

Automatic foreign currency balancing for debit positions

Topic: **Stock exchange and custody accounts** Case number: **2017/11**

The client had been trading shares listed on the Hong Kong stock exchange since 2015. The foreign currency (HKD) debit positions resulting from the purchase transactions should have been balanced for in his account in CHF daily through the bank's automatic foreign currency balancing system. Due to a technical problem the bank encountered however, this balancing could not take place until the end of 2016 once the client contacted the bank about the matter. After conversion, the interest expense accrued in the meantime amounted to approximately 6000 CHF. The client asked the bank to refund this sum. In light of the client's belated objection, the bank only offered to pay half. The client accepted this offer on the Ombudsman's recommendation.

The client actively performed stock exchange transactions online and held a CHF trading account with the bank for this purpose. He typically focused on stocks listed on the Swiss stock exchange. In 2015 however, the client began trading local securities listed on the Hong Kong stock market which required an account to be opened in Hong Kong dollars (HKD). Contractually, an agreement was reached with the bank that the client would be enrolled in the bank's automatic foreign currency balancing system. Under this system, all foreign currency debit positions would be balanced automatically using assets in the CHF account on the evening of each trading day. This system would avoid the client having to monitor this situation himself and would prevent any foreign currency interest expense being charged. The client claims that he relied on this automatic foreign currency balancing system and that, as a result, he only noticed towards the end of 2016 that this balancing had never taken place. He stated that, up to that date, interest of approximately 6000 CHF after conversion had been charged on his holdings in HKD, even though he had always had sufficient funds in his CHF account. As a result, he asked the bank to bear the loss given the obvious failure of its system. While the bank did not dispute the fact that a technical failure of its system was the cause behind the lack of automatic balancing, it pointed out the client's belated objection and thus asserted deemed approval on the part of the client as provided for under its general terms and conditions. Pursuant to these provisions, transactions are deemed accepted if no objection is raised within a certain period. The bank therefore refused to pay the loss in full but offered to refund 50% of the interest expense charged. As the client was unwilling to accept this amicable settlement, he then contacted the Ombudsman who requested a statement of position from the bank.

In its response, the bank explained that clients performing online transactions are able to view the balances of all foreign currency accounts, and in particular the interest expense accrued, at any time on the main page for the trading account in question. It also pointed out that from the first trading day in August 2015, the balance of the HKD account had remained continually negative as a result of the lack of balancing due to the system failure. According to the bank, the client could have, and indeed should have, noticed at that time the negative account balance and the interest expense accrued. The bank was also able to prove that the client had received two interest statements in the meantime showing the interest expense charged. In addition, the client had unquestionably logged into the system almost ninety times during the period in question. The bank was therefore of the opinion that the client had thus been informed in detail about the failure of the balancing system from the very start of his HKD stock exchange transactions. In light of the client's belated objection (and the content of the general terms and conditions to which the bank made reference once again), the bank stated that it was not willing to pay more than half of the loss incurred.

In general, the Ombudsman believes that a client should be able to rely on contractual agreements entered into with the bank, namely in this case the automatic balancing of foreign currency positions. This in no way releases the client from his duty to monitor and duty to complain however. In fact, in this case, a timely complaint from the client would have undoubtedly prevented the majority of the loss. Moreover, the bank's system permits every client to perform the currency balancing themselves, thereby avoiding any interest expense being charged. Given that the bank was able to show that the client had logged into the system on almost ninety occasions during the period in question, and that he had even received statements showing the interest expense, the Ombudsman was in no doubt that the client should have noticed this and objected to it sooner. Considering the foregoing, the Ombudsman saw no reason to ask the bank to pay the full amount of the loss. In light of this the client ultimately accepted the bank's offer.