**Case of the Month February 2019**

**Note that while investors have the right to possess deposit accounts, this is not the case for securities accounts.**

Retail investors do not have the right to require their bank to open a securities account. The Law of 24 January 1984, which establishes the right for a person to possess a deposit account, is not intended to apply to any type of account.

The case I am presenting to you this month gives me an opportunity to remind you of the scope of this principle.

**The Facts**

In August 2018, Mr D. applied to open an ordinary securities account in the name of the simplified joint-stock company (SAS) of which he is the CEO.

The bank informed him that it was not authorised to open such an account for a company with variable capital: in fact, the institution did not have the procedures and tools it needed to determine the effective beneficiaries in variable capital companies.

Nevertheless, Mr D. persisted with his application and requested my intervention to secure the opening of a securities account, while claiming the loss of investment opportunities.

**Investigation**

In addition to the technical and procedural constraints referred to by the institution, I examined this case in the context of the regulations relating to accounts and deposits and with regard to the documents provided by Mr D.

As a reminder, Article L. 312-1 of the Monetary and Financial Code limits the freedom of banks to refuse to open an account. It provides for the right to open a deposit account at the credit institution of one’s choice, provided that a deposit account is not already held in France.

The same article then requires the institution that refuses to open the deposit account to provide its reasons in writing (on paper and on another durable medium if requested by the applicant) and to provide a certificate of refusal informing the applicant that he or she can exercise his or her right to an account through the Banque de France. The Banque de France then quickly assigns a credit institution to the applicant. The choice of institution is made within one working day of receipt of the required documents (defined by the Order of 30 May 2014).

It is important to clarify that although the bank assigned by the Banque de France cannot refuse to comply – even if the said bank has already excluded the person concerned from its clientele – it may nevertheless restrict its provision to basic services whose content and pricing conditions are specified by decree.

These basic services include:[[1]](#footnote-1) cash deposits and withdrawals, cashing cheques and bank transfers, and issuing payment cards and bank statements.

However, these regulations are intended to apply only to applications to open a deposit account, in other words, to an account allowing the recording of cash transactions that will increase or decrease the initial deposit.

**Recommendation**

Mr D. applied to open a securities account capable of recording dematerialised financial instruments, which would thus enable stock market transactions to be carried out.

However, the opening of an account for such a purpose clearly does not constitute a basic banking service, as defined above.

Moreover, as a reminder, the institution’s refusal was based on lacking the means to identify the effective beneficiaries in variable capital companies. It should be noted that this bank complied with the AML/CFT (prevention of money laundering and terrorist financing) system provided for in Articles L. 561-2 and following of the Monetary and Financial Code, as amended by Order No. 2016-1635 of 1 December 2016.[[2]](#footnote-2)

Before entering into a business relationship, credit institutions must verify the identity of their client and, where applicable, the effective beneficiary of the business relationship, in other words, the natural person who ultimately controls the client or for whom a transaction is executed, or an activity is carried out.

In view of all these elements, I informed Mr D. that I had no power to take further action with the institution.

**Lesson to be learned**

There is no right to a securities account. A retail investor cannot therefore legitimately require his/her bank to open such an account since the right to open an account applies only to the basic banking services associated with a deposit account.

Therefore, in such a case, the bank cannot be reproached for refusing.

1. Article D. 312-5 of the Monetary and Financial Code. [↑](#footnote-ref-1)
2. In this case, the institution was thereby demonstrating the vigilance required to open a securities account, pursuant to Order No. 2016-1635 of 1 December 2016, transposing Directive (EU) 2015/849 of 20 May 2015, known as the Fourth Anti-Money Laundering Directive.

For information, the Fifth Anti-Money Laundering Directive (Directive (EU) 2018/843 of 30 May 2018), published in the Official Journal of the European Union on 19 June 2018 but not yet transposed in France, has extended the scope of the Fourth Directive. [↑](#footnote-ref-2)