AUTORITÉ DES MARCHÉS FINANCIERS

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A stock exchange order must be able to be cancelled or altered as long as it has not been executed

It sometimes happens that investors do not benefit from the possibility of cancelling or altering their order submitted to the market, although there would still be time, for example during a phase of suspension of trading, to prevent it from being executed at a very different price from what was expected.

But what happens when a client wants to cancel their order and is unable to do so despite proving their attempts, because they were unable to contact the account-keeper?

This case of the month analyses this misfortune that occurred for a client, and which came to a satisfactory conclusion by mediation.

The facts

On Saturday 28 February 2020, at 5.01 am, Mr X. placed two market buy orders by internet for 800 and 2,000 A shares listed on Euronext Growth.

On Monday 2 March 2020, as of 9:00 am, Mr X. tried to log in to the stock exchange area of his financial intermediary's website to check whether his buy orders had been executed. He specifies that he was unable to log in, due to the appearance on the site of a message indicating a technical problem. He explains that he then tried to contact the client service by telephone, in vain.

Around 9:30 am, Mr X. discovered on a stock market site that the price of the A share had increased to €25, representing a 145% rise from the closing price on 28 February 2020.

In the following hours, Mr X. tried to cancel his orders, without being able to do so. He says that he then got in touch by telephone with an adviser acting for the insurance institution, who did not, however, have the required access rights to enter a cancellation of the orders. This adviser testified in writing that she had been consulted along these lines.

According to the explanations of Mr X., listing of security A was suspended until around 11:00 am. He therefore imagined that his orders had not been executed due to insufficient provisioning.

The next day, once the transactions had been updated in his personal space, Mr X. noted that the cash account attached to his securities account showed a debit balance of more than €38,000. Thinking first that this was a mistake, Mr X. finally realised that his orders had been executed even though the credit balance was insufficient. Then, his financial intermediary sent him an email ordering him to make up the deficit or else penalties for lateness would be applied.

In order to get an understanding of the situation and ask for cancellation of the buy orders, Mr X. then contacted an adviser in the institution who told him: "we can no longer cancel orders once they have been sent to the market". He advised him to sell his securities in order to make up the overdraft.

Seeing no other solution, Mr X. explains that he sold the 2,800 A shares, whose price had fallen sharply, and most of his portfolio, in order to settle the debit on his cash account.

Under these circumstances, Mr X. called on me to intervene.

In support of his case, Mr X. specified that if he had been able access the online trading space, contact a telemarketing consultant or the trading room during the suspension period, he would have cancelled the two disputed buy orders. He demanded cancellation of the orders placed on 29 February 2020 and executed on 2 March 2020, and a refund of the amounts lost due to the malfunctioning of the website and the telephone platform.

Investigation

For the investigation of this case, I contacted the institution called into question, which informed me of its observations.

First, the institution confirmed the conditions in which the orders had been entered. It also specified that the check on the provision available on the cash account was calculated in relation to the last known closing price on the date of their entry, i.e. the closing price on 28 February 2020 of €10.20 plus an automatic margin of safety set at 2%. The institution added that, when the orders were entered, an alert was displayed concerning the major risks of price and liquidity fluctuations for this security.

Second, the institution pointed out that orders sent to the market cannot be cancelled, under the terms of the article relating to the characteristics of orders included in its general terms and conditions.

The professional also asserted that he had not received a call from Mr X. and therefore did not recognise Mr X.'s desire to cancel the orders before they were executed.

Upon receiving this information, I carried out a thorough analysis of the case.

First, I noted that the A share had undergone a suspension of trading from 9:00 am to 11:03 am due to heavy demand leading to a rise in the share price.

Next, I tried to determine whether a technical malfunction had indeed affected the financial intermediary's website and telephone platform. In the absence of any details from the professional on these points, I adopted the written testimony which was sent to me by the company officer, which corroborated Mr X.'s intention to cancel the contentious orders during the suspension period and the difficulties that he had faced in trying to contact the institution.

Finally, I contacted the financial intermediary to remind it of the terms of Euronext's harmonised market rules, and in particular the provision according to which an order can be cancelled as long as it has not been executed. Lastly, I drew the professional's attention to the evident inaccuracy of its general conditions in that they maintained that an order could not be cancelled once it has been entered by the client.

Recommendation

In light of the evidence of the case and the testimony submitted, but also taking into account the market rules, it appeared to me that Mr X. was entitled to obtain the cancellation of his order which, although submitted to the market and recorded in the central order book, had not yet been executed. The institution therefore agreed to carry out the necessary repayment in full.

Lessons to be learned

A stock exchange order is above all a mandate given by a client to their account-keeper.

While it is true that verification of provisioning, as provided for by the bank's general conditions, takes place when the order is given and not when the order is executed, it is nevertheless a fact that, until it has been executed, the stock exchange order remains cancellable and modifiable, just as any mandate given pursuant to Article 2004 of the French Code of Civil Law may be cancelled. With respect to stock exchange orders, this possibility is explicitly referred to by the Euronext market rules (Book I No. 4202/4).

It is therefore important, both that the account-keeping institutions check that their general conditions do not indicate the contrary by mistake, and that investors be vigilant, as this client tried to do, by seizing this possibility, and substantiating it, to avoid unpleasant surprises which could prove very harmful.

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