

# Cancellation of a limited buy order for a derivative

Topic: **Stock exchange and custody accounts** Case number: **2018/15**

The customer complained that the bank cancelled a limited buy order for a derivative before the selected end date without duly informing him because the issuer had temporarily indicated that the product was “sold out”. The next day however, the product was offered again at a price that was below his buying limit and could have been sold by him on the same day with a considerable profit. He claimed compensation from the bank for the difference between this possible purchase price and the selling price he could have achieved. The bank refused any liability to pay compensation as it was unable to guarantee trading for such a product in accordance with the applicable trading conditions. The customer then referred the matter to the Ombudsman. It was possible to find an amicable solution during the Ombudsman proceedings.

Since the Ombudsman did not feel that the bank’s response was clear given the specific allegations, he asked it to provide a comprehensive statement of its views regarding the facts outlined by the customer. The bank took three months in fact to draft the response, which seems a long time within Ombudsman proceedings, but then gave a detailed statement of its position.

According to the bank’s statement, it places customer orders for such derivatives on an external platform. According to the terms and conditions for the relevant electronic trading system, which were accepted by the customer, issuers offering financial instruments are not obliged to accept orders placed by the bank on the customer’s behalf on the external platform which forms the interface between the bank and the issuer. The bank was therefore unable to offer customers a guarantee that they would be able to trade a particular financial instrument at a given point in time. An order could only be completed when the issuer in question confirmed its acceptance of the same. In this case, at one point during a night in the term of the limited buy order, the issuer changed the status of the product to “sold out” whereupon the electronic platform immediately deleted the order placed by the bank on the customer’s behalf. At the same time, the customer was shown the deletion of the buy order by the bank under “My orders” in his account.

The customer also noticed this deletion, which is why he contacted the bank by telephone the following morning. The deletion was confirmed to him during that call. Even though he was aware that the product was available on the platform again at that time, he did not place a new order. The bank further maintained that, on the trading day in question, once it was available again, contrary to the customer’s statement, the product was never traded at a price below the customer’s purchase limit. It would therefore have been impossible for the bank to purchase the product for him at the desired price anyway. The lowest price shown was much higher than the limit specified by the customer. The bank claimed that the customer had therefore not suffered any damage or loss as a result of the incident. Although the bank also refused the claim for compensation in its statement of opinion to the Ombudsman, in view of the longstanding relationship, it did offer, by way of a gesture of goodwill and without acknowledging any legal obligation, to pay the customer one third of the claim asserted by him.

The Ombudsman understood the customer’s annoyance about the limited purchase order being

deleted before it had expired given the circumstances. As this case demonstrates, a status change for a product can be merely temporary. Although the bank explained quite understandably that it has no influence over such status changes, the Ombudsman felt it was not clear why such a status change had to result in the deletion of a limited buy order placed by the bank. As a contractor however, by law it has the right to withdraw from a placed order at any time, just as the customer has the right to withdraw such an order at any time. This is permissible even if it occurs at an inopportune moment, but can then give rise to liability for compensation. Even if the deletion of the limited buy order at night could be deemed at an inopportune moment however, no damage or loss would be incurred in this specific case since the product did not reach the purchase limit set by the customer on the trading day in question. In addition, the bank verifiably explained that it had informed the customer about the deletion.

In light of these considerations, the Ombudsman considered the goodwill gesture offered to the customer to be fair and recommended that he accept it. The customer did not agree with all aspects of the situation put forward by the bank but stated that he was satisfied with the bank's offer and accepted it.