***Case of the month, October 2018***

***On the correct use of the AMF Ombudsman: neither too early nor too late…***

In addition to questions regarding the remit of the AMF Ombudsman - the limits of which are sometimes complex - the admissibility of disputes submitted to it is subject to compliance with other conditions, which are still too often overlooked by certain retail investors.

This month’s case offers an opportunity to review these conditions.

**The facts**:

On 8 December 2006, Mr B acquired 100 shares in the company S. at €19.05 per share in an open price offer, based on the recommendations of his adviser. After noting a sharp decline in the value of his assets, Mr B solicited the AMF Ombudsman.

Mr B believed he had been the victim of a lack of information and advice from his financial institution and wished to cancel his subscription.

He told me that at the time of this subscription, his adviser had informed him that the share value was guaranteed after an eight-year holding period. Claiming to be a novice in financial matters, Mr B affirmed that at the time of the subscription, he had received no precise information on these securities and had not been warned of the risks associated with them.

**The analysis:**

After careful examination of Mr B’s request, I questioned his bank several times to request the documents proving that the investment services provider had supplied the appropriate information to its client with regard to risk and had verified that the proposed product was in line with Mr B’s financial situation, experience, and knowledge and suited his needs and objectives[[1]](#footnote-1).

After several exchanges, however, the bank contacted me again to provide me with a judgement, not included in the case file, that had been handed down eight years before on the same dispute with this retail investor.

**The recommendation**:

I informed Mr B that I could no longer be involved in this dispute insofar as it had already been subject to a judgement. In accordance with Article L. 612-2 of the French Consumer Code, a dispute cannot be examined by a consumer Ombudsman if it has been previously examined or is under examination by a court.

**Lesson to be learned**:

It is important to remember certain basic principles of mediation.

AMF mediation is a public service provided to retail investors free of charge in accordance with law. It falls within the framework of consumer mediation resulting from the EU Directive of 21 May 2013, which was transposed into the French Consumer Code and came into force on 1 January 2016.

Disputes may only be validly submitted to the AMF Ombudsman if the retail investor can prove that they have first attempted to resolve their dispute with the firm directly by submitting a written complaint. Only if the response provided by the institution does not satisfy the retail investor or if no response is received within two months from the complaint may the retail investor then contact the Ombudsman.

The Ombudsman is not the firm’s customer service, but a third party independent of the two parties engaged in the dispute.

However, the law stipulates that the retail investor must not solicit the Ombudsman too late, as the written complaint must be dated within one year to be considered admissible.

Moreover, as was the case in this instance, the Ombudsman is not authorised to intervene when a dispute has been previously examined or is under examination by a court or by another Ombudsman.

In this case, the other inadmissibility results from the will of public authorities to preserve the wholly amicable nature of the mediation procedure. If the consumer has chosen to solicit a civil court or to file a complaint with the criminal court, they can no longer pursue the attempt to resolve the dispute amicably. It is too late… and contradictory.

Finally, the legislature has also made a provision for rare but real cases in which the Ombudsman cannot examine the dispute as the request is clearly unfounded or abusive.

When the complainant contacts the Ombudsman via the [form](https://www.amf-france.org/en_US/Formulaires-et-declarations/Contact?lst_select_form_theme_id=mediation) on its website, they will first be asked to answer a series of questions that enable the Ombudsman to filter requests that cannot be examined by the latter for these various reasons. In the interest of good practice, savers and investors are therefore advised to use this form rather than a written letter.

**Useful link**:

Mediation form

1. Article L. 533-4 of the Monetary and Financial Code; Article 321-45 of the AMF General Regulation (in force at the time of the events). [↑](#footnote-ref-1)