Published in French in La Semaine Judiciaire April 2021
SJ 2021 II 47

THE LOMBARD CREDIT AND THE LEVERAGE EFFECT

by

Alexandre DE SENARCLENS
Lawyer at the Geneva Bar

and

Lisa HARRISON
Lawyer, Legal Officer at
the Federal Office of Justice

I. INTRODUCTION

Following the stock market crash of March 2020, the risks associated with the Lombard credit have once again become a hot topic in the Swiss financial center. Clients who had been granted a loan in the form of a Lombard loan to invest more significantly in the markets suffered substantial losses. The stock market meltdown caused the assets of many clients to disappear. Unable to make up for the loss in value of their assets and to face margin calls, many of the client's assets were disposed by the Bank, either by forced sale or in the open market, in order to recover the loss of value.

This contribution examines the complex legal relationship between a Bank and its client when the latter has a leverage effect on its portfolio by the granting of a Lombard loan by its Bank. In particular, this article describes the contractual relationship between the Bank and its client (Chapter III), the financial terms of the Lombard loan, i.e. the calculation of the collateral value and margin (Chapter IV), the duties and obligations of the Bank (Chapter V), the margin call and realisation of assets (Chapter VI) and the client's possible claims for damages in connection with the Lombard loan (Chapter VII).

This is an unofficial translation of the article published in La Semaine Judiciaire (SJ 2021 II 47). Should this version and the French version differ, the French version shall prevail.

II. LOMBARD LOAN

A Lombard loan is a transaction by which a Bank lends to its client funds secured by a pledge within the meaning of Articles 884 ff. SCC[1] on the securities and securities rights deposited in the client's account[2]. The pledge guarantees the Bank all its present or future claims against the debtor[3]. This form of pledge is an extremely widespread form of security in the Banking sector[4].

The loan granted by the Bank to its client, which can be renewable, allows the latter to have more assets at his disposal and, therefore, to carry out stock exchange transactions for larger amounts[5]. In bull market times, the client benefits from a "leverage effect", which increases the return on equity (net assets excluding debt). However, this practice proves disastrous in the event of an economic downturn as it increases losses and forces the client, who is in a margin call situation (see Chapter VI), to sell his assets in unfavourable conditions of stock market instability[6].

To protect itself against the financial risks involved in this type of loan, the Bank requires, throughout the duration of the contract, that the client has a minimum percentage of its portfolio available as a "safety mattress" in the event of a fall in the markets. This percentage is called margin and represents the difference between the value of the assets estimated by the Bank and the loan granted. When the value of the assets falls below the safety margin, the Bank can, under certain conditions, execute the collateral. In addition, the Bank often reserves its right to unilaterally modify the percentage amount it has allocated to the pledged assets according to their volatility, which is referred to as the Pledge Value or Loan to Value (hereinafter also: "LTV") (see chapter IV. A).

In return for the risk taken, the Bank has a twofold financial interest in granting a Lombard loan to a client: it can charge interest on the loan granted and increase its assets under management. Consequently, without attracting new clients, the Bank increases its income for administration, brokerage and possibly portfolio management.

---

1 SWISS CIVIL CODE (SCC – RS 210).

2 LOMBARDINI, p. 736, N 59.

3 GUGGENHEIM / GUGGENHEIM, N 1156.

4 GUGGENHEIM / GUGGENHEIM, N 1132.

5 LOMBARDINI, p. 736, N 59 and ABEGG / GEISSBÜHLER / HAEFELI / HUGGENBERGER / LARUMBE, p. 134.

6 BAUEN / ROUILLER, p. 258.

However, these transactions are very risky for both the client and the Bank, especially in the event of a sudden decrease in the value of the pledged assets. This risk has materialized in recent years during the various stock market crashes which have led to forced sales of client assets in order to cover the margins set by the Banks within a very short period of time. These include the Russian crisis of August 17th 1998, the financial crisis of 2007-2008 and, more recently, the collapse of the main stock markets on March 12th 2020 - described as the worst session for Wall Street since 1987. For this reason, Lombard loans imply, for the client and for the Bank, increased and constant surveillance of the stock market[7].

Finally, it should be noted that these leveraged transactions may generate a "systemic effect" in markets that undermine financial stability, especially at a time when trading can be done in an automated manner. Forced sales by Banks wishing to rebuild their margins accelerate the fall of the markets and make them self-sustaining.

III. THE CONTRACTUAL RELATIONSHIP BETWEEN THE BANK AND ITS CLIENT

When a Lombard loan is granted, three documents regulate the relationship between the Bank and its customer: the general terms and conditions (A.), the Lombard loan agreement (B.) and the pledge agreement (C.).

A. The Bank's general terms and conditions

The Bank and the client first conclude a basic account/custody account agreement. This contract regulates the complex legal relationship between the Bank and the client and includes the characteristic elements of a current account (for the settlement of transactions), an irregular deposit (for remitted funds), a mandate (for the administrative management of securities) and a commission (for the purchase and sale of securities in the name of the Bank)[8].

The general terms and conditions that define the relationship between the client and the Bank are included in this contract. Among these conditions, the Bank generally provides for a very broad right of pledge for all its claims against the client on all the client's assets, whether

7 BAUEN / ROUILLER, p. 258.

8 TF, 4A_303/2012 of 30 October 2012, c. 2.1 and TF, 4C.387/2000 of 15 March 2001, c. 2a *in* SJ 2001 I p. 525.

present or future and whether matured or not[9]. This applies in particular to accrued interest and dividends[10].

B. The Lombard loan agreement

Secondly, the Bank and the client enter into a Lombard loan agreement. This agreement usually expressly refers to the pledge deed (infra C.) which is signed simultaneously. In practice, these two documents interact with each other and must be examined in parallel.

The Lombard loan agreement determines the (maximum) loan amount. This amount is calculated by the Bank on the basis of the market value of the securities in the pledged portfolio, the type of investment and the products in which the client invests less the margin[11] (see Chapter IV). This agreement also stipulates that the loan must be covered at all times by the collateral value of the pledged assets. It also specifies that the client pays interest on the loan, which may be increased if the client exceeds the maximum amount of the loan granted. In addition, irrespective of the actual use of the credit, a commission is generally payable for the provision of the credit, the so-called provision commission, which is calculated as a percentage of the actual credit limit[12]. In general, the Bank reserves its right to revise the amount of the loan, the percentage of the collateral value ("LTV") and thus its margin at any time and without prior notice[13].

---

9 BAUEN / ROUILLER, P. 185.

10 GUGGENHEIM / GUGGENHEIM, N 1154. For example, the General Terms and Conditions of Credit Suisse AG (ref. 610 011 / 12.19) provide under the chapter Right of Pledge and Set-off: The Bank has a right of pledge on all assets held by it on behalf of the client, whether at home or elsewhere, and, in respect of all claims (including claims arising from savings and other deposits), a right of set-off for all its present or future claims, regardless of their due dates or the currencies in which they are denominated. This right of pledge and right of set-off shall also apply to any claims for compensation or exemption from liability on the part of the Bank, in particular if claims of third parties (including issuers, liquidators, debt restructuring trustees, Bankruptcy administrators, institutions and authorities) are asserted against the Bank in connection with transactions carried out for the client or assets held for the client. As soon as the client is in default, the Bank is entitled, at its own discretion, to realise the pledges by way of legal proceedings or by private agreement. The realisation of the pledges shall be announced in advance. Subject to special agreements.

11 ABEGG / GEISSBÜHLER / HAEFELI / HUGGENBERGER / LARUMBE, p. 134.

12 MOSKRIC, p. 25.

13 For example, the Basic Agreement for Lombard Credits of UBS Switzerland AG (ref. 61058 F V8 001 of 14.10.2019) provides: The credits must at all times be covered by the collateral value of the assets pledged to UBS. The advance value corresponds to the value of the collateral less the margin. The size of the margin depends on the type of the pledged assets, their market or nominal value and their risk profile. As a general rule, the respective collateral value constitutes the maximum possible credit framework. UBS defines the assets that can be pledged, the volume of the collateral, the size of the margins and reserves the right to modify the collateral principles according to normal market criteria at any time without prior notice. At the client's

The proceeds from the realisation of the assets will be offset against the secured claim[14]. If the proceeds of realisation generate a surplus, this will be paid to the client[15]. In principle, the Lombard loan agreement provides that, if the proceeds from the realisation of the assets do not cover the entire claim held by the Bank, the Bank can initiate legal proceedings against the client (in particular by means of debt collection law) at the place of jurisdiction provided for by the Bank in the general terms and conditions.

Finally, the Lombard loan agreement specifies that the parties may terminate the agreement at any time with immediate effect. The Bank generally reserves the right to terminate the contract in the event that a margin call is not met[16]. The amounts owed by the client to the Bank (commissions, interest, etc.) are due upon termination of the contract.

C. The pledge agreement

Finally, the Bank and the client enter into a pledge agreement on the client's assets. Under this agreement, the client pledges all the assets in his account (general pledge) to the Bank as security for all claims that the Bank may have against him arising from the foreseeable relationship between the parties[17]. This right of pledge, as provided for in the General Terms and Conditions, extends to all interest and dividends due, current or future[18].

This contract also describes the form and content of the margin call which can be sent by the Bank, as well as the client's obligation to meet the margin call within the time limit set by the Bank, either by repaying the debt or by providing additional security[19]. Banks will generally choose to not indicate the length of time granted to clients in a situation of margin call in its contracts in order to have the latitude to adapt the

request, UBS will inform the client at any time of the current collateral value of his assets and the possibilities of using the credit.

14 Foëx, art. 891 SCC, N 42.

15 Foëx, art. 891 SCC, N 46 ss.

16 Abegg / Geissbühler / Haefeli / Huggenberger / Larumbe, p. 134.

17 Guggenheim / Guggenheim, N. 1156 à 1158.

18 Guggenheim / Guggenheim, N. 1154.

19 The Pledge Deed of UBS Switzerland AG (ref. 63022 F V7 001 of 10 February 2017) provides: If the value of the pledges falls below the usual or agreed margin or if, for other reasons, the collateral is no longer appropriate for the secured claims, the borrower(s) will be obliged, upon simple request by UBS, either to reduce the amount of the debt by repayment or to provide additional collateral in order to re-establish the margin. In the event that the borrower(s) do not comply with this demand within the time limit set by UBS, the debt would then be due and payable immediately and in full.

deadline to the current situation. As we shall see (see Chapter VI. A.), this deadline can be very short.

Finally, the agreement mentions the right for the Bank to proceed, at its own discretion, with the compulsory realisation or sale by private agreement in the event of the client's default, even if its claim is not yet due.

It should be noted that, except in the case of a management mandate, the administration of the pledged securities is in principle the responsibility of the client and not of the Bank[20].

IV. THE FINANCIAL TERMS OF THE LOMBARD CREDIT

A. Calculation of the pledge value (« LTV »)

In a Lombard loan, the Bank grants a loan to a client with a pledge of the client's movable assets as collateral. In order to protect its financial interests, the Bank must therefore carry out a risk assessment of the pledged assets in order to determine a percentage "loan-to-value" or LTV. The LTV represents the maximum rate that the Bank is willing to lend in relation to the market value of an asset.

The LTV percentage depends on the volatility of the asset (i.e. the estimate of the price variations in the stock market), the liquidity of the asset (how fast/easily the asset can be sold on the market), as well as the diversification of the pledged assets. The more the asset/portfolio is considered safe by the Bank, the more the percentage will increase to close to 100% of its value. Conversely, the less secure the asset is, the lower the percentage will be as the risk for the Bank is higher[21].

For example, a higher loan can be obtained with investment grade bonds. On the contrary, high yield bonds, volatile equities or hedge fund units will have a lower LTV rate. The LTVs of securities which are quoted in a different currency from the currency of the loan are discounted, usually by 5-10%, in order to protect the Bank against the risk of exchange rate fluctuations.

B. The Bank’s margin

The margin represents the difference between the loan and the proceeds expected from the realisation of the guarantee[22]. The margin’s purpose

---

20 GUGGENHEIM / GUGGENHEIM, N. 1155.

21 EMCH / RENZ / ARPAGAUS, N. 730 ; MOSKRIC, pp. 114 et 115.

22 EMCH / RENZ / ARPAGAUS, N. 730 ; MOSKRIC, pp. 114 et 115.

is to protect the Bank against a devaluation of the collateral and to cover accrued interest and costs[23].

The margin is therefore in direct relation with the LTV: the higher the LTV, the less margin the Bank will take on the pledged assets to secure its loan.

In Switzerland, the regulation doesn't impose a minimum margin that must be available for securities transactions[24]. This depends on the risk appetite of the Banks and their ability to charge their own funds for the granting of credit[25], in accordance with Art. 4bis BA[26] and the Capital Adequacy Ordinance[27].

From the client's point of view, compliance with the margin is crucial: if the client makes maximum use of his borrowing facility, he runs the risk of being in an under-covered position as soon as the stock market suffers a downturn. For this reason, the Bank will generally recommend its client to keep excess coverage.

C. Specific example

In practice, when assessing a client request for a Lombard loan, the Bank carries out an analysis of each product in the client's portfolio to fix the overall collateral value of the account and, consequently, the maximum amount of the Lombard loan.

1. Determination of the LTV

To illustrate, we will take the example of a client holding assets valued at a time T of one million Swiss francs. The client's assets and the LTV set by the Bank are as follows:

---

23 EMCH / RENZ / ARPAGAUS, N. 730.

24 LOMBARDINI, p. 737, N 64.

25 MOSKRIC, pp. 114 et 115.

26 Swiss Federal Act on Banks and Savings Banks (BA - RS 952.0)

27 Ordinance on Capital Adequacy and Risk Diversification of Banks and Securities Dealers (Capital Adequacy Ordinance, CAO – RS 952.03)

Assets	Currency of denomination of assets	Evaluation in CHF	LTV in %	LTV in CHF
Swiss Confederation bonds	CHF	100'000.-	90	90'000.-
Investment grade bonds	USD	200'000.-	60	120'000.-
SMI shares	CHF	300'000.-	50	150'000.-
Euro Stoxx 50 shares	EURO	200'000.-	40	80'000.-
NASDAQ shares	USD	100'000.-	30	30'000.-
Emerging market shares	USD	100'000.-	30	30'000.-
TOTAL		**1'000'000.-**	**50**	**500'000.-**

As shown in the table above, on the basis of this portfolio valued in Swiss francs, the Bank estimated the client's LTV at a time time T at 50%. Consequently, the client's net assets, deducting the loan, should represent at least 50% of the total value of the pledged assets. Therefore, the Bank's margin and LTV are of 50%. Thus, if this portfolio contained solely government bonds, the overall LTV would be of 90% and the Bank could have tolerated a margin of only 10%.

2. The Bank's margin and client's borrowing capacity

If the client wishes to invest in a project outside the Bank, for example the purchase of a property, he won't be able to borrow more than CHF 500,000. This loan represents 50% of the client's pledged assets. Therefore, if the assets of CHF 1 million at a given time decline in value by up to 50%, the Bank will still have sufficient assets to guarantee its loan.

However, if the borrowed cash is invested in Bank assets that remain on deposit with the Bank, the borrowing capacity will be much higher. Indeed, since the total value of the loan can amount to 50% of the client's total assets, the client will be able to double his investments in these same assets (and in the same proportions) and invest up to a maximum of CHF 2 million. Thus, in this example, for each franc invested the Bank will lend one franc. On such a portfolio of CHF 2 million (net assets of CHF 1 million and a loan of CHF 1 million), the Bank would have a margin of CHF 1 million to cushion a possible market downturn on this portfolio.

However, since assets are subject to fluctuations in value, loans are often made within a certain "excess coverage" to absorb these fluctuations. Therefore, in our example, it would be recommended that the client use his loan only up to CHF 800,000, respectively

CHF 400,000 if the client were to use this loan for a project outside the Bank.

This calculation is made at a time T according to the market conditions on the day of the grant. If, at a time T+1, another client were to request a Lombard loan to invest in the same assets and in the same proportions, and if, in the meantime, these assets were to lose 10% of their value, the Bank would grant a loan 10% lower than the initial value of the portfolio at time T (all other things being equal).

3. Effect of the market downturn followed by a change in the LTV by the Bank

The Bank generally reserves its right to reduce (or increase) the initial LTV if it considers that it is no longer justified in view of the quality of the pledged asset. In practice, this can have very significant effects, especially as bad news never travels alone: a drop in the LTV often has as a corollary the significant drop in the stock market value of the same asset.

Let’s take, for example, a share of the company "AAA Corp" listed on the Swiss stock exchange for CHF 100.- with a 50% LTV at the time the loan was granted. As mentioned above, by pledging this asset, the client could borrow up to CHF 100.- to reinvest in the same asset and double the number of AAA Corp. shares in its portfolio. If the client chooses to keep excess cover and borrow only CHF 80.-, he will have assets worth CHF 180.- and CHF 80.- in credit with his Bank. The value of this asset may fall to CHF 160.-, below which there will be an under-coverage (CHF 160.- x 50 % LTV = CHF 80.-).

If, by hypothesis, a few months later, the stock market value of AAA Corp. falls by 20%, this asset will be worth only CHF 144.- and the client will be under-covered by CHF 8.- (CHF 144.- x 50% LTV = CHF 72.-). The Bank then has the choice, depending on its risk appetite, to make an immediate margin call or to temporarily tolerate the under-coverage with a regular review of the situation. If, however, the market value of the asset continues to decline to a level that the Bank is no longer willing to tolerate, for example a 25% decline in the value of the asset (CHF 180 x 0.75 = CHF 135.-), the Bank will make a formal margin call. At such a level, the under-coverage will have increased to CHF 12.50 (CHF 135.- x 50% LTV = CHF 67.50 ; CHF 80.- - CHF 67.50 = CHF 12.50). In this example, the Bank would therefore be entitled to ask the client to transfer on short notice additional assets into his or her pledged safe custody account with a collateral value of CHF 12.50. If the client fails to transfer the requested additional assets, the Bank can sell the client assets in order to generate additional collateral of CHF 12.50. On this point, it is important to understand that it will not be sufficient for the client to bring in an asset with a market value of CHF 12.50 as the asset transferred must have a pledge value, estimated at the Bank's discretion, of that amount. Thus, if the client wishes to cover the under-coverage by bringing in SMI shares with an average LTV of 50%, he will have to transfer twice the amount, i.e. shares with a stock market value of CHF 25.-.

If, in addition, the Bank decides to change the LTV to 20%, the under-coverage will increase to CHF 53.- (CHF 135.- x 20% LTV = CHF 27.-; CHF 80.- minus 27.- = CHF 53.-). The Bank will then be entitled to ask the client to either repay the entire loan of CHF 80.-, to contribute assets with a collateral value of CHF 53.- or to sell assets that will generate additional collateral of CHF 53.- . The choice between these three options is up to the client.

4. Effect of selling certain assets to meet the margin call

It should also be noted that cash flow from asset sales increases the borrowing value of a securities account. This cash flow can be used to repay part of the loan or can be maintained as additional collateral to the loan. Cash meets lower margin requirements and can even be taken at 100% of its value if it is denominated in the same currency as the loan.

In the above example, if the client sells investment grade bonds for an amount of CHF 100'000.- , the client will generate CHF 40’000.- more since the bond was only taken into account up to 60% (LTV OF 60%) of its value.

However, in times of stock market crash, such assumption is rare as the same investment grade bonds will certainly have lost value and/or will be less liquid. Thus, their sale will certainly generate cash flows well below CHF 100'000.-, or even, in the worst case scenario, below the loan amount of CHF 60'000.- that this asset was theoretically supposed to guarantee. In such case, the sale would not meet the margin call and the client could find himself in a situation where the total value of the pledged assets would no longer be sufficient to cover the amount of the loan.

V. DUTIES AND OBLIGATIONS OF THE BANK

As in any Banking activity, the Bank has duties and obligations. We will examine how these duties and obligations are specifically applied in the granting of Lombard loans and the risks associated with them.

A. The Bank's duty of information, diligence and loyalty

The Bank's duty of information, diligence and loyalty depends essentially on the type of contractual relationship binding him to his client.

In stock exchange operations, the Federal Court distinguishes - in well-established case law - three types of contractual relationships: the asset management contract (Vermögensverwaltungsvertrag), the investment advisory contract (Anlageberatungsvertrag) and the simple Bank account / custody account relationship (blosse Konto-/Depot-Beziehung; execution only)[28].

The FinSA[29], which came into force on 1st January 2020, integrated these three types of contracts while subdividing the investment advisory contract into two sub-categories, namely the one for which the financial institution will have to take into account its analysis of the client's entire portfolio (which can be called global advice) and the one limited to investment advisory services related to isolated transactions (which will be called ad hoc advice).

The designation used in the contract between the client and the Bank is not solely decisive in qualifying the contract binding the parties. As states the case law handed down before the entry of the FinSA, the knowledge and experience of the client, the possible relationship of trust (art. 2 Swiss Civil Code) binding the client to his Bank and the services requested by the client actually provided by the Bank, even without special remuneration but only on commission of the orders placed, are also decisive[30].

The duty of information, diligence and loyalty, whatever the type of contractual relationship between the Bank and its client, continues throughout the entire contractual relationship.

1. The asset management mandate

In the asset management mandate, the client instructs the Bank to manage all or part of his assets[31]. The Bank itself determines the stock exchange transactions to be carried out, within the limits set by the contract with regard to the investment strategy and the objective

---

28 TF, 4A_54/2017 of 29 January 2018, c. 5.1.1, TF, 4A_202/2019 of 11 December 2019, 5.1. and references.

29 Federal Act on Financial Services (Financial Services Act, FinSA - RS 950.1).

30 TF, 4A_54/2017 of 29 January 2018, c. 5.1.3 et 5.1.4, TF, 4A_202/2019 of 11 December 2019, c. 5.1 and references.

31 TF, 4A_54/2017 of 29 January 2018, c. 5.1.2., TF, 4A_72/2020 of 23 October 2020, c. 5. and references.

pursued by the client[32]. It should be noted that the existence of an asset management contract in no way precludes the client from occasionally giving instructions to the Bank[33]. In this type of contractual relationship, the Bank's duties of information, advice and warning are the most extensive[34]. The FinSA formalizes these duties in its articles 11 (Verification of appropriateness) and 12 (Verification of suitability).

Under this mandate, the client can be granted a Lombard loan in order to increase his assets under management which will be entrusted to the Bank to be managed in accordance with the investment strategy defined between the parties. This is not standard practice and, in accordance with the guidelines of the Swiss Bankers Association, will require the express agreement of the client[35]. The fact that the client does not only speculate with his own money, but also with the Bank's money, obviously increases the Bank's obligations, in particular the requirements for risk information[36].

First of all, the Bank will have to verify the appropriateness (art. 11 FinSA) of the granting of the Lombard loan and the resulting leverage. For this purpose, the Bank will ensure that the client has sufficient knowledge and experience to understand such financial transactions. In particular, the Bank shall ensure that the client is sufficiently informed of the consequences of a severe market downturn. In particular, the Bank shall draw the client's attention to the fact that the margin call may be made at short notice and that his assets may be liquidated in unfavorable market conditions if the margin call is not met within the time limit. Therefore, the client should be aware that he or she may find himself or herself in a situation where he or she will have lost all of his or her assets and may even be indebted to the Bank because of his or her obligation to repay the loan balance.

The Bank will then verify the adequacy (art. 12 FinSA) of the service proposed or requested by the client. In this respect, the Bank will collect a number of information concerning its client: his income, expenses, real estate assets (main and/or secondary residence, rental investments and returns, ...), movable assets (Bank and stock market investments,

---

32 TF, 4A_54/2017 of 29 January 2018, c. 5.1.2., TF, 4A_72/2020 of 23 October 2020, c. 5. and references.

33 TF, 4A_54/2017 of 29 January 2018, c. 5.1.2 ; TF, 4A_72/2020 of 23 October 2020, c. 5. and references.

34 TF, 4A_54/2017 of 29 January 2018, c. 5.1.2.

35 Portfolio Management Guidelines – SBA 2020, art. 7, Implementing provisions n°21 and 22.

36 TF, 4A_444/2012 of 10 December 2012, c. 3.2 in: SJ 2013 I 512.; ATF 133 III 97, c. 7.1.1. in: SJ 2007 252; ATF 119 II 333, c. 5a in: SJ 1994 130 ; TF, 4A_72/2020 of 23 October 2020, c. 5.1.2 and Decision of the Commercial Court of the Canton of Zurich HG100012-0 of 26 March 2012, c. 5.1.2.

savings contracts, life insurance, ...), professional assets, family situation, age, health and liquidity needs (short, medium and long term). This information will help to define the client's subjective risk tolerance and his objective capacity to face the risks associated with the Lombard loan[37].

If, after this examination, the Bank concludes that the client does not understand the risks involved or that, in view of his financial situation, the client is taking disproportionate risks (e.g. the assets deposited with the Bank constitute a disproportionate part of his assets or are necessary to cover his retirement needs, ...), the Bank must expressly advise the client not to borrow money and not to pledge his assets as collateral. This obligation now results from art. 14 al. 2 FinSA, which provides that "*if the financial service provider is of the opinion that a financial instrument is not appropriate or suitable for its clients, it shall advise them against it before providing it*".

During the mandate, the Bank's supervisory and advisory duties continue. The Bank must therefore regularly monitor its client's portfolio and adjust it if necessary to a margin call situation. For example, within the framework of the given mandate, the Bank can decide to sell riskier assets with a low LTV and buy, in return, less risky assets with a higher LTV. The Bank can also decide to sell positions in order to be able to reduce the amount borrowed by the client and thus reduce the margin call risk. Finally, the Bank is required to warn the client as soon as his account approaches a margin call situation and remind him of the risks.

More generally, the Bank will need to conduct an ongoing review[38] of the suitability of the loan for the client's situation. Thus, if during its mandate the Bank realizes that the client's financial situation has changed in such a way that leverage now constitutes a disproportionate risk for the client, it must make the client aware of these risks and advise him to reduce his exposure or even terminate the Lombard loan.

It follows that, in the asset management mandate, the conclusion of a Lombard loan increases the Bank's duties of vigilance, as well as the Bank's duties of information and warning towards its client. In order to ensure that these duties are met, an appropriate organization of the Bank is essential (see chapter V. B.).

2. Investment advice

In investment advice, the client requests information and advice from the Bank but decides alone on the transactions to be carried out. The

---

37 BRAIDI, p.13.

38 BRAIDI, p.14.

Bank can therefore only undertake transactions on the instructions or with the agreement of the client[39]. The client's power of decision is the main criterion for distinguishing the asset management contract[40]. Consequently, the client generally bears the risk arising from his decision[41].

However, the Bank is liable if it gives objectively false and manifestly unreasonable advice to its client and the client follows it to his or her loss[42].

The Bank's duties to inform and advise the clients depend on the type of contract concluded and the circumstances of the specific case, in particular the knowledge and experience of the client[43].

As mentioned above (see chapter V. A.), the FinSA distinguishes between investment advice taking into account the client's entire portfolio (global advice) and investment advisory services related to isolated transactions (ad hoc advice).

For the global advice, the Bank is required to verify the appropriateness (art. 11 FinSA) and the adequacy (art. 12 FinSA) of the operation in question. The Bank's obligations are therefore similar to those that the Bank must fulfil for a client with a management mandate (see chapter V. A. 1.).

For ad hoc advice, the Bank will only have to verify that the planned investment is appropriate (see chapter V. A. 3.).

Also, in this mandate, the client may be granted a Lombard loan in order to increase the pool of assets that is the subject of the advisory mandate. As in the case of the asset management mandate, the client's demands for vigilance, information and warning are higher when the client is not only speculating with his assets, but also with the assets lent by the Bank[44]. Thus, the Bank must ensure that the client has fully understood the specific risks associated with the Lombard loan.

---

39 TF, 4A_54/2017 of 29 January 2018, c. 5.1.3. ; TF, 4A_90/2011 of 22 June 2011, c. 2.2.1. and references.

40 TF, 4A_444/2012 of 10 December 2012, c. 3.2 in: SJ 2013 I 512.

41 TF, 4A_444/2012 of 10 December 2012, c. 3.2 in: SJ 2013 I 512 and TF, 4A_54/2017 of 29 January 2018, c. 5.1.3.

42 TF, 4A_54/2017 of 29 January 2018, c. 5.1.3 and ATF 119 II 333, c. 7a *in* SJ 1994 130.

43 TF, 4A_54/2017 of 29 January 2018, c. 5.1.3. ; 4A_336/2014 of 18 December 2014, c. 4.2. and references.

44 TF, 4A_444/2012 of 10 December 2012, c. 3.2. in: SJ 2013 I 512, ATF 133 III 97, c. 7.1.1 *in* SJ 2007 252 and ATF 119 II 333 , c. 5a. in: SJ 1994 p. 130.

3. The contract execution only

In the execution-only contract, the Bank only undertakes to execute the client's specific investment instructions, without being obliged to ensure that the client's interests are generally safeguarded[45].

Therefore, the Bank does not have to verify the appropriateness of a transaction requested by the client, nor the adequacy of the transaction in relation to its entire portfolio[46]. Nor does the Bank have a duty to spontaneously advise the client on the probable developments of the chosen investments and on the measures to be taken to limit its risks[47].

Exceptionally, as a result of case law prior to the coming into force of the FinSA, it must be admitted that the Bank has a duty to warn it's client when it realises or should have realised, with the attention required by the circumstances, that the client has not identified the risk associated with the considered investment[48]. There is also a duty to inform when, in the context of a lasting business relationship between the client and the Bank, a special relationship of trust developed between them, under which the former may, on the basis of the rules of good faith, expect warnings from the latter, even if the client has not requested them[49].

Thus, with the exception of the hypothesis mentioned above, the Bank will not have to advise the client. The Bank will simply explain the mechanism related to the overdraft and margin call and the risks for the client of having to liquidate his account and have to repay any uncovered balance of the loan. In practice, this information is clearly stated in the Lombard loan and pledge agreements provided to clients and, as a result, this obligation is generally met by the Bank.

B. The Bank's organisational obligation

In the case of loans, as in its other areas of activity, the Bank must have an adequate organisation, i.e. it must ensure compliance with the obligations of the FinSA by means of internal regulations adapted to its

---

45 TF, 4A_54/2017 of 29 January 2018, c. 5.1.4. ; TF, 4C.385/2006 of 2 April 2007, c. 2.1 and TF, 4A_369/2015 of 25 April 2016, c. 2.3.

46 TF, 4A_54/2017 of 29 January 2018, c. 5.1.4.

47 TF, 4C.298/2004 of 26 January 2005, c. 3.1. ; ATF 119 II 333, c. 5b ; TF, 4C.108/2002 of 23 July 2002, c. 2b and TF, 4C.410/1997 of 23 June 1998, c. 3b *in* SJ 1999 I, p. 205.

48 TF, 4A_54/2017 of 29 January 2018, c. 5.1.4 ; TF, 4C.385/2006 of 2 April 2007, c. 2.1 ; TF, 4A_369/2015 of 25 April 2016, c. 2.3 and SCHMIN in: Bankvertragsrecht, 2017, p. 226.

49 TF, 4A_54/2017 of 29 January 2018, c. 5.1.4. ; ATF 133 III 97, c. 7.1.2 in: SJ 2007 252 and TF, 4A_369/2015 of 25 April 2016, c. 2.3.

activity (Art. 21 et seq. FinSA), in particular according to the financial services offered and the risks they present (Art. 23 para. 1 let. a FINSO).

However, as we pointed out, the leverage effect is by definition very risky both for the Bank, who can lose part of its equity capital, and for its client, who can lose all of his savings. Moreover, the risks often materialize in periods of stock market crashes where the Bank and the client must react quickly in order to preserve the portfolio and the loan.

Significant tensions can then arise between the Bank's credit department - who fears losses for the institution - and the front office, in charge of the client, who wants to maintain the relationship of trust with him.

The Bank must therefore have clear guidelines in order to define the decisive financial criteria, the control and analysis processes as well as the transmission of information between departments (front/credit) and with the client (in particular the content of the margin call letter) and, finally, the deadlines to be respected.

In particular, to face a stock market crash, the Bank must also have the necessary staff to analyse financial information and take the necessary decisions quickly (art. 22 FinSA and art. 23 FINSO). It follows that if the Bank grants a loan against the collateral of complex products, it must ensure that it has the necessary human and IT resources to analyse and evaluate these products in real time in order to organize forced sales at the best conditions for its client.

However, in the event of a financial crisis leading to a sudden drop in the markets, the systems set up by the Banks have often revealed malfunctions[50]. To avoid this, risks must be measured daily and stress tests must be carried out regularly[51].

VI. THE MARGIN CALL AND THE REALISATION OF ASSETS

In the event where the pledged assets lose value and are no longer sufficient to cover the margin, the Bank will have to take appropriate measures to remove the potential threat to the loan[52]. To do so, the Bank will ask the client to cover the loan with a cash payment, with additional collateral, i.e new assets to be pledged, or to sell positions[53].

If the client does not meet the margin call within the time limit set by the Bank, the Bank has the right to immediately sell the client's

50 LOMBARDINI, p. 71, N 94.

51 LOMBARDINI, pp. 71 and 72, N 96.

52 MOSKRIC, p. 117.

53 Indeed, as a reminder, additional cash from asset sales increases the borrowing value of an account when the cash benefits from a higher LTV.

securities to repay its loan in accordance with the conditions set out below.

Pre-formulated Lombard loan and pledge agreements between the Bank and the client generally contain a clause providing that the Bank has the right to sell the clients securities to repay its loan if the debtor defaults on its obligations (see chapter III. B. and C.).

A. Announcement and deadline

The realisation of the assets must be preceded by the announcement of the realisation of the assets, in principle in writing, by the Bank to the client to complete the guarantees within a certain period of time[54]. The deadline can be very short, case law and legal literature admitting a 24-hour period[55]. The notice must mention that in the absence of coverage of the margin within the time allowed, the Bank will be obliged to proceed to the sale of the client's assets[56].

This obligation is also provided for in the FISA[57], which entered into force on 1st January 2010. Indeed, according to Art. 32 FISA, the enforcement of a security interest must be preceded by a notice to the provider of the security interest before realisation. A provider of a security interest who is a custodian or a qualified investor may waive the notice requirement. Pursuant to Art. 32 FISA, the notice is mandatory. Any waiver must be considered null and void in accordance with Art. 20 SCO, with the exception of a waiver by an accredited investor[58]. The content of the notice is not defined by the law, it must however invite the client to reconstitute the margin and warn him that, failing that, his assets will be realised[59].

According to cantonal case law, in analogous application of art. 108 para. 1 SCO, a margin call would not be necessary if it is clear from the circumstances that the customer will not react within the time limit to

54 Judgment of the Court of Justice ACJC/842/2013 of 28 June 2013, c. 6. Note that, according to Judgment of the Court of Justice ACJC/1409/2013 of 22 November 2013, c. 4.4. a margin call cannot be made to the remaining Bank when it is unlikely that the client will be aware of it in time to react.

55 TF, 4C.243/2006 of 10 July 2007, c. 3 ss ; Judgment of the Cantonal Court of the Canton of Vaud CO99.003274 of 18 November 2005, c. III and IV ; Judgment of the Commercial Court of the Canton of Zurich HG100012-0 of 26 March 2012, c. 3.3.3.3; GUGGENHEIM/GUGGENHEIM, N 1163 and LOMBARDINI, pp. 738 and 739, N 70.

56 LOMBARDINI, p. 739, N 71.

57 Federal Act on Intermediated Securities (Federal Intermediated Securities Act, FISA – RS 957.1).

58 MAURENBRECHER / BAUER, art. 32 BEG, N. 12.

59 MAURENBRECHER / BAUER, art. 32 BEG, N. 12.

said margin call[60]. On appeal in the same case, the Federal Court left the question open[61]. *Lombardini* is of the opinion that, if it is established that the client did not have the funds to reconstitute the margin, the possible violation committed by the Bank of its obligation to send a notice is no longer relevant due to the lack of causal relationship between the violation and the damage suffered. It is therefore up to the client to prove that he could have reconstituted the margin within the time limit[62].

In our view, this issue should be examined differently by distinguishing between (a) advisory/execution-only mandate and (b) management mandate. In the first case (a), without a formal a margin call letter, the Bank is not authorised to proceed with the sales of the client's assets. In consequence, the sales carried out by the Bank without instructions from its client or his representative constitute a breach of contract and not the lack of a margin call letter. Therefore, the client would only have to prove the unauthorized sales and not that he could have reconstituted the margin if the Bank had sent him the margin call letter. It would then be up to the Bank to prove that a margin call letter would have had no effect as the client would not have been able to cover the loan with a cash payment or with additional collateral[63]. The simple fact that the client does not have sufficient funds on his account to cover the loan would not, in our view, be sufficient to prove this fact. Indeed, the Bank would have to prove that the client was not able to bring additional assets within the time limit set by the Bank. A contrary interpretation would, in our view, amount to a reversal of the burden of proof in contradiction with the law (art. 8 SCC), as proof of the fact alleged by the Bank is not objectively impossible.

In a management mandate (b), the situation is different as the Bank is authorised to sell and buy positions in the name and on behalf of the client. However, the Bank can realise the collateral to meet an under-coverage situation once it has sent a margin call letter to the client. Consequently, sales made without formal notice would also constitute a breach of contract. If the Bank alleges, in its defence, that a margin call letter would have been ineffective, it would have to prove this fact (art. 8 SCC). It should be noted that, according to the Federal Court, the fact that the Bank had sent margin calls on the previous days does not

---

60 Judgment of the Cantonal Court of the Canton of Vaud CO99.003274 of 18 November 2005, c. Vb.

61 TF, 4C.243/2006 of 10 July 2007, c. 3.2.

62 LOMBARDINI, pp. 741 and 742, N 87.

63 On this point, without these decisions providing clear answers: Judgment of the Court of Justice ACJC/1409/2013 of 22 November 2013, c. 5.1 and TF 4C.243/2006 of 10 July 2007, c. 3.2.

exempt the Bank from repeating this obligation even if the debtor had been alerted of the situation and knew about it for having responded 10 days before to another margin call[64].

In any case, in view of the risks involved, the client must be attainable at all times, especially when the markets are very volatile. In the event where the Bank is unable to contact the client, it will be entitled to realise the assets in order to rebuild its margin and the client will not be able to complain about the fact that he was unable to react by bringing in assets or cash[65].

B. The risk of abuse of rights

If the client does not meet the margin call, its assets may be liquidated in order to restore the margin required by the Bank[66]. This liquidation will be to the amount initially required when the Lombard loan was granted or a higher or lower margin depending on the subsequent fluctuation of the LTV defined by the Bank[67] (see chapter IV. C).

According to *Guggenheim / Guggenheim*, by requiring the respect of the initial (or primitive) margin, the Bank can however be reproached for an abuse of right. According to these authors, one must not lose sight of the fact that what is self-evident, at the moment when the credit is granted, becomes impossible in case of fluctuations of the exchange rate[68]. Thus, the Bank may be required, depending on the circumstances and in accordance with the rules of good faith, to make do with a lower margin (e.g., 10% instead of 30%)[69]. The credit must however still be more than covered[70].

Contrary to what the above-mentioned authors maintain, for us it seems difficult to argue an abuse of rights of the Bank which, in the context of a speculative activity of this type, clearly set limits on the risks it was prepared to take and demanded the execution of the contract. The humanly understandable criticism of the client who realises that his securities were sold at the worst possible moment and notes that it would have been enough to wait a few days for the overdraft

---

64 TF, 4C.243/2006 of 10 July 2007, c. 3.2.

65 Lombardini, p. 739, N 72.

66 Lombardini, p. 739, N 71.

67 Moskric, p. 117.

68 Guggenheim / Guggenheim, N 1168.

69 Guggenheim / Guggenheim, N 1168.

70 Guggenheim / Guggenheim, N 1168.

situation to cease is not legally relevant[71]. This is all the more true since, by selling to the extent necessary to cover the margin, the Bank may also, depending on the case, have avoided an even greater loss for his client.

The risk of abuse of rights can, for us, be found on another level. Indeed, the general terms and conditions of Lombard loan agreements or pledging agreements usually provide that the Bank is free to review "at any time" the value of the collateral and thus the margin required. These contracts, drawn up by the Banks, are obviously in their favour to protect them as well as possible. Even though these contracts give the Bank a great deal of latitude, the Bank must act in good faith in the performance of the contract. As a specialist, it must have carried out a detailed analysis, at the time the credit is granted, of the securities pledged. In this respect, according to the principle of trust, the client must be able to rely on the fact that the said analysis has been carried out objectively, in compliance with precise financial criteria. He must also be able to assume that the Bank is familiar with the financial product(s) held by the customer and that, thanks to the Bank's human and technological resources, the examination and estimation of risks has been correctly carried out. In particular, before granting credit, the Bank must incorporate into its analysis of the client's financial products a market scenario model that includes the assumptions of financial crashes. Indeed, severe corrections are frequent on the stock exchanges and are occurrences that must be included in the LTV assessment as they are part of the "normal course of events".

In view of the foregoing, for us, the Bank could commit an abuse of rights by unilaterally modifying the LTV arguing a risk that it had not previously identified, if said risk already existed when the LTV was initially set. In such case, the Bank would have no new objective reason justifying the change the value of the initial LTV. Indeed, as a financial specialist, the Bank should be able to demonstrate, in the event of a dispute, that the change in LTV was based on a new market scenario model based on new facts which could not be foreseen when the previous LTV was set and on a detailed financial analysis.

As such, changes in LTV should be rare and the exception. A decrease in the Bank's capital or a general change in the Bank's policy that would result in the Bank no longer being willing to take as much risk should not, according to the confidence principle, be the basis for a change in the LTV and, therefore, in the margin requirement. In any event, the Bank should at least give the client sufficient time to reduce his credit and at a time which would be financially convenient for him.

---

71 Contra : Judgment of the Cantonal Court of the Canton of Vaud CO99.003274 of 18 November 2005, c. Vb. On appeal, the Federal Court did not deal with the matter.

C. The criterion of best execution in the realisation of the assets

When selling the pledged assets, the Bank first acts to protect its own interests, i.e. to insure that the client reimburses the loan granted, thus avoiding a loss for the Bank.

However, this does not exempt the Bank from respecting its duties of diligence and loyalty owed to his client. These duties require the Bank to sell the pledged assets under the best possible conditions taking into account all the circumstances. This duty of "best execution" is now enshrined in art. 18 al. 1 FinSA, which provides that "*Financial service providers shall ensure in the execution of their clients' orders that the best possible outcome is achieved in terms of cost, timing and quality*"[72]. However, this provision applies only to the execution of client orders and cannot be directly invoked in the case of the execution of securities.

According to the case law, due diligence is assessed by means of objective criteria by determining how a conscientious agent, placed in the same situation, would have acted in managing the case in question[73].

This duty entails an obligation for the Bank to limit the customer's loss as much as possible when it attempts to restore the margin to which it is entitled in accordance with the contract concluded with its customer. Therefore, the Bank is obliged, when selling assets, to respect the rules of good faith, to the extent compatible with its own interests, and to spare its client any avoidable damage[74]. Also, the Bank will have to choose which of the client's assets it decides to sell in order to reduce the client's damage and increase its chances of recovering the margin[75].

It is difficult to decree in abstracto the best reaction of the Bank. However, it can be assumed that it will be appropriate to sell the least volatile assets - especially those assets that have resisted best in the event of a stock market crash - and that would be more likely to restore the margin. This will make it possible to maintain, even if the diversification and risk distribution of the account is unbalanced for a given period of time, the values that could - once the stock market storm has passed - regain value. The Bank should not sell more than is necessary to restore the margin.

---

72 On this subject too, see the Code of Conduct for Securities Dealers governing securities transactions - SBA, 2008.

73 Judgment of the Court of Justice ACJC/1282/2016 of 23 September 2016, c. 3.1.3 ; ATF 127 III 328, c. 3 ; ATF 115 II 62, c. 3a and TF, 4A_696/2012 of 19 February 2013, c. 2.

74 TF, 4A_71/2015 of 10 September 2015, c. 3 ; ATF 118 II 112, c. 2 and TF, 4C.323/1995 of 24 June 1996, c. 5a.

75 LOMBARDINI, p. 739, N 71.

Also, the duty of best execution requires the Bank to "work the market", i.e. to seek the best result by analysing fluctuations in value and setting limits on the selling price. This analysis may require the Bank not to react "too quickly" and to wait a few hours by leaving orders at levels that do not find takers to test the appetite of potential buyers. Once again, in times of stock market crash, some stocks may experience very important plunges due to a momentary market failure. The Bank should not overreact or give in to panic. It will be required to objectively analyse the market in order to determine when and at what price to sell its client's assets.

VII. POSSIBLE CLAIMS FOR THE CLIENT DAMAGES IN CONNECTION WITH THE LOMBARD CREDIT

Without attempting to provide an exhaustive overview of the claims that a client may raise against a Bank, will be discussed hereafter the main arguments that a client can raise against his Bank in relation to Lombard lending and leverage.

The grievance most often invoked by a client is breach of contract. In this particular area, a contractual violation is particularly committed when a client is confronted with a Bank that sells its pledged positions without having been given prior notice to reconstitute the margin[76]. In this case, the Bank should in principle be liable for the damage caused to the client by the unauthorized sale of its assets[77] (see chapter VI. A.).

The Bank is also liable for breaches of the duty of care and loyalty, depending on the contractual relationship between the parties.

A. The asset management mandate

As detailed above (chapter V. A. 1.), in an asset management mandate, "*the Bank's duties of information, advice and warning are the most extensive*"[78]. This is where the main risk for the Bank lies: the client who suffers a loss could argue that he was not properly informed of the risks of losses linked to the leverage effect and that, if necessary, he would not have taken such risks. The Bank will not be able to assume that these risks are known, unlike the risks associated with the purchase, sale and holding of simple shares, bonds and investment fund units[79]. Therefore, as stated above (chapter V. A. 1.), this duty of information -

---

76 LOMBARDINI, p. 741, N 84.

77 TF, 4C.243/2006 of 10 July 2007, c. 3.2.

78 TF, 4A_54/2017 of 29 January 2018, c. 5.1.2. and references.

79 TF, 4A_72/2020 of 23 October 2020, c. 5.1.3.

particularly in the management of the very important risk associated with leverage - will have to be renewed as much as necessary in order for the Bank to ensure that the client is fully informed.

In addition, the Bank will have to take the initiative to adapt the portfolio, if necessary by selling assets, to avoid the client approaching a margin call situation. Failing this, the client will be able to claim that the Bank was late in adapting its portfolio and that all or part of the damage could have been avoided if the Bank had acted in time.

The client could also argue that the Bank, in view of the volatility of the investments made, should have demanded a higher margin to avoid an under-cover situation. Indeed, although the margin of coverage serves mainly to limit the Bank's risks against a fall in the value of the assets, the Bank remains bound by a duty of protection in favour of the client in a management mandate or a global advisory mandate[80]. The client can then deduce from this duty a contractual breach if the Bank tolerates a shortfall in collateral.

B. Investment advice

As in an asset management mandate, the client can invoke that he was not properly informed and advised by his Bank. The client would then argue that, if the Bank had complied with its duties to inform and advise, he would not have taken out a Lombard loan to invest more in the markets or that he would not have given such and such instructions that increased the leverage and exposed him to risks of which he was unaware.

Also, depending on the investment advisory mandate (see chapter V. A. 2.) an obligation to inform or warn the client may exist. This is particularly the case if the client's instruction (e.g. cash transfer to another account or purchase of more volatile assets with a lower LTV) leads to a shortfall in cover for the Bank and a situation where the client is no longer able, to the knowledge of the Bank, to reduce this shortfall within a reasonable period of time[81].

C. The execution only contract

In an execution only contract, claims for damages are more complicated. Indeed, in this type of contract, the Bank can only execute the orders given by its client. Thus, the Bank's liability can only be engaged if it does not execute its client's orders correctly[82]. In other

80 TF, 4A_521/2008 and 4A_525/2008 of 26 February 2009, c. 5.2.

81 TF, 4A_521/2008 and 4A_525/2008 of 26 February 2009, c. 5.2.

82 LOMBARDINI, p. 731, N 44.

words, the Bank is not obliged to carry out an advisory activity[83] towards the client involving obligations as agent, except in certain limited cases (see chapter V. A. 2.).

Therefore, in principle, the Bank does not have to actively seek to limit the customer's risk of loss[84]. As a result, the Bank is not obliged to monitor the margin evolution, nor to regularly inform the user of the state of his margin, in particular to notify him if the actual margin is lower than the required margin[85]. Nor is the Bank required to systematically call for margin in the event of under-coverage and may decide to delay doing so, at its own discretion, until a potential loss to itself materializes[86].

Notwithstanding, as stated above (see chapter V. A. 2.), in realising the client's assets, the Bank must respect its duty of care. Failing this, the Bank may face a claim for the damage caused by the violation of the principle of best execution if the proceeds of realisation are lower than those that should have been achieved if it had observed the required diligence[87].

VII. CONCLUSION

Whether for the Bank or its client, the Lombard loan is a very risky operation.

In the event of a severe drop in the financial markets or a period of financial instability, leverage can have a devastating effect on the client and generate losses that it is no longer able to absorb.

This type of service is therefore not recommended for any client and the Bank's duty to inform and warn its client of the risks of this loan must be commensurate with the risks incurred by the Bank and the client.

In addition, these services require that Banks put in place strict protocols and sufficient organisation in order to respond to emergency situations induced by this activity. Regular notices, compliance with deadlines in the event of margin calls and the realisation of assets within the framework of the best execution principle are thus essential to avoid an increase in losses and disputes between the Bank and its clients.

---

83 LOMBARDINI, p. 731, N 44.

84 TF, 4A_450/2010 of 21 December 2010, c. 5.2 ; TF, 4A_521/2008 et 4A_525/2008 of 26 February 2009, c. 5.2 ; TF, 4C.298/2004 of 26 January 2005, c. 3.2., TF, 4C.305/2003 of 3 May 2004, c. 3.2.1 ; TF, 4C.152/2002 of 22 July 2002, c. 2.2 *in* SJ 2003 I p. 359 and TF, 4C.166/2000 of 8 December 2000, c. 3a/cc.

85 TF, 4A_450/2010 of 21 Decembrer 2010, c. 5.2.2.

86 TF, 4A_450/2010 of 21 December 2010, c. 5.2.2.

87 FOËX, art. 891 CC, N 39.

BIBLIOGRAPHY

Unless otherwise indicated, the books or articles in this bibliography are cited in the notes with the name of the author or authors only.

ABEGG PHILIPP / GEISSBÜHLER ALEX / HAEFELI KURT / HUGGENBERGER ERIC / LARUMBE GABRIEL , Schweizerisches Bankenrecht, 4e éd., 2019

BAUEN MARC / ROUILLER NICOLAS , Relations bancaires en Suisse : un aperçu pour le client des banques et ses conseillers : operations bancaires et contrats, financements, gestion de patrimoine et conseil, secret bancaire, responsabilités, 2011

BRAIDI GUILLAUME , Protection des clients selon la future loi sur les services financiers, in : Jusletter 23 avril 2018

EMCH URS / RENZ HUGO / ARPAGAUS RETO , Das Schweizerische Bankgeschäft: das praktische Lehrbuch und Nachsclagewerk, 6e éd., 2004

FOËX BÉNÉDICT , in : Commentaire romand, Code civil II, 2016

GUGGENHEIM DANIEL / GUGGENHEIM ANATH , Les contrats de la pratique bancaire suisse, 5e éd., 2014

HIRSCH CÉLIAN , La preuve du dommage lors d'une action contre une banque, in : www.lawinside.ch/604/

LOMBARDINI CARLO , Droit bancaire suisse, 2e éd., 2008

MAURENBRECHER BENEDIKT / BAUER CHRISTOPH , Kommentar zum Bucheffektengesetz (BEG), 2013

MOSKRIC ELISABETH , Der Lombardkredit, in : Etudes suisses de droit bancaire, N. 74, 2003

OLLIVIER NICOLAS / GEISSBÜHLER GRÉGOIRE , La monnaie des conclusions dans les litiges bancaires, in : PJA 2017, p. 1439 ss

SCHMID JÖRG , in : Bankvertragsrecht, 2017

This is an unofficial translation of the article published in La Semaine Judiciaire (SJ 2021 II 47). Should this version and the French version differ, the French version shall prevail.

TABLE OF CONTENTS

This is an unofficial translation of the article published in La Semaine Judiciaire (SJ 2021 II 47). Should this version and the French version differ, the French version shall prevail.