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The Ombudsman's Case of the Month
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When a regular securities account cannot be transferred because it contains securities of companies in court-ordered liquidation

At a time when new legislative provisions[1] are facilitating banking mobility, investors often still find it difficult to transfer their regular securities accounts and have to wait an unusually long time. There are any number of reasons: insufficient information, lack of communication and, as with this month's case, the inclusion in the account of securities of companies in insolvency proceedings.

The facts

Mr N. had a regular securities account with his original bank and, for several months, had wanted to transfer his account to a new institution where he had taken out a mortgage. But the transfer was on hold: the target institution believed it could not take Mr N.'s securities account as is, as it contained investments in two US companies that had been delisted but whose court-ordered liquidation had not yet been completed.

To break the deadlock and as he was concerned he would have to pay custody fees on these two worthless investments, Mr N. sent a letter, return receipt requested, in which he requested that these two stocks be removed from his account. This letter went unanswered.

Mr N. therefore asked me to intervene with his original bank to find a solution that would allow him to transfer his securities account and not be charged for the investments that remained at his original bank.

The analysis

I contacted the original institution and asked it to provide its comments.

At first, I was told that the second bank had not submitted a request to transfer the securities account.

The original bank confirmed that the securities that were preventing the transfer had been delisted as these two companies were in court-ordered liquidation and had been placed under Chapter 7 protection under Title 11 of the US Bankruptcy Code.

This institution explained to me that its depositary had nevertheless told it that the securities for one of the two investments had been written off. The original bank told me that, conversely, for the second investment, the securities could not be written off immediately as the company was still in business.

The original bank therefore proposed that:

- Mr N. contact the second institution to formalise his request to transfer the "transferable" securities, i.e. the entire portfolio with the exception of the two securities investments that were preventing the transfer;
- Mr N.'s securities account remain open, with no custody fees, in its books until the second investment could be exited.

The recommendation

I found the solution proposed by the original institution to be very fair and believed it would allow the client to transfer his securities account and avoid being charged for the worthless securities on the books at the original bank.

[1] Law of 6 August 2015 on economic growth, activity and equal opportunities, known as the "Macron law", establishing a mechanism for banking mobility that took effect on 6 February 2017

I therefore asked Mr N. to take the necessary steps with the second bank to initiate the transfer of his securities account under the conditions proposed.

The lesson to be learned

First, it should be noted that if the securities of a company become worthless due to court-ordered liquidation, they can only be removed from the client's portfolio when the company ceases to exist, i.e. when a judgement has declared that the court-ordered liquidation has been completed due to insolvency. The company is not dissolved until that last moment. Financial institutions therefore cannot respond favourably to requests from clients who would like these worthless securities to be removed from their portfolio.

It should also be acknowledged that, in general, original institutions are not overly eager to transfer securities accounts, as they have little desire to see clients take their business elsewhere.

We should therefore applaud, in this case, the initiative taken by the original institution which, under the Ombudsman's supervision, offered to keep an investment in worthless securities on its own books without charging custody fees.

The solution, which asks institutions to exempt worthless securities from custody fees, would ideally be widely adopted to prevent certain irritating disputes.

It should nevertheless be stressed that when this issue arises with an equity savings plan (*plan d'épargne en actions*, or PEA), it poses specific challenges. While investors can have two securities accounts, they cannot, under any circumstances, have two PEAs. The Ombudsman calls for a discussion about possibly changing the regulations to offer more flexibility and, in particular, to allow worthless securities to be removed from a PEA with no negative effects for investors.

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