20 December 2019

Opening a securities account: what are the bank’s anti-money laundering obligations?

Opening a securities account is not automatic! In addition to the usual formalities required to open a securities account, the bank must also be able to carry out specific and very stringent due diligence with respect to money laundering, and prospects should be aware of this. This is illustrated by this recent mediation case.

The facts :

On 2 March 2018, a French non-trading real estate company (société civile immobilière (SCI)), asked bank A to open a securities account for it and to invest up to €230,000 in several funds by remitting a cheque for the same amount.

On 16 March 2018, bank A contacted the SCI to inform it that the application for opening the securities account was incomplete and asked the SCI to send it the minutes of the general meeting authorising the opening of the securities account.

On 9 April 2018, bank A received the full minutes and was asked to invest the money deposited as soon as possible, in accordance with the initial instructions.

On 20 April 2018, the securities account was opened in the name of the SCI and the funds were invested on 23 April as per the SCI’s instructions.

Nevertheless, since the SCI considered that the sums entrusted had been invested later than it had requested, it contacted the bank to ask for a reinstatement dated 29 March 2018, the date on which it considered that the full application had been submitted. This is because, between 29 March and 23 April, the date on which the instructions were executed, there had been a sharp increase in the valuation of the selected funds, which made the operation less advantageous for the SCI.

The bank offered a gesture of goodwill amounting to €400 to the SCI. Considering the gesture insufficient, the SCI sent the bank a second claim asking for the adjustment of its positions.

Bank A offered another gesture of goodwill of €400 in addition to the €400 paid previously.

Considering that this proposal did not fully cover its loss, the SCI requested my intervention and has asked for a real reinstatement.

The investigation :

For this case, I queried bank A on several occasions.

It informed me that, as stated in its subscription documents, it had asked for the minutes of the SCI's general meeting that authorised the opening of the securities account.

However, the document submitted on 29 March 2018 contained some inconsistencies. Bank A therefore contacted the SCI again to ask for minutes that were compliant. The full minutes were sent on 9 April.

Bank A then pointed out to me that following research that it had conducted under its anti-money laundering and terrorist financing obligations, the legal representative of the SCI had appeared as a "politically exposed person". This particular circumstance had blocked the opening of the securities account until it was finally established that it was only a homonym.

Once the doubt had been removed, the bank was able to cash the cheque for €230,000 and the instructions were executed on 23 April.

Bank A pointed out that:

- As mentioned in its terms and conditions, clients must submit a certain number of supporting documents before opening a securities account. In this case, the opening of the

securities account was necessarily and traditionally conditional upon the receipt of the minutes of the general meeting of the company that conferred the power of attorney to its representative.

- As provided for by regulations, specific and additional checks must be carried out in the fight against money laundering and terrorist financing.

In the light of these elements, bank A considers that it complied with its legal obligations and has informed me that it did not wish to go beyond the gesture of goodwill of €800 that it had offered, €400 of which had already been paid out.

Recommendation :

In this case, I identified two processing delays in the opening of the securities account in the name of the SCI:

- an initial delay from the request to open the securities account (2 March) to receipt by the bank of a complete application (9 April): here, the delay was due in particular to the specific formalities required for legal entities.

- A second delay from 9 April to the effective opening of the securities account (20 April). It turned out that this delay was the result of the very strict and specific legal due diligence required of all financial institutions in the fight against money laundering. In this case, the opening of the securities account had to be deferred because the SCI's legal representative appeared to be a "politically exposed person" as defined in Article L. 561-10 [1] of the Monetary and Financial Code.

The concept of politically exposed persons (PEP) was introduced in the transposition of the third European Directive (October 2005) on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

Politically exposed persons are individuals that occupy or have occupied important public functions, not necessarily political, linked to a significant decision-making power. Individuals considered as persons known to be closely linked to a PEP client are also included. This category of person is defined in Article R.561-18 of the Monetary and Financial Code.

The regulations on PEPs require a high level of vigilance that is suited to the risk of money laundering and terrorist financing (AML/CTF), and the specific additional measures listed in Article R. 561-20-2, [2] upon the establishment of the relationship and throughout this relationship.

In view of all these elements, while I note that the opening of SCI's securities accounts was indeed delayed by the due diligence performed by the account-keeping institution, I cannot blame said institution for having complied with its legal obligations to combat money

laundering: the obligations imposed on account-keepers in this field are particularly burdensome and there are serious consequences for financial institution that fail to comply with these obligations [3].

Furthermore, I observed that as soon as the securities account was opened in the name of the SCI, the cheque received was cashed very rapidly and the investment instructions were executed.

In the light of these elements, I decided that there was nothing justifying any questioning of Bank A's analysis and did not grant the request for additional compensation.

Lesson to be learned :

In addition to the usual formalities required to open a securities account, the account holder must, at the same time, carry out very stringent due diligence with respect to money laundering.

At the time of establishment of the business relationship, the prospect is asked to fill out the "Know Your Client" questionnaire. Although the client may refrain from answering the questions about its knowledge of and experience in investment matters as set out in Article L533-13 of the Monetary and Financial Code, the bank will therefore be bound by an obligation to refrain from giving advice. However, the client may under no circumstances refuse to answer the bank's inquiries concerning anti-money laundering and the fight against terrorism queries. Otherwise, it will not be able to open the securities account with the bank, or if the securities account has already been opened, it will be closed.

It is important that the client or potential client be fully aware of these two separate types of obligations, which have different causes and therefore different consequences.

[1] The entities referred to in Article L. 561-2 shall apply enhanced due diligence measures to their clients in addition to the measures referred to in Articles L. 561-5 and L. 561-5-1, where: (…) 2° the client, or where applicable, its beneficial owner, (…) is an individual exposed to particular risks non account of the political, jurisdictional or administrative functions he performs or has performed on behalf of a State or of those that direct members of his family or individuals known to be closely associated with him who become closely associated during the business relationship perform or have performed;

[2] The entities referred to in Article L. 561-2 shall define and implement procedures, adapted to the money laundering and terrorist financing risks to which they are exposed that will enable them to determine whether their client, or its beneficial owner, is a person referred to in paragraph 2° of Article L. 561-10 or becomes such a person in the course of the business relationship. When the client, or his beneficial owner is an entity referred to in paragraph 2 of Article L. 561-10 or becomes such an entity in the

course of the business relationship, the persons referred to in Article L. 561-2, in addition to the measures set out in Articles L. 561-5 to L. 561-6, shall apply the enhanced due diligence measures below: 1° They shall ensure that the decision to establish or maintain a business relationship with this person can be taken only by a member of the executive body or any person authorised thereto by the executive body; 2° They shall examine the source of the assets and funds involved in the business relationship or transaction, for the purpose of assessing money laundering and terrorist financing risks; 3° They shall intensify the due diligence measures set out in Article R. 561-12-1.

[3] Article L. 531-36-1 of the Monetary and Financial Code

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