default trader linked to it, and if the relevant trader ID is not actively included in the order template, the Exchange will assume that the default trader has entered the order. By applying strict enforcement policy on the one hand and not technically enforcing participants to enter a trader ID on the other, the Exchange would create a situation which increases members' risk of non-compliance. X has now mitigated this risk by technically enforcing a trader ID in each order.
30. SaKo states clearly that it is the sole responsibility of the trading company to ensure that all formalities are respected and that its technical systems as well as internal monitoring systems ensure full compliance with the rules.
31. To SaKo, it has been established that, even though, personal Trader IDs according to the regulation laid down in section 4.3.2 para. 3 sentence 3 TR can only be used by other registered traders, since X's beginning of trading at SIX Swiss Exchange on [...] eight non-registered traders used the personal trader IDs of (three) other registered traders to perform 1231 transactions on SIX Swiss Exchange.
32. SaKo concludes that X failed to ensure that the personal Trader IDs of registered traders were only given to (or used by) other registered traders at X. This constitutes a misuse of personal Trader IDs and thus a violation of section 4.3.2 para. 3 sentence 3 TR.

### 3.3. Duty to provide information

33. The participant is obliged according to section 4.5 para. 1 let. a) TR to inform SIX and/or SER immediately, if it has violated or is unable to comply with the Trading Rules.
34. According to X, before the Audit Report identified a reservation about trader access, it was not clear to X that its procedures could be violating the rules of SIX Swiss Exchange. Furthermore, X points out that it was made aware of the issue and need for resolution only after the finalization of the Audit Report earlier in 2022. X holds that it did not proactively notify the exchange about this issue when it became aware of it *"because the Exchange's Audit Team specifically told Firm staff that this was a relatively minor finding that was unlikely to lead to a formal sanction."* X, therefore,

- determined that the lack of any serious findings did not warrant any type of additional notification to the Exchange in addition to the audit report.
35. X states that *"the Firm did notify the Exchange of the audit report's finding through its auditor. This is no different than relaying the audit report findings to the Exchange via mail or any other method. To be sure, the Firm and the Auditors Engagement Letter confirms that the Auditor, as the designated auditor, would report any findings to the Exchange. More specifically, the agreement states, "[t]his letter shall confirm our understanding of our engagement to provide the audit services in the context of the SIX Swiss Exchange Ltd Participant audit for the business year ending 31 December 2021 and to report to Participant management and the Exchange accordingly."* Further, *the Auditor confirmed in their engagement letter to X "if we identify violations against the Securities Law and Exchange decrees or material deficiencies within the internal control system to ensure compliance with such laws and decrees this will be included in our reporting to the Exchange. Indeed, the Exchange's own rules under Section 19, paragraph 2 does not contemplate any distinction between whether the participant's own employees or that of the participant's auditors submit the required summary audit report on behalf of the participant. In review of these facts, we wish to reiterate that the Auditor did not note any adverse findings to the Firm as to any other rule violation than that of 4.3.2 para. 1 of the Trading Rules. X Trading is of the opinion that it was entirely reasonable for the Firm to have relied on its auditor to convey any deficiencies to the Exchange on our behalf, either via the audit report or by other means. X should not be subject to sanctions for a violation which only exists by the virtue of semantics. Bottom line is that Exchange was informed immediately on the Firm's behalf in accordance with the Rule."*
  36. The Trading Rules clearly oblige the participant to inform SIX Swiss Exchange and/or SER immediately, if it has violated or is unable to comply with the Trading Rules irrespective of the nature of the violation of non-compliance with the Trading Rules.
  37. SaKo concludes that the reporting obligation is and remains with the trading company irrespective of their agreements with the audit company. Any reporting of the audit company to SIX or SER cannot substitute this obligation. Only the direct reporting by the trading company to SIX can ensure that any occurrences are notified immediately. Any clauses in the engagement letter between X and *the Auditor* are internal to these parties and do not change the obligations of X to SIX.
  38. Even though X was aware of its violation of the Trading Rules by the submission of the audit report on 29 March 2022 at the latest, according to the list provided in Response Letter 2, an employee conducted further trades on SIX Swiss Exchange at least during the months of April and May without being registered at SIX Swiss Exchange.
  39. X accepts that unregistered traders executed trades after the finding was brought to light. *"However, that does not mean that X didn't take appropriate measures to address the issue. Immediately after the finding was brought to light, all unregistered individuals that had previously entered orders on SIX were required to prepare to be registered or to stop trading immediately. For those individuals that chose to get registered, X allowed a grace period until the end of June as specifically was discussed with and deemed appropriate by Y. In addition, while we now realize that the Auditor did not relay that information to the Exchange, it was X's belief that the Auditor would verify with the Exchange that X was taking corrective steps. Accordingly, X believes it is entirely appropriate for SER and the Sanctions Committee to recognize these mitigating actions. Our auditor responded to X's plan of action with the following words: "We are fine with your proposed amendments to the notice of reservation. Furthermore, we consider your management response appropriate in order to enter into an educated discussion with SIX Swiss Exchange about the trader set-up for algorithmic trading firms."*

40. SaKo insists that it is the sole obligation of X to ensure that the TR are fully implemented. This responsibility cannot be delegated to the audit company. Therefore, it is the obligation of X that the corrective action is appropriate and to discuss eventual transitional arrangements with SER. The opinion expressed by *the Auditoris* not binding to SER nor to SaKo.
41. Hence SaKo concludes that X not only failed to inform SIX Swiss Exchange and/or SER immediately, after it had realized its violation of the Trading Rules according to section 4.5 para. 1 let. a) TR. It also failed to prevent non-registered individuals from accessing and trading on SIX Swiss Exchange after identifying the violation of the SIX Swiss Exchange Trading Rules.

### 3.4. Appropriate organization

42. As per section 4.3.1 para. 1 let. b) TR the participant must issue appropriate internal guidelines and monitor compliance with the Trading Rules.
43. As elaborated, X failed to ensure that only employees registered as traders with SIX Swiss Exchange make entries into the exchange system of SIX Swiss Exchange from June 2020 until May 2022. It further violated section 4.3.2 para. 3 sentence 3 TR by failing to ensure that personal Trader IDs were only given to other registered traders at X from June 2020 until May 2022. It also failed to inform SIX Swiss Exchange and/or SER immediately, after it had realized its violation of the Trading Rules according to section 4.5 para. 1 let. a) TR and did not prevent non-registered individuals from accessing and trading on SIX Swiss Exchange after identifying the violation of the SIX Swiss Exchange Trading Rules.
44. X argues that "*the proposed rule violation that the Firm "failed to monitor compliance with the Trading Rules as stated in section 4.3, in particular 4.3.1 para. 1 let. b), Trading Rules" also must be weighed against the facts of this isolated incident and the Firm's structure. X takes its responsibilities as a member of the Exchange (and broader European market) seriously. The Firm has set up organizational structures that are appropriate and effective for SIX and all of the other markets on which it trades. The Firm's [...] audit (report date March 31, 2021) found no issues and the subsequent audit found no issue other than the registration of these individuals (who were appropriately qualified and experienced) who placed risk-reducing orders only. At all times, both these risk-reducing orders and the algorithm-generated orders were under the constraints of the Firm's robust independent Risk function. The Firm's Compliance team performs daily surveillance checks and maintains real-time alerting for a variety of potential abuses in line with SIX regulations and that of its home regulator, the AFM. Not only does X have a clean disciplinary history at SIX, but the Firm, in fact, has never been subject to any disciplinary history anywhere*".
45. SaKo notes that X explained in its responses that they did not realize that their organization and internal control mechanisms could lead to a violation of the TR in respect of the registration of traders. The deficiencies were only recognized after the audit report. Therefore, SaKo concludes that there was a systematic violation of the rules even if the absolute number of transactions is relatively low compared to all transactions conducted. However, a systematic violation of the TR is serious even if only a small proportion of transactions are concerned.
46. In failing to take the required measures, X failed to comply with the requirement of an appropriate organization according to section 4.3 Trading Rules.
47. Therefore, SaKo concludes that X did fail to monitor compliance with the Trading Rules and therefore did not have appropriate organization to ensure compliance with the Trading Rules.

### 3.5. Conclusion

48. After assessing the available documents, namely the Audit Report and the participant's responses as well as SVE's analysis, it has been established to SaKo that:
- X failed to register traders who traded on the exchange with the exchange according to section 4.3.2 para. 1 Trading Rules;
  - X misused personal Trader IDs by failing to ensure that they were only given to other registered traders at X according to section 4.3.2 para. 3 sentence 3 Trading Rules;
  - X failed to inform SIX Swiss Exchange and/or SER immediately after realization of its violation of the Trading Rules according to section 4.5 para. 1 let. a) Trading Rules;
  - X failed to monitor compliance with the Trading Rules as stated in section 4.3, in particular 4.3.1 para. 1 let. b), Trading Rules.

## 4. Determination of the sanction

49. Decisions on the imposing of sanctions take into account the gravity of the violation, the degree of fault and any previous sanctions imposed on the participant (section 21 para. 2 TR).
50. In reaching at its decision, the Sanctions Commission is not bound by the sanction proposals submitted by the investigative bodies (Art. 4.4 para. 4 RP).
51. In recent years it has become clear that it is necessary to impose stronger sanctions for violations of the rules of the Exchange. The Financial Market Surveillance Authority expects that Stock Exchanges in Switzerland enforce all applicable rules with strict measures. The Sanctions Commission already warned earlier 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 its current practice. The purpose is not only to penalize the past, but also to prevent breaches of the rules in the future. The sanction should in fact have a preventive effect (SaKo 2016– SER 29/15): *"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 ... The sanction should have a preventive effect."* In 2020, this policy was confirmed in the decision SaKo 026/19 taking a first step to impose higher sanctions, as well as in cases decided in 2021 and 2022.

### 4.1. Severity of the breach

52. Consistent compliance with the rules for registering traders as well as traceability is essential, since it is the only way to ensure unequivocal accountability for entries made in the exchange system. The identification of the person responsible for trades is an indispensable prerequisite for trade surveillance and, hence, for securing fair and transparent financial markets.
53. It is not disputed that eight non-registered traders performed 1231 transactions on SIX Swiss Exchange since X's beginning of trading at SIX Swiss Exchange on 2 June 2020.
54. X re-emphasizes *"the relatively low number of risk-mitigating trades that were executed by the individuals in focus, being no more than [...] % of all its trades at the Exchange during the relevant period. In absolute numbers and on average it comes down to no more than 10 trades per person per month over the observed period. Furthermore, no less than 83% of those trades in question were executed by the same individual"*.

55. SaKo considers that X has not been sanctioned before and was willing to cooperate in the scope of these investigations. X further acknowledges its failure to ensure that only registered traders have access to the exchange system of SIX. Additionally, 1231 transactions are a relatively small amount compared to the total amount of transactions conducted by X at SIX Swiss Exchange in this period. Furthermore, as of 29 July 2022, according to X only SIX Swiss Exchange registered traders were technically able to enter orders to the exchange system.
56. It is and remains the responsibility of the participant to ensure that only individuals registered as traders with SIX make entries into the exchange system of SIX Swiss Exchange. It is also the responsibility of the participant that personal Trader IDs are only given to other registered traders and to inform SIX Swiss Exchange and/or SER immediately upon violation of the Trading Rules. This holds true even more for algorithmic trading setups. In its Decision in the procedure SaKo 061/21 from 30 November 2021, the Sanctions Commission has established in point 53 that for those transactions initiated by automated algorithms, under the responsibility of the trading managers, it is even more important that systems involving automated algorithms respect the respective rules.
57. However, a system was operated by X giving rise to systematic breaches of the Trading Rules during nearly two years. This trading setup enabled individuals to submit orders to SIX Swiss Exchange irrespective of their registration with SIX Swiss Exchange.
58. Due to the trading setup giving rise to systematic breaches of the relevant trading rules, the trades performed by individuals not registered with SIX misusing the personal trader ID of three registered traders even after identification of the Trading Rule violation and the failure to inform SIX or SER adequately about the violation of the Trading Rules, SaKo judges the severity of the breach medium.

## 4.2. Degree of fault

59. The TR requires issuers to ensure compliance with the TR, additional rules and related implementing decrees at all times. In the present case, it should be noted that the issue at stake is the sanctioning of a legal person and not of a natural person. The participant shall be sanctioned if it is accused of not having taken all necessary and reasonable organizational precautions to prevent a breach of the obligations entered under the TR. Accordingly, the assessment of fault is carried out according to largely objective standards. The conduct of the natural persons or bodies acting on behalf of the participant are attributed to the participant. (see decisions of the Sanction Commissions of 14 April 2015 [SaKo 2015-AhP-/15], number 19; of 30 July 2010 [SaKo 2010-CG-II/10/SaKo 2010-MP-I/10], number 13; sanction notice of SIX Exchange Regulation AG of 12 August 2013 [SER-KTR-FOR-I/13], number 28; of 4 February 2013 [SER-MT II/12/SER-AHP I/12/SER-Listing I/12], number 103; these considerations are relevant to violations of TR as well).
60. In the assessment of the degree of fault, the Sanctions Commission's consistent practice is to expect from participants, compliance with stock exchange regulations without further ado. Because of the trader's duty of care, every trader is expected to be familiar with the applicable stock exchange rules, commentaries, and practice of the judicial bodies. Any breach of the rules and regulations must raise a presumption of negligence of the issuer in failing to discharge its duty of care (see sanction notice of SIX Exchange Regulation of 11 October 2013 [SER-AHP-/13],

number 49; of 4 February 2013 [SER-MT II/12/SER-AHP/12/SER-Listing I/12], number 104; these considerations are relevant to violations of TR as well).

61. X states that the company, *"including its affiliates of the X Trading Group, is one of the most active trading firms on global markets. The Firm has a proven track record exhibiting that it understands what it takes to run its operations in a sound and safe manner. At the same time, we will acknowledge and correct any determined wrongdoings or oversights. In our experience to date with regulators where there existed a difference of opinion, we have found that disputes are best resolved from a setting of understanding and collaboration rather than enforcement."*
62. Even though X was aware of its violation of the Trading Rules at the latest by the submission of the audit report on 29 March 2022, X failed to inform SIX Swiss Exchange and/or SER immediately upon violation of the Trading Rules. Moreover, further trades were conducted by non-registered traders hereafter in April and May 2022 and, therefore, when X was aware of the violation of the Trading Rules. Hence, the participant has acted even with intent in these cases. However, SaKo counts to the benefit of X that they relied (although unjustified) on the opinion of *the Auditor* to allow these transactions. Therefore, SaKo exceptionally does not count this as an aggravating factor.
63. Overall, SaKo considers the degree of fault as medium negligence.

#### **4.3. Previous sanctions and sensitivity to sanctions**

64. SaKo notes that X has not been sanctioned before.
65. Sensitivity to sanctions is not mentioned in the criteria for sanctions according to section 21 para. 2 TR. However, SaKo considers sensitivity to sanctions as a fundamental principle of any sanction system. In the current case, there are no factors in the file nor requests that would underline a special sensitivity to sanctions.

#### **4.4. Amount of the sanction**

66. Art. 21 para. 1 lit. a) TR foresees the possibility to impose a fine against a participant, which may amount up to CHF 10 million.
67. X *"would appreciate a more pragmatic and accommodating approach from the Exchange, which would have led to the same change of behavior. "Instead, we find the proposed penalty disproportionate to the offense." X therefore respectfully requests that the sanction reflect the equivalent of a minor rule violation for a single rule breach (e.g., violation of section 4.3.2 para. 1 of the SIX Swiss Exchange Trading Rules) and the proposed penalty be reduced to be more in line with this single violation."*
68. As mentioned above, regulators, participants and the public expect that the SIX Group enforces the rules strictly including by imposing substantial sanctions. In recent times, other trading firms violating TR by enabling access to non-registered traders have been sanctioned with amounts substantially over CHF 100'000.
69. In the current case, SaKo considers the systematic character of the violation as aggravating factor as well as other elements elaborated above as mitigating.
70. In view of the aforesaid, the sanction is set at CHF 75'000, remaining in the low range of possible fines according to Art. 21 para. 1 lit. a) TR.

## 5. Information for the general public

71. The Sanction Commission may publish the legally binding decision in a summarized, and anonymized version. Section 21 para. 3 TR allows disclosure of sanctions imposed as well as of the underlying violations to the public and other participants even with naming. As per section 6 para. 8 RP legally binding decisions of the Sanctions Commission are published on the SIX Exchange Regulation website at least in anonymous form.
72. SaKo considers that there is no need nor general interest to name the participant in the publication in the current case. Therefore, the decision shall be published in anonymized form on the website upon entry into force.

## 6. Costs

73. In accordance with section 4.4 para. 1 let. g) RP, the Sanctions Commission must also include the costs in its decision. The executive bodies may require the Parties Concerned to pay all or some of the costs of the proceedings or of any other specific expenditures such as costs for expert opinions and the processing of records, provided that, according to section 2.9 para. 1 let. a) RP, sanctions have been imposed; or, according to section 2.9 para. 1 let. b) RP, the Parties Concerned were responsible for those costs being incurred owing to a violation of procedural Obligations.
74. In case of sanction proceedings, SER charges for costs which are determined based on the expenditure incurred (Ciph. 3.7 in connection with Ciph. 4.1 of the List of Charges Regulatory Bodies). In the present case, these costs amount to CHF 6'000. The costs of the Sanctions Commission amount to CHF 3'000. Both the SER costs and the Sanctions Commission costs shall be borne by X, amounting to total CHF 9'000.

Zurich, 14 January 2023