

Principles of Acting in the Best Interests of the Customer in the Financial Markets Area of mBank S.A.

Information for Customers



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1. Introduction

These “Principles of Acting in the Best Interests of the Customer” (hereinafter referred to as the “Principles”) define how the Bank should act in order to enable the Customer to obtain the best possible result in connection with the investment services provided by the Bank that consist in acquiring and disposing of Financial Instruments to the Bank’s own account in transactions with Customers. The Principles aim at implementing the requirements imposed on investment firms, including the Bank, by Article 66 of Commission Delegated Regulation (EU) 2017/565 and relevant domestic provisions implementing the MIFID Regulations.

Acting in the best interests of the Customer when concluding transactions in Financial Instruments means that the Bank should take all the necessary steps to obtain the best possible result for the Customer with respect to financial market transactions, in the scope of and in line with the rules described below (hereinafter referred to as “Best Execution”). Apart from the rules described in these Principles, the Bank has to comply with the obligation to act honestly, fairly and professionally in accordance with the best interest of our Customers.

2. The terms used in the Principles shall have the following definitions:

Bank – mBank S.A.,

Customer – Retail or Professional Customer entering into transactions with the Bank in the financial markets area,

Retail Customer – a retail client within the meaning of the MIFID Regulations,

Professional Customer – a professional client within the meaning of the MIFID Regulations,

Eligible Counterparty – an eligible counterparty within the meaning of the MIFID Regulations,

MIFID Regulations – Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU together with implementing and delegated acts,

Mark-up – the difference between the Transaction price quoted for the Customer and the price of maintaining the position by the Bank.

3. Scope of application of the Principles

3.1. Customers

The Principles apply to transactions entered into with Professional and Retail Customers within the meaning of the MIFID Regulations in the scope defined in Section 4. Prior to the commencement of cooperation covering transactions in Financial Instruments, Customers receive information about their MIFID category. Unless the Principles clearly state otherwise, the Principles apply both to Retail and Professional Customers. The Principles and Best Execution do not apply to transactions entered into by the Bank with Eligible Counterparties.

3.2. Products

In the scope defined in the Principles, Best Execution applies to transactions entered into by the Bank with Customers in the financial markets area, being financial instruments, and to other transactions defined in the Principles (hereinafter “Financial Instrument”), in particular to:

- a) sale and purchase of debt securities,
- b) foreign exchange forwards (FX Forward),
- c) sale and repurchase of foreign exchange options,
- d) forward rate agreements (FRA),
- e) sale and purchase of interest rate options,
- f) interest rate swaps (IRS),
- g) currency interest rate swaps (CIRS),
- h) dual-currency deposits,
- i) forward transactions (FT),
- j) forward transactions of sale of greenhouse gas emission allowances with cash settlement option
- k) commodity swaps,
- l) sale and purchase of commodity options.

4. How to determine the Customer and Financial Instrument categories to which Best Execution applies?

The Best Execution obligation depends, first and foremost, on the MIFID category into which a Customer has been classified (Retail or Professional Customer). The Bank carries out a periodic assessment checking the extent to which particular groups of analysed Customers with the same MIFID category and other common features (e.g. the nature of the Customer’s business) reasonably rely on the Bank, in the process of concluding such transactions, to provide them with the best terms of particular types of transactions, which in turn determines whether Best Execution should apply. To this end, the Bank takes into account the criteria defined in the European Commission’s test (“Test”) published in “Commission answers to CESR scope issues under MiFID and the implementing directive”. The potential exemption of Best Execution depends on meeting all of the criteria presented below:

- a) Are the transaction terms agreed on in the process where it is the Bank that offers the transaction conclusion to the Customer? If the Bank offers the Customer to enter into a transaction, Best Execution applies. If it is the Customer that initiates the transaction, the Bank may come to the conclusion that the Customer does not reasonably rely on the Bank and hence, Best Execution does not apply. This, in particular, concerns the situations where the Customer asks for transaction price or the Customer expresses a desire to enter into the transaction at a given price. The following actions are not treated as the initiation of transaction by the Bank: providing Customers with information about Financial Instruments and the way they function, valuations of transactions for informational purposes, information and comments on the market situation and market prices of particular Financial Instruments, and/or researching Customers’ needs as regards financial market transactions.
- b) How likely are Customers to compare transaction prices offered by other investment firms, including other banks, and to what extent are they able to do so before entering into a transaction in a given Financial Instrument? If Customers are not likely and/or able to compare transaction prices at other entities, Best Execution does apply. If Customers can easily compare prices and enter into transactions at other banks and investment firms, the Bank may come to the conclusion that Customers do not reasonably rely on the Bank and hence, Best Execution does not apply. This is mainly affected by accessibility of a given Financial Instrument in offers of other investment firms, including banks, especially in the Polish market, as well as by accessibility of prices of a given Financial Instrument.
- c) What is the availability of market prices of a given Financial Instrument type? If market prices are not available, Best Execution does apply. If prices of a given or comparable Financial Instrument are available to Customers via e.g. generally accessible websites, commercial sites such as Thompson Reuters Eikon – European Securities or Six ID, the Bank may come to the conclusion that Customers do not reasonably rely on the Bank in the process of entering into transactions, and hence, Best execution does not apply.
- d) Does the Customer documentation or the information provided to the Customer imply that the Customer may reasonably rely on the Bank to provide him/her with the best possible terms of a given transaction type? If such indications exist, Best Executions does apply; however, if the documentation and information provided do not contain such indications or provisions, the Bank may come to the conclusion that the Customer does not rely on the Bank in the process of entering into transactions and hence, Best Execution does not apply.

4.1. Retail Customers

The Bank presumes that in principle Retail Customers rely on the Bank when agreeing terms and entering into transactions in Financial Instruments. The Bank may come to the conclusion that the Test criteria are met for certain Retail Customer groups or individual Retail Customers with respect to particular transaction types, and thus such Customers do not reasonably rely on the Bank when entering into transactions. If this is the case, Best Execution does not apply. Regardless of the above, a Retail Customer may always submit a written statement demanding that the Bank apply Best Execution to such a Customer, in the full scope, with respect to the transactions referred to herein.

4.2. Professional Customers

The Bank presumes that Professional Customers are less likely to rely on the Bank when agreeing terms and entering into transactions in Financial Instruments. The Bank may come to the conclusion that the Test criteria are met for certain Professional Customer groups or individual Professional Customers with respect to particular transaction types. If this is the case, Best Execution does not apply.

4.3. Entering into Transactions in the Matched Principal Model

Regardless of the Customer's MIFID category and provisions under sections 4.1 and 4.2, Best Execution applies in the cases where a transaction is concluded with the Customer to the Bank's own account in the matched principal model. The model works as follows: when entering into a transaction with a Customer, the Bank immediately concludes a reverse transaction with another investment firm, including another bank, so as not to be exposed, at any point, to market risks connected with the transaction concluded with the Customer. The reverse transaction concluded by the Bank is aimed at closing all the major market risks arising from the transaction entered into with the Customer. Conclusion of hedging transactions by the Bank as part of market risk management for its own portfolio (within the market risk limits set at the Bank) from which transactions are quoted to Customers, is not treated as a matched principal model action. The matched principal model involves the Bank's intention not to leave the market risk in a given transaction type open.

4.4. Other cases

- a) The Bank assumes that transactions concluded on behalf of and on account of Customers by authorised entities providing professional portfolio management services (e.g. asset management companies) meet the Test criteria, regardless of the category of the Customer being a party to the transaction. In such cases, Best Execution does not apply, subject to section 4.3.
- b) The Bank assumes that transactions concluded by Customers who meet the criteria of being a financial counterparty within the meaning of EMIR (e.g. investment funds, insurance companies) and who, at the same time, are not classified as an Eligible Counterparty, meet the Test criteria.
- c) Regardless of provisions of sections 4.1 and 4.2, the Bank assumes that Best Execution applies in situations where the Customer is obliged to enter into a particular transaction in Financial Instruments with the Bank pursuant to the provisions of agreements concluded with the Customer, especially a transaction hedging against market risks (interest rate or FX risks) arising from the loan or leasing agreement concluded with the Bank or with the Bank's subsidiary. This does not apply to the situation where the agreement concluded with the Customer obliges the Customer to ensure a certain volume of FX transactions at the Bank; this volume, in addition to the volume of spot FX transactions, includes the volume of transactions in Financial Instruments.

5. How to ensure Best Execution?

In order to ensure Best Execution, the Bank, in the process of quoting prices of transactions in Financial Instruments to the Customer, takes every effort to guarantee that the price at which it intends to conclude a transaction to its own account is fair (the price of maintaining the Bank's position, excluding Mark-up) and that Mark-ups are used within the limits presented to the Customer. When determining the price of maintaining the position, serving as a basis for transaction quotation to the Customer, the Bank takes account of a number of factors, in particular: transaction type, underlying asset, nominal value, tenor, trading position (buy or sell), instrument valuation model and costs of maintaining and managing the position. When entering into a transaction with a Customer and making it on its own portfolio, the Bank assumes a number of risks, including market and credit risks, which it needs to mitigate by concluding hedging transactions. That is why the price of maintaining the Bank's position includes in particular: prices (available to the Bank) of hedging instruments necessary to manage the position within the transaction lifetime, necessity of financing the position and financial risks borne. When determining the price of maintaining the position, the Bank shall not include a relevant Mark-up in it.

6. Procedures for entering into transactions

The Bank enters into transactions with Customers to its own account, which means that it is a party to every transaction concluded with a Customer. The conclusion of a transaction consists in providing the transaction price to the Customer based on the price of maintaining the position for the Bank increased by Mark-up. It is also possible to enter into transaction by way of offer and acceptance where it is the Customer that submits an offer to the Bank for concluding a transaction and indicates all the significant terms, in particular the price at which the Customer is willing to enter into the transaction. Typical sample models of entering into transactions and applying Best Execution are presented below, whereas the Bank takes account of the Test procedure in line with section 4, specifying whether a given Financial Instrument type is subject to Best Execution.

6.1. Request for quote

When entering into a transaction by means of a request for quote, the Bank replies to the Customer's request for the price of a given transaction, in which the Customer indicates other significant terms of the transaction, in particular the type of the transaction and its underlying asset (e.g. Barrier FX Option for EUR/PLN), the transaction nominal value (e.g. EUR 1 million), the settlement date(s), the trading position (e.g. purchase of EUR/PLN call option). The Bank replies to the request by providing the price to the Customer (the price of maintaining the positions for the Bank, plus/minus Mark-up). In this case, with the proviso that all the requirements stipulated in section 4 are met, the Bank concludes the transaction as the Customer's counterparty, not on behalf of the Customer. Therefore, Best Execution does not apply.

6.2. Transaction conclusion by way of offer and acceptance

When concluding a transaction by way of offer and acceptance, the Customer that submits an offer to the Bank for entering into a transaction and indicates all the significant terms, in particular the price at which the Customer is willing to enter into the transaction. If this is the case, the Bank accepts the Customer's offer if the price for the Customer adjusted for a Mark-up, corresponds to the price of maintaining the position at which the Bank can enter into a given transaction. When submitting the offer and determining the price at which the Customer is willing to enter into the transaction, the Customer is free to determine the price in a number of different ways as long as the Bank accepts the selected method; in particular the Customer can: indicate the price level, indicate the method for calculating the price, e.g. based on a reference price on the regulated market adjusted for a given value, or indicate the formula of price calculation. Determination of the price at which the Customer is willing to enter into the transaction with the Bank can lead to a situation where the price is worse than market conditions as at the time when the Bank accepted the Customer's offer.

7. Transaction execution venue

Transactions are concluded with Customers outside trading venues, to the Bank's own account, which means that the transaction conclusion venue is the Bank's own portfolio. The Bank is a party to each such transaction concluded by the Customer.

8. Best Execution monitoring and the Principles review

The Bank has an internal Best Execution monitoring process in place, which verifies the quality of the procedure on a daily basis. Based on the monitoring results, the Bank carries out the Principles review at least once a year.

In addition, the Bank carries out the Principles review if changes are introduced in the manner of providing services to Customers, which can have a significant impact on Best Execution results.

9. Communication and approval of the Principles

The Principles and amendments thereto are communicated to Customers not later than prior to the conclusion of the first transaction by means indicated in the Terms and Conditions "Rules of Cooperation for Financial Market Transactions", Terms and Conditions "Rules of Cooperation for Financial Market Transactions for consumers", Terms and Conditions "Rules of Cooperation for Financial Market Transactions for institutional clients", General Terms and Conditions of Cooperation with Clients with respect to Financial Market Transactions or documentation signed with the Customer.

In the case of any questions concerning these Principles, the Customer should contact the Bank's employee responsible for entering into transactions or presenting the offer of financial market products (dealer or specialist for sale of derivatives).

These Principles apply to transactions concluded as of 3 January 2018.

10. Appendix - Scope of Best Execution

The current scope of application of Best Execution with respect to particular groups of Customers and types of Financial Instruments. Regardless of the below, the Bank may, by means of a separate notification, inform the Customer that Best Execution shall not apply to certain transaction types.

The acronyms used below mean the following:

BE – Best Execution applies

NBE – Best Execution does not apply

N/A - not applicable

10.1. Retail Customers

Type of Financial Instrument	Retail Customer	Retail Customer active on the market ¹	Retail Customer – matched principal model transaction	Retail Customer indicated in section 4.4 a) or b), e.g. customer of an asset management company, investment fund, insurer
FX Forward	BE	NBE	N/A	NBE
Par-Forward	BE	BE	N/A	NBE
Foreign Exchange Options	BE	BE	N/A	NBE
IRS	BE	BE	N/A	NBE
FRA	BE	BE	N/A	NBE
Cap&Floor Options	BE	BE	N/A	NBE
CIRS	BE	BE	N/A	NBE
FT	BE	BE	BE	BE
Commodity Swap	BE	BE	BE	BE
Commodity Option	BE	BE	BE	BE
Forward transactions of sale of greenhouse gas emission allowances	BE	BE	BE	BE
Treasury debt securities	BE	BE	N/A	NBE
Non-treasury debt securities – traded on a trading venue	BE	BE	BE	NBE
Non-treasury debt securities – not traded on a trading venue	BE	BE	BE	BE
Dual-Currency Deposits	BE	BE	N/A	NBE

¹ Customers that are active on the financial market, which results from their core business activity, e.g. currency exchange offices.

10.2. Professional Customers

Type of Financial Instrument	Professional Customer	Professional Customer - matched principal model transaction	Professional Customer indicated in section 4.4 a) or b), e.g. customer of an asset management company, investment fund, insurer
FX Forward	NBE	N/A	NBE
Par-Forward	NBE	N/A	NBE
Foreign Exchange Options	BE	N/A	NBE
IRS	BE	N/A	NBE
FRA	BE	N/A	NBE
Cap&Floor Options	BE	N/A	NBE
CIRS	BE	N/A	NBE
FT	BE	BE	BE
Commodity Swap	BE	BE	BE
Commodity Option	BE	BE	BE
Forward transactions of sale of greenhouse gas emission allowances	BE	BE	BE
Treasury debt securities	NBE	N/A	NBE
Non-treasury debt securities – traded on a trading venue	BE	BE	NBE
Non-treasury debt securities – not traded on a trading venue	BE	BE	BE
Dual-Currency Deposits	BE	N/A	NBE