

Supervision of Banking Department
Policy and Regulation Division
July 19, 2023

The Banking Corporations and Credit Card Companies

Att: CEO

**Re: Q&A File on Implementing Proper Conduct of
Banking Business Directive No. 461 “A Banking
Corporation’s Activity as a Broker-Dealer”**

Dear Sir or Madam:

1. This file is a selection of positions regarding implementation of Proper Conduct of Banking Business Directive No. 461 “A Banking Corporation Activity as a Broker-Dealer” (“the Directive”). This file is not a complete list of the positions of the Supervision of Banking Department on the issues that arose or may arise in implementing the Directive.
2. The answers contained in this file reflect the Supervisor of Banks’ binding position and interpretation of the Directive.
3. Alongside each response is the date it was communicated or most recently revised.
4. This document is posted on the Bank of Israel website and is revised by us from time to time.

Respectfully,

Revital Keisar-Satoya
Deputy Supervisor of Banks

CC: Supervisor of Banks

Questions and Answers File: Banking corporations' broker-dealer activity¹

		Revision date
Chapter B: Corporate Governance		
Senior management (Section 11)		
Q1	How will banking corporations balance the need to set profitability targets with the need to comply with operational risk tolerance at different levels of their organizational hierarchy?	July 19, 2023
Answer	Banking corporations can define targets for the managers of their business units, dealers, or business units in terms of maximum risk tolerance. Alternatively, they can include the level of operational risk in the variable components of remuneration. They can do this by taking into account the level of operational risk losses or by defining limits to operational risk in terms of key risk indicators, scorecards, alerts, etc. The targets and limits should be consistent with the banking corporations' risk strategy and general risk appetite.	
Chapter C: Professional qualifications and conflicts of interest		
Handling conflicts of interest (Section 16)		
Q1	What does it mean to identify circumstances in the course of the banking corporation's activities in which there is a conflict of interest between one client and another?	July 19, 2023
Answer	This means, for example, prioritizing one client over another in the order in which orders are sent, or when the banking corporation discriminates between clients for various reasons, such as incentives offered by a party related to the activities or the remuneration policy of the banking corporation itself. Rendering certain services or benefits that the banking system customarily grants (e.g., a discount on fees on securities transactions) to certain types of customers (e.g., professional clients or eligible clients) will not be considered discrimination among client for the purpose of Section 16 of the Directive.	
Chapter D: Operations appropriate for the client		
Operations appropriate for the client (Sections 18-20)		
Q1	According to Section 20(b), is the banking corporation required to inform all its clients, both existing and new, about their classification according to the Directive, as eligible, professional, or other clients?	July 19, 2023
Answer	A banking corporation shall give notice of a client's classification (eligible, professional, or other) according to this	

¹ The sections noted here are the same as in the Directive.
Among other things, relevant FAQs from the file published by ESMA were included.

	Directive, to new clients and to existing clients whose classification changed.	
	Reporting to clients (Sections 19 and 41(b))	
Q2	Before signing an agreement to execute securities transactions, a banking corporation shall provide comprehensive information to the client in writing about ancillary costs and charges. If this information was already given to the client within the requirements of the Banking (Service to Customer) (Due Diligence and Delivery of Documents) Rules, 5752-1992, is the banking corporation required to convey this information again?	July 19, 2023
Answer	<p>The banking corporation is required to give a client information about ancillary costs and charges related to securities transaction services, such as fees, third-party payments, etc. If, on the date the Directive determined as the timing of the delivery of information, all the ancillary costs and charges of a transaction had already been given to the client according to the Banking (Service to Customer)(Due Diligence and Delivery of Documents) Rules, 5752-1992 (“the Rules”), the banking corporation is not required to provide them again according to this Directive.</p> <p>Note that the exemption from the requirement to comply with paragraphs (1) to (3) of Section 26A of the Rules, as stated in Bank of Israel Circular No. 06-2254 on “Disclosure of Cost of the Service When Rendering Securities and Foreign Currency Services” dated January 5, 2010 also applies to the requirements in Section 19 of the Directive.</p>	
Q3	A banking corporation is required to give the client a periodic report, at least once a year, of the actions that it performed for the client. These reports shall include details of securities balances and the costs related to the execution of transactions. If this information is included in the client’s Banking ID, is that sufficient to meet the requirements of this section?	July 19, 2023
Answer	If the required periodic information is contained in the Banking ID, the banking corporation is not required to convey this information again, according to this Directive.	
Q4	According to Section 20, is it necessary to have a specific agreement for execution of securities transactions?	July 19, 2023
Answer	In general, a specific agreement for execution of securities transactions is not required if the banking corporation already has agreements for various banking services that include a separate chapter on this topic, except in the cases where clients wish to trade in complex financial instruments. In that case, a separate specific agreement must be signed.	

Chapter E: Executing transactions		
	Best execution (Section 28)	
Q1	How should one understand the requirement in Section 28(a) about taking all reasonable means to obtain the most favorable transaction for the client?	July 19, 2023
Answer	<p>A banking corporation shall use all reasonable means to execute the most favorable transaction for the client, taking into account the following features of the transaction, among other things: size, price, costs, speed of execution, and likelihood of execution and settlement in potential regulated markets, unless the client gave a specific order regarding the execution of the order.</p> <p>To implement this instruction, the banking corporation is required, when planning its execution policy, to define execution processes that will continuously ensure that reasonable steps are being taken to obtain the most favorable transaction for its clients.</p>	
Q2	How can banking corporations that operate in only one regulated market prove that they take steps to obtain the most favorable transaction for its clients?	July 19, 2023
Answer	<p>A banking corporation may elect to execute its client's orders involving a certain type of securities in a single regulated market, where it can show that such a choice does in fact allow it consistently to obtain the most favorable execution for its clients. When a banking corporation decides on a policy of execution in a single regulated market only, the banking corporation is expected to include in its considerations the development of competition (the market landscape), the possibility of execution in various regulated markets, the entry of new actors and new regulated markets, and various execution-related services. This policy should be examined periodically, together with an analysis of suitable regulated markets, and whether use of these markets will improve the rates, costs and risks (counterparty, operational).</p> <p>Operating in a single regulated market (even if the securities are traded only on this market) is not a sufficient indication that the corporation fulfilled its duty of executing the most favorable transaction. The manner in which the order was executed is also important. Sending the order to the primary order book is not sufficient: The banking corporation must examine whether the order should be executed as a single trade or should be divided into parts, and whether conditions of execution should be added (e.g., limit, fill or kill, etc.).</p>	
Chapter G: Reporting and documentation of transactions		

	Reporting and documentation of transactions (Sections 41–46)	
Q1	What kind of internal telephone calls or digital messages must be recorded or documented?	July 19, 2023
Answer	<p>Internal telephone calls or electronic messages that were made in order to execute transactions or are related to a client’s orders or execution of orders to the bank’s own account must be recorded or documented, and this includes conversations about rates, requests for quotes, expressions of interest in securities, etc.</p> <p>For the sake of good order, we clarify that such recordings or documentation must also include the internal telephone calls or electronic messages made by the sales desk, requesting quotes from the securities dealing desk before completing the transaction with the client. The recordings are designed to ensure that the transactions that are executed according to clients’ orders, and to identify misconduct, also in the case that the corporation executes a transaction on its own account.</p>	
Q2	What is periodic monitoring of the recordings?	July 19, 2023
Answer	The banking corporation is required to monitor the records of recorded telephone calls or documented messages communicated by other electronic means, on a regular basis, and when necessary for a specific matter, in order to verify compliance with regulatory requirements. The monitoring method will be based on, among other factors, the nature, size, and complexity of the business. The monitoring process and the monitoring tools should be established in policy and in procedures.	
Q3	What kind of messaging media are subject to the recording and documentation requirement?	July 19, 2023
Answer	<p>The requirement to record telephone conversations and document electronic messages encompasses all the media involved in the transaction execution process, whether the execution is for the banking corporation’s own account or whether execution is based on a client’s order.</p> <p>The term “electronic message” covers many categories of communication, and includes video calls, fax, email, SMS messages, business communication devices, chats, immediate messages, and mobile devices.</p> <p>Since technology evolves continuously, it is not possible to define a closed list of electronic means of communication.</p>	
Q4	If the banking corporation outsources the operation of the telephone conversation recordings and the recordings of voice messages conveyed through other media to an external service	July 19, 2023

	provider, would this be considered a material activity with respect to outsourcing?	
Answer	Yes. These operations may be assigned to an external service provider that meets the requirements of the Proper Conduct of Banking Business Directive no. 359A.	
Q5	May employees use mobile devices to perform activities related to transactions for the banking corporation's own account or to execute a client's order?	July 19, 2023
Answer	<p>A banking corporation may allow its employees to use mobile devices to execute transactions for its own account or to execute a client's orders (whether the device is owned by the corporation or whether the device is privately owned and is expressly permitted for such use), provided that the banking corporation can record or copy the execution records.</p> <p>The banking corporation's recording policy should also cover the mobile devices and address the following topics, among others: prohibition against deleting recordings, how to respond if a device is lost or stolen, what happens to the device or the data when an employee leaves the corporation, and the frequency at which the information from the mobile device is transferred to the organization's database.</p>	
Chapter H: Controls		
Controls on the operations and on unusual activities (Section 47–56)		
Q1	How should a banking corporation check and control the accuracy of the data of the transactions executed with a counterparty?	July 19, 2023
Answer	<p>In general, by the end of the next business day, the banking corporation must exchange certifications with the counterparty's control function or relevant support function, with respect to all transactions, including offset transactions and transactions executed by a third party. An exemption from this rule applies only in unusual circumstances (e.g., transactions with specific counterparties or specific transactions) that, in any case, must be expressly defined, fully documented, reported, and will be subject to review and assessment by the control function.</p> <p>The back office will, on a test sample basis, listen to the conversations in which transactions were agreed upon without obtaining the counterparty's approval. The back office will perform daily controls on dealers' log books regarding transactions above a certain amount or regarding complex transactions, where the back office did not listen to the conversations in which these transactions were agreed upon.</p>	

