Unless specifically required to do so, an account-keeping institution does not have to provide information or alerts intended for the account-holder to an agent who has been granted a general power of attorney.

If an account-holder grants a general power of attorney to an agent, to whom should account information be sent? If the account-keeper needs to provide an urgent notification about an account event, should this alert also be sent to the agent?

The facts

Mr D has a general power of attorney covering the securities account of his adult daughter and carries out stock market trades using that account. He took a risky position on the account by buying 9,444 X shares on a deferred settlement basis and 10,700 X shares on a cash settlement basis.

On 2 December, the account-keeper liquidated the deferred settlement position because of insufficient collateral, since securities for deferred settlement could not be collateralised with the same cash-settled securities[1].

Mr D argued that the account-keeper failed to inform him automatically about this situation on 2 December under his power of attorney. Because the issue involved a collateral shortfall, Mr D felt that the email, which was sent only to his daughter, should have been sent to him personally.

After lodging a complaint with the account-keeper and being refused compensation, Mr D turned to me.

The analysis

I told the account-keeper about Mr D's complaint and asked it to provide its observations.

The account-keeper said that it had informed Mr D's daughter in an earlier email dated 8 November that her securities account was inadequately collateralised and asked her to rectify the situation. She was given until 1 December to do so. This time period was itself exceptional, insofar as the situation had just been detected following improvements to the system for identifying inadequately collateralised clients.

The account-keeper said that if corrective actions were not taken within the specified time, it was required to liquidate the deferred settlement positions by 2 December at the latest.

It felt that it had duly informed Mr D's daughter, as account-holder, about her duty to take corrective action and was thus unable to accept the compensation claim.

I obtained for review a copy of the general power of attorney held by Mr D in relation to his daughter's securities account.

As regards the information provided to Mr D's daughter when the account was found to be inadequately collateralised, I asked for and obtained from the account-keeper copies of the emails in question. I saw that an email was sent to Mr D's daughter on 8 November 2016 at 1:25 pm telling her that her securities account was inadequately collateralised and asking her to rectify the situation by 1 December 2016 at 5:35 pm.

My proposal

[1] AMF GR Article 315-15: "... In any event, long positions in a given financial instrument cannot be collateralised with the same financial instrument. "

After reviewing the power of attorney, I saw that Mr D's daughter had indeed authorised her father to act in her name and on her behalf to carry out any administrative acts or disposals on her securities account.

However, as regards the various documents and information that the account-keeper might send to Mr D's daughter, there was no specific clause indicating that they should also be sent directly to her agent.

A distinction needs to be drawn between the transmission of emails (particularly margin calls) to the address provided by the account-holder, and the access that Mr D may have had in his capacity as agent through the "*e-statements and documents*" page to the client space showing transactions on his daughter's account (notably trade confirmations). For this reason it seemed to me that, in the absence of specific arrangements, it was right for the account-keeper to send requests to correct the collateral situation directly to the email address of Mr D's daughter, who remains the sole holder of her securities account.

It also seemed appropriate to me that since the holder failed to take corrective steps within the allotted time, the account-keeper followed the procedures set out in Article 5 of the account agreement and sold the 9,444 non-collateralised X shares on 2 December. The account-holder was responsible for informing her agent of this.

In view of the above, I saw no evidence to challenge the assessment of the account-keeper, which resulted in its rejection of the compensation claim.

Lesson to be learned

Unless specifically required to do so, an account-keeping institution does not have to provide information or alerts intended for the account-holder to an agent who has been granted a general power of attorney.

If the agent and principal want specific notification arrangements, they need to include these in advance in the account's terms and operating procedures and agree to them with the account-keeper.
In this case, since it was not specifically required to do so, the account-keeper had no duty to provide information to the agent. It was up to Mr D's daughter to tell her father about the alerts issued by the account-keeper.