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Securities transactions: the importance of providing information about the possible reply procedures

When an event, such as the payment of a dividend in cash or in new shares, a capital increase, or a public offer, that requires the transmission of instructions from the shareholder interested in a securities transaction occurs in the life of a financial instrument, the account-keeping firm must ensure that the terms and conditions for responding to the transaction, and in particular the appropriate reply channel, are perfectly clear, as shown in the case I will describe to you this month.

The facts

Mr P., who holds shares in company A, was informed by his account-keeping firm of a securities transaction. He was also informed that he could not enter his instructions online on his account-keeper's website, as was customary for other securities transactions. According to his account keeper, he had only two options: give instructions by telephone or by e-mail.

Since he wished to participate in the mixed public offer for the A shares he held, Mr P. chose to keep a written record by sending his instructions by email, and did not receive any notification of non-delivery or failure to deliver to the addressee.



However, at the end of the offer, Mr P. found that his instructions had not been carried out and that his A shares had been removed from his portfolio in return for a fixed amount of cash for each share held.

When he complained, his account-keeper told him that the email containing the securities transaction notice had been sent from a no-reply email address and that he should not have replied to this address. This was actually specified in the email.

However, Mr P. contended that this information was not included in the said e-mail and that the address was not displayed as such when the e-mail was received, which did not allow him to identify it as an e-mail sent with a no-reply email address.

Mr P. therefore challenged what he considered to be a lack of information from his account-keeper, which had resulted in a loss for him. He asked for compensation for this loss.

Mr P. then referred the matter to me.

Investigation

I questioned firm X which informed me of its observations on this case.

Firm X acknowledged that Mr P. had been ill-informed about how to respond to his participation in the securities transaction. The procedure for collecting investors' decisions differed from the usual procedure for securities transactions, and did not specify the procedures for responding by e-mail, stating simply: "Please send us your instruction: By email/By phone".

It should be remembered that a securities transaction can cover a wide range of events that may occur during the life of a financial instrument. While it can refer to "simple" transactions related to the life of a security, such as the payment of a dividend or a coupon, "complex" transactions, such as a capital increase or public offers (takeover, exchange, mixed) require that shareholders express their choice.

In this case, the mixed public offer is a transaction whereby an acquiring company offers to buy the shares of a target company from its shareholders. It pays them partly in cash, as in a takeover bid, and partly with its own shares as in an exchange offer.

This transaction therefore requires the intervention of the target company's shareholders, who may choose to contribute their shares in exchange for a cash amount (shareholders



exercise their right to withdraw their capital contribution), and/or to exchange them on the basis of a predefined exchange ratio of shares in the acquiring company (the shareholder considers that the potential of the synergy generated by the acquisition of the target company by the acquiring company is a future source of stock market performance).

Recommendation

After receiving these answers, I conducted a careful analysis of the case.

Regarding the securities transaction notice that did not specify how to reply by email, the account-keeper acknowledged that this was a mistake and explained to me that it therefore intended to modify the content of the emails sent to its clients interested in securities transactions by including the following statement: "Please send us your instruction: by email (do not reply to this email). Go to your account area in the Manage my accounts > Securities transactions > Replies to other securities transactions/By phone". I consider this corrective measure to be satisfactory.

Regarding Mr P.'s claim for compensation, the company has asked me about the appropriate procedure for rectifying the disputed transaction in this specific case.

I advised the company that it would be appropriate if the rectification led to complete return to the status quo ante, in accordance with the initial instructions given by Mr P. (the company would bear the cost for any difference in price).

Mr. P. subsequently confirmed to me that he had received X shares in the acquiring company, as well as the payment of the balance in the amount of X, as provided for in the securities transaction and as per his initial instructions.

Consequently, Mr P.'s petition received a favourable opinion.

Lessons to be learned

As illustrated in this case, a failure to receive instructions from a shareholder leads to a default choice (consideration of a fixed amount of cash for each share held), which may not satisfy the shareholder whose securities are subject to a securities transaction.

While shareholders are of course responsible for monitoring the securities in their portfolio and the securities transactions to which they are subject, it is the professional's duty to




provide information to ensure that the securities transaction notice is drafted as clearly as possible, and that it clearly states how the shareholder should reply to the notice.

Thus, this case highlights an important lesson for the professional:

Given that a securities transaction requires the receipt of instructions that are decisive for the future of a shareholder's portfolio, particularly in the case of transmission by email, it appears necessary for account-keepers to clearly specify to investors the channel through which they can convey their instructions or, more generally, inform them of the procedures for transmitting instructions that are accepted for this transaction.

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