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Qualified Investor

Scope of the Duty of Care and Exclusion of Exceptional Circumstances

Par Dante O'Neil le 21 April 2026

In its final judgment ACJC/151/2026 of January 27, 2026, the Court of Justice of the Canton of Geneva upheld the dismissal of a claim for payment filed by a client who held the status of a qualified investor within the meaning of the aLPCC against a bank, following losses incurred on equity investments. It clarifies the scope of the bank's duty of care in the presence of a qualified investor and excludes the application of exceptional circumstances, such as the existence of a special relationship of trust, in the present case.

The client, a businessman domiciled in the United Kingdom with substantial assets, opened an account with the bank in 2014. At that time, he signed a contract in which he acknowledged his status as a qualified investor within the meaning of Art. 10 para. 3bis aLPCC (provision repealed upon the entry into force of the LSFin) as well as a professional client within the meaning of MiFID II. He also signed several contracts in which he acknowledged his financial knowledge and undertook to keep himself constantly informed of his positions. Finally, he accepted the bank's general terms and conditions, including a complaint clause.

In 2015, as part of a program for qualified investors, the client approached the bank to invest in the shares of a French company prior to its initial public offering (IPO), thereby acquiring a significant volume of shares. Subsequently, between 2015 and 2016, several buy and sell transactions involving these same shares were executed through his account. During this period, the bank contacted the client on several occasions to suggest investments or the sale of certain positions. After an initial rise, the stock's value plummeted starting in 2017. It was not until 2019 that the client contested the transactions carried out between 2015 and 2016 and criticized the bank for failing to provide adequate monitoring or recommend the sale of the securities. He then sought compensation from the bank for his losses.

At the trial court level, the court found that an investment advisory relationship existed and held that, notwithstanding his status as a qualified investor, the client could legitimately expect some monitoring of the stock price. It found that the bank should have informed him of the decline and suggested selling, but dismissed the claim for lack of proof of damages. The client appealed to the Court of Justice, which, unlike the Tribunal, did not distinguish between an advisory relationship and an "execution-only" relationship, holding that this issue could remain undecided. It held that, from the perspective of a potential advisory relationship, no duty to inform or monitor applies, since the appellant is a qualified investor with sufficient knowledge of finance and the stock market and had informed the bank that he wished to be kept informed of

his positions. From the perspective of a potential “execution-only” relationship, it also excludes any duty to inform or warn, in particular the application of exceptional circumstances based on the existence of a relationship of trust with the bank, as claimed by the appellant. The Court rejects the application of such circumstances on the grounds, first, that no evidence in the record establishes the existence of a particularly close and lasting relationship, and second, that such circumstances cannot be invoked in the presence of a qualified investor possessing sufficient knowledge. Furthermore, the Court dismisses the appellant’s claim due to the claim clause enforceable against him, which creates a presumption of ratification (see, e.g., Hirsch, cdbf.ch/1178 and cdbf.ch/1028/). It notes that such a clause generally applies to “execution only” relationships, though its scope may be limited in the context of an advisory or management relationship, depending on the client’s ability to understand the information provided. In this case, the Court held that the appellant, as a qualified investor with sufficient knowledge, was capable of understanding the scope of the documents received, in particular the evolution of the price of his shares.

The Court’s decision calls for two comments.

First, the Court departs from the Tribunal’s decision and adopts a more restrictive approach regarding the duties of disclosure and monitoring within the context of a potential advisory relationship. Indeed, given the client’s status and the contractual documentation attesting to his knowledge, as well as the fact that he kept himself informed of his positions, the solution adopted at first instance was surprising. The Court corrects this by excluding any monitoring duty on the part of the bank.

Second, by ruling out the application of exceptional circumstances in the context of a potential “execution-only” relationship with a qualified investor possessing sufficient financial and stock market knowledge, the Court adopts an approach that may implicitly lead to reserving such circumstances solely for ordinary clients lacking such knowledge. However, the Federal Supreme Court has not expressly ruled on this point. Its case law (ATF 133 III 97, paras. 7.1.2 and 7.2 ; Federal Supreme Court decisions 4A_54/2017, para. 5.1.4, and 4C.357/2004, para. 4.1.1, discussed *in* : Do Duc, cdbf.ch/324) is limited to acknowledging that a duty to warn may arise, based on the agent’s duty of care and loyalty (Art. 398 para. 2 CO), particularly when a special relationship of trust has developed within the context of a long-term relationship, even in the absence of a request. The Court holds, correctly in our view, that the client’s status, as well as the contractual documentation attesting to his knowledge and willingness to keep himself informed of his positions, limit the bank’s duty of care and exclude, in the present case, the existence of a duty to warn.

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