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## Preferential subscription right: investors, even non-shareholders, must be properly informed

During a corporate action, an account keeper may bring forward the closing date of the subscription period. However, investors must be made well aware of this. How should account keepers provide this information to investors, including non-shareholders, who wish to take part in a capital increase?

That is the question that I'll be answering in this case.

### The facts

Between 29 May and 2 June 2020, Mr. G. acquired preferential subscription rights of Company L. on the stock market.

On 9 June 2020, he decided to exercise his preferential subscription rights. However, his account keeper's customer service informed him that the subscription period had closed on 5 June 2020, which meant that he could no longer exercise his rights.

Mr. G. considered that the subscription period should not have closed before 9 June 2020 in accordance with the information contained in the prospectus distributed by the company and approved by the AMF. He referred to the timetable for the transaction, which was as follows:



25 May: Detachment of preferential subscription rights and opening of the trading period of preferential subscription rights on the market

27 May: Opening of the subscription period for the capital increase (period of exercise of preferential subscription rights)

5 June: Closing of the trading period of subscription rights (end of the listing period)

9 June: Closing of the subscription period.

Believing that he had been the victim of an error attributable to the services of his account keeper, Mr. G. contacted me to obtain compensation for the loss he sustained as a result of his failure to exercise his preferential subscription rights.

## Investigation

I questioned the account keeper who confirmed that he had received Mr. G.'s request to exercise his preferential subscription rights on 9 June 2020 and refused it on the same day because he considered that it had been submitted after the deadline.

Although the financial institution confirmed that the official timetable drawn up by Company L. did indeed specify that the subscription period ended on 9 June, it also informed me that it had set an earlier closing date for the subscription period for the capital increase for 5 June, i.e. two business days before the official closing date of the subscription period.

The account keeper informed me that since the European harmonisation of corporate actions, account keepers may change the response deadline in order to ensure smooth processing. In this case, the account keeper had set a deadline for exercising preferential subscription rights two working days from the official date.

To inform its clients of this, the account keeper explained that it had created a "pop-up", i.e. an alert window on its website, on the page of the information sheet of the security concerned, which was visible when the preferential subscription rights were acquired. This alert reminded investors that subscription periods could be shortened, and set out the timetable for Company L.'s securities transaction, in particular the subscription period, which, for the account keeper, was from 27 May to 5 June inclusive.



Consequently, the account keeper informed me that it considered that it had committed no fault in processing Mr. G.'s request.

## Recommendation

I have examined the details of this case very closely.

Let us first remember that during a capital increase, shareholders of the company concerned may be allocated preferential subscription rights in proportion to their share in equity capital.

They may then, at their convenience, either exercise these rights, i.e. subscribe for new shares at a lower price before the end of the subscription period, or sell them on the market throughout the rights negotiation period (listing period), since the preferential subscription rights are themselves listed on the stock market.

Unexercised preferential subscription rights may be traded on the stock market and acquired by investors, which is what happened in this case. The investors may then take part in the capital increase by exercising these rights and thus become company shareholders.

As I already stated in the March 2017 issue, and more extensively in my 2017 annual report (p. 32-35), Article L. 225-132 of the Commercial Code amended by the order of 31 July 2014 (No. 2014-863) provides that the trading period of preferential subscription rights opens two days before the subscription period and therefore also ends two days before the end of this period. It should also be added that, for administrative and technical reasons, account keepers may also reduce the response time for the exercise of the preferential subscription rights, so as to be able to have the time necessary to process the subscriptions to the capital increase.

The issue in this case was therefore not the validity of the process, but the information provided to the investor.

I always begin by checking the quality of this information traditionally through the securities transaction notice sent to the shareholder.

However, in this case, the securities transaction notice could not resolve the issue since, for capital increases, these notices are sent personally and only to the shareholders with preferential subscription rights prior to the transaction. However, Mr. G. was not a



shareholder of the company before the transaction, but had acquired his preferential subscription rights on the stock market, during the rights trading period.

However, in my opinion, an alert window that opens automatically when the security factsheet in question is consulted constitutes clear information, making it unequivocally clear that the closing date for subscription operations and therefore for the exercise of preferential subscription rights was, in this case, set for 5 June 2020.

I therefore found that there was no fault on the part of the account keeper regarding the investor's late application.

## Lessons to be learned

Whenever there is a change in the timetable for a securities transaction, account keepers must alert each investor likely to participate in the transaction. To this end, I think it would be a good practice to set up a "pop-up", i.e. an alert window on the account keeper's website, which would be visible as soon as the preferential subscription rights are acquired, as was done by this account keeper. In this way, anyone interested in purchasing preferential subscription rights would have immediate access to the information.


Of course, this information does not exclude the information that must be delivered personally to shareholders through the securities transaction notice that is sent to them.

Investors should also pay attention to the warning messages that appear, since this modified timetable takes precedence over the one initially set by the company.

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