AUTORITÉ DES MARCHÉS FINANCIERS

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Inheritance: the advantageous fee schedule of a securities account ceases when the client dies

Heirs sometimes do not understand why they do not benefit from the same advantageous fee schedule as the deceased. As the agreements between a banking or financial institution and its client are *intuitu personae*, i.e. entered into in consideration of the person, they necessarily come to an end when the client dies, as I will set out in this month's dossier.

Facts

Ms and Mr X told me that, following the death of their mother, the notary in charge of the estate had written to institution Y asking it to sell the securities she had held in her securities account.

The institution then invoiced for a brokerage commission calculated as a percentage of the amount of the order.

However, the X heirs realised that the commission charged by institution Y was much higher than the rate their mother would have paid during her lifetime, given the contract she had taken out.

When institution Y refused to satisfy their request for a refund, the X heirs asked me to intervene.

Investigation

I contacted institution Y, which told me that the pricing demanded by the X heirs was not applicable, because the order to sell the shares had not been transmitted using one of the channels that qualify for this specific pricing: Internet, mobile application or telephone.

Institution Y told me that unless one of these channels was used, all other transactions would be charged under the standard fee schedule applied at the branch.

Recommendation

On receiving this reply, I carefully examined the file, and in particular the applicable fee schedule.

I confirmed to the X heirs that the advantageous rate they were claiming only applied when the buy or sell order was placed over the Internet/mobile application or by telephone, otherwise this specific pricing did not apply.

In addition, institution Y gave me a copy of the letter in which the notary in charge of the estate had placed the sale order, thus confirming that this order had not in fact been placed via one of the channels qualifying for the specific pricing.

Therefore, even though it was not possible for the notary to place an order using one of the channels qualifying for the specific pricing, since they did not have access to the dedicated mobile application and, as a notary, it was impossible for them to place such an order by telephone, the specific pricing for orders transmitted via the internet, mobile application or telephone did not have to be applied.

In any event, I reminded the heirs that banking agreements are concluded *intuitu personae,* i.e. in consideration of the person themselves. Consequently, specific fee schedules taken out by a client necessarily cease when the latter dies.

The institution therefore strictly applied the appropriate fee schedule and its use of this less advantageous fee schedule was legitimate.

Lesson to be learned

Generally speaking, the brokerage fees applied to an order are liable to vary based on the pricing option chosen by the client, but also according to the transmission channel. It should

be noted that, in the case of a PEA (equity savings plan), these fees are capped and the regulations distinguish between orders transmitted electronically and those transmitted by other means, as I have recalled on a previous occasion[1].

Furthermore, as this dossier shows, in the event of an estate, as soon as it is opened after the death, the estate account used to manage transactions relating to the estate is subject to a new contractual relationship, governed solely by the general banking conditions applicable to undivided estate accounts which must be opened as soon as the death is notified, and therefore does not grant entitlement to any specific conditions enjoyed by the deceased during their lifetime.

Keywords FEES

[1] Capping of PEA (equity savings plan) transaction fees: the channel through which an order is transmitted is not sufficient to justify the order having been executed electronically

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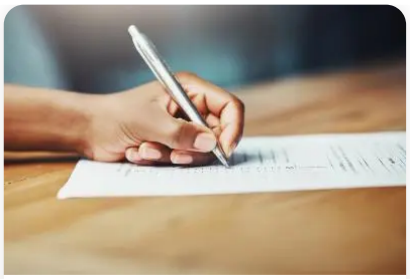

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