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Failure to execute stock market orders

Between the bank’s diligence and the client’s silence

Par Carla Cournot le 29 May 2026

Under what conditions is a bank liable for the failure to execute a stock market order, and to what extent is a client responsible for their own communications and their silence ? In a judgment of 20 January 2026, the Geneva Court of Justice clarified these issues by distinguishing between three scenarios : a clear order not executed without sufficient justification ; an ambiguous communication not constituting a genuine instruction to sell ; and the absence of a timely objection leading to the application of the presumption of ratification (ACJC/105/2026, final).

In 2021, a Turkish national opened a banking relationship with a Swiss bank comprising two current accounts, denominated in US dollars and Turkish lira respectively. Following the initial public offering of a Turkish company, he instructed the bank to invest nearly USD 1,500,000 to subscribe for shares. Following a sharp rise in the share price, he sends the bank several sell orders. The dispute concerns the alleged non-execution of three of these orders.

On 6 April 2021, the client ordered the sale of 5,000 shares. On the same day, the bank received an anonymous email from a generic Gmail address warning it of insider trading behind this order. It therefore blocked the instruction and froze the account in order to carry out further checks. On 9 April, the doubts were resolved. The client sent an email to the bank stating that he wished to sell his shares and asking for confirmation that they were available. The bank replied in the affirmative. The client did not proceed with the first sales until 12 April. On 25 May, the client instructed the bank to sell the remaining shares. The bank did not execute the order, as evidenced by the portfolio statement sent to the client a few days later. The client did not contest this failure to execute within the time limit set out in the complaints clause contained in the bank’s general terms and conditions, and decided to wait for the next market upturn.

Hearing the case, the Court of First Instance held the bank liable solely for the failure to execute the order of 6 April, finding that the email of 9 April did not constitute a sell instruction and that the order of 25 May was covered by the doctrine of ratification. Ruling on the appeal and the joined appeal, the Court of Justice confirmed this analysis.

As regards the hold on 6 April, it considered that the bank could not refuse to execute the order solely on the basis of an email of unknown origin. FINMA Circular 2013/8 ‘Market Conduct Rules’ requires ‘clear indications’ of insider trading for a regulated person to be able to refrain from participating in a securities transaction (paragraph 47). However, the message received, lacking any verifiable elements, does not meet this standard, particularly as the bank did not

verify either its origin or its content. The loss is limited to the difference in price between 6 and 12 April 2021. The TRY/USD exchange loss claimed on appeal is excluded : previous conversions resulted from specific and express instructions, which were absent from the order of 6 April. The bank therefore had no general duty to convert the proceeds of the sales into USD, notwithstanding the designation of the US dollar as the reference currency of the main account.

The Court ruled that the email of 9 April did not constitute a sell instruction, and was primarily intended to obtain confirmation of the possibility of selling the securities. The absence of any mention of the number of shares to be sold and the client's subsequent conduct (partial sales several days later) confirm the absence of a binding order.

Finally, the Court acknowledges the failure to execute the instruction of 25 May without valid cause, but declares it to be covered by the fiction of ratification (see in particular Hirsch, cdbf.ch/1178 and cdbf.ch/1028 ; Braidi Guillaume, Les clauses de réclamation dans le domaine bancaire, GesKR 2026 p. 72). In the absence of a challenge within the agreed time limit, the bank could legitimately consider that the client had waived the instruction.

The judgment gives rise to several observations.

Firstly, to our knowledge for the first time, it provides welcome clarification on the threshold required for an indication to justify the refusal to execute an order : an anonymous, unverified email lacking concrete details cannot constitute a 'clear indication' within the meaning of FINMA Circular 2013/8. Whilst the Court clarifies this standard in the negative in this relatively clear-cut case, it leaves open the (practically delicate) question of the degree of plausibility at which a clue becomes sufficiently serious to justify such a refusal in a more ambiguous situation. The judgment nevertheless outlines several criteria for balancing the obligation to execute the order (Art. 397(1) CO) and the prudential requirements of Art. 142 and 143 LIMF : the possibility of identifying the source, the verifiable and verified nature of the information provided, and the plausibility of the signal in light of the client file.

Beyond the quality of the evidence, the Court criticises the bank above all for failing to undertake the necessary steps to clarify the matter. Paragraph 47 of the Circular cannot therefore constitute an automatic 'safe harbour' in the event of an alert. On the contrary, it presupposes prior, diligent and prompt checks, with the standard of 'clear indication' requiring a prima facie assessment rather than an in-depth investigation.

The judgment also specifies that the non-execution of an order does not, in principle, give rise to a right to compensation for exchange rate losses where the securities are traded in the same currency as that of the account in which the transactions are recorded, unless there is a general duty to convert. In the context of multi-currency accounts, a client wishing to hedge against exchange rate risk in the event of non-execution would therefore be well advised to agree to an automatic conversion instruction.

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