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In the event of an incomplete questionnaire, the bank must alert its clients but transmit their stock exchange orders

MiFID II increased the obligations of investment services providers (ISPs) regarding the assessment of their clients: more than ever, the ISPs must make sure that the planned product or service corresponds to their clients' profile. However, to do so, they must have the necessary information. Now, in some cases a client refuses to fill in the assessment questionnaire, making it impossible to determine their profile. As illustrated by the case that I will describe to you this month, the consequences of this vary depending on the investment service in question, but do not result in a refusal to transmit orders.

The facts

Mr B. informed me that, during the lockdown period, he wanted to open a securities account in order to invest on the stock exchange via an online brokerage site that is a partner of his traditional bank.

However, according to Mr B., the questionnaire used to determine his investor profile was very long and very precise, and this, in addition to the time required to confirm the opening of said account, discouraged him from going any further.



Mr B. specifies that his bank also allowed the opening of a "PEA" personal equity savings plan and that it accordingly very quickly confirmed opening of the plan in 24/48H, which enabled him to invest immediately.

On 15 April 2020, after opening his PEA plan, Mr B. therefore transmitted a buy order to the market for 95,000 shares of X, for a total amount of more than €50,000 euros. However, seeing the X share price fall and fearing he might lose everything, Mr B. sold his position, thereby booking a capital loss of around 50% of his initial investment.

Mr B. considered that, given his profile, he should not have been able to invest in the stock market, and considered that his financial intermediary failed in its obligations by not preventing him from performing the contentious transactions.

Mr B. therefore referred the matter to me to obtain compensation for the amount of the capital loss booked.

Investigation

I contacted Mr B.'s bank and asked it to submit its observations, in particular regarding the means used to gather information on the investment knowledge and experience of Mr B., to enable it to determine whether the service or the financial instrument was appropriate.

In response to my request, Mr B.'s bank first mentioned that he had been a client for several years and that he had indeed opened a "PEA" savings plan in March 2020.

The institution told me that Mr B. had chosen to open this plan completely digitally via the online bank.

Mr B.'s bank said to me that during the account opening process, the system asked him to fill in a questionnaire to know his knowledge and experience regarding investment and thus enable it to then assist him in his transactions. However, Mr B. refused to reply to this questionnaire and decided nevertheless to continue and complete the opening of his PEA plan.

Recommendation

I noted that Mr B. was invoking his profile as a "Beginner" in order to consider that his bank should not have permitted him to transmit his stock exchange order and that it had therefore, according to him, failed in its obligations.



Regarding this point, it should be remembered that, pursuant to Article L. 533-13 II. of the Monetary and Financial Code, in order to provide a simple order receipt and transmission service, and not an investment advisory service, investment service providers (other than asset management companies) "must ask their clients, especially potential clients, for information on their investment knowledge and experience in relation to the specific type of financial instruments or services proposed or requested, to be able to determine whether the service or financial instrument is appropriate.(...)"

If clients, especially potential clients, do not provide the information referred to in the first paragraph or if the information provided is insufficient, service providers shall notify them that they are not able to determine whether the financial service or instrument contemplated is suitable for them."

In other words, the institution has a duty to alert,^[1] and not an obligation to refrain from providing the requested service. So, contrary to what Mr B. argued, his bank was in no case obliged to refuse to transmit his order, but merely had to warn him. Now, it seemed to me that Mr B.'s bank, having no information concerning his knowledge and experience (since Mr B. had not wished to disclose this information), had warned him before transmitting the contentious order - which, moreover, was not his first transaction - and for each transaction initiated.

The fact that Mr B. chose to confirm his instructions despite the warning that was given to him could not, in my opinion, be attributable to his financial intermediary. I therefore considered that in this case there were no grounds for recommending compensation.

Lessons to be learned

The client assessment questionnaire is sometimes perceived as intrusive but is not merely a regulatory obligation. It is a document that is useful and important for both the bank and the saver. The bank, which is required by the regulations to submit it to clients, can thereby assess their profile and determine whether the financial service or instrument is suitable for them. It is therefore in the client's interest to fill it in carefully and accurately.

Moreover, as I have already had occasion to mention in a previous monthly case study,^[2] in the case of investment advisory services (or portfolio management services), the obligations of the ISP and the client's obligations to reply are more demanding:

- Firstly, the client assessment is more thorough: in addition to the client's experience and knowledge, the ISP must also gather information relating to their financial position,



including their ability to bear losses, and their investment objectives, including their risk tolerance;

- Secondly, if the client does not provide the required information, the ISP does not merely issue a warning to them but must refrain from recommending financial instruments to them (or from providing them with portfolio management services).

NB: Since January 2018, this obligation no longer appears in I. of Article L. 533-13 of the Monetary and Financial Code but under point 8 of Article 54 of the Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

[1] Note that when a client decides on their own initiative to buy or sell non-complex financial products, this is an "execution only" service: at the client's request, the bank executes the transaction after first informing the client that in such cases the bank is not required to assess whether the transaction is appropriate for the client (Article L. 533-13 III of the Monetary and Financial Code).

[2] If the client does not provide the information in the MiFID questionnaire, the bank must refrain from providing an investment advisory service

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