

## SALE OF GETBACK BONDS AS AN EXAMPLE OF MISSELLING

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### Abstract

**The purpose of this article** The purpose of this study is to identify the occurrence of misselling in the process of offering and selling corporate bonds of GetBack SA.

**Methodology.** The study included a literature review, analysis of secondary data derived from official documents such as decisions issued by the President of the Office of Competition and Consumer Protection, reports of the Supreme Audit Office, and studies by the Financial Ombudsman.

**The result of the research.** The area where the phenomenon of misselling occurred is undoubtedly the case regarding the process of offering and selling bonds of GetBack SA. The circumstances of the case indicate that there were irregularities in the sales process, which consisted in misleading the customers about the offered products, which were not adapted to their needs and carried a high investment risk, disregarding their investor knowledge. Furthermore, in the opinion of the Office of Competition and Consumer Protection and the Financial Ombudsman.

**Keywords:** misselling, unfair sales, unfair practices, financial market, fraud, finance ethics.

**JEL Class:** D18, G18, G21, G23.

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## INTRODUCTION

In the financial services market, abuses against consumers can have various dimensions. There can be an individual dimension: when a particular market practice of a specific financial market entity affects a specific consumer, and a collective mass dimension: when abusive market practices affect all consumers. Such an example of abuse can be misselling, which is mass (widespread) and repetitive in nature. Regardless, abuses against consumers by financial service providers can also have different legal nature and subjective scope. Their legal classification can also be made differently. Namely, they can be considered prohibited market practices (practices that violate the collective interests of consumers, unfair market practices, misselling of financial services, use of prohibited contractual clauses), criminal acts (“sectoral” crimes, consumer offenses), or other torts (individual acts in violation of the provisions of the consumer financial market law) (Rutkowska-Tomaszewska, 2020: 29–60). At the same time, abuse of the consumer is always a violation of good morals, including ethical standards, honesty, integrity, which should be respected by financial institutions in their relations with the weaker participant in the financial services market. In the financial services market, characterized by high risk and high complexity, there are problems arising from its imperfection (Chater, Huck and Inderst, 2010: 3). The advantage of financial institutions over consumers in terms of information, knowledge, legal standing or negotiating power is indicated as a market imperfection (Czechowska and Zatoń, 2018: 290). Therefore, in the literature, the reasons for the imbalance are to be sought among: market defects (Chater, Huck and Inderst, 2010: 3), irrational market behavior (Muller et al., 2014: 30), but primarily in the irregularities occurring on the part of financial service providers. The abuse of customer advantage and the resulting negative consequences are referred to as misselling (Czechowska and Waliszewski, 2018: 19–32)<sup>1</sup>.

Misselling as an unethical and legally questionable practice occurs in finance and banking, which is an important research problem given the importance of financial transactions. Although it is one of the important topics addressed in the literature, no single definition has been developed so far. By some experts, misselling is defined broadly, ranging from the practice of misleading customers and inadequately informing them about important product features, i.e. the cost and level of risk associated with a financial product (Franke, Mosk and Schnebel, 2016), to aggressive selling or fraud. The consequences of this type of behavior are financial losses on the part of consumers, as well as undermining confidence

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<sup>1</sup> In particular, we can talk about allegations of mis-selling financial services to a consumer who is not a professional and lacks expertise in a particular field, unable to evaluate the information provided.

in the market as well as financial institutions. A good example of this is the case concerning the process of offering and selling GetBack SA bonds, referred to by the market as the “GetBack affair”. This company has committed numerous and significant irregularities, suffered great losses and caused serious damage to others<sup>2</sup>. The GetBack affair is undoubtedly a serious, unprecedented phenomenon that has brought together many of the problems of the Polish capital market.

The main purpose of the article is to identify the occurrence of misselling in the process of offering and selling corporate bonds of GetBack SA. The research methods used in the article include literature analysis and analysis of secondary data having its source in official documents in the form of decisions issued by the President of the Office of Competition and Consumer Protection (OCCP), reports of the Supreme Audit Office (NIK) and studies of the Financial Ombudsman.

## **1. THE ESSENCE OF THE CONCEPT AND EXAMPLES OF THE OCCURRENCE OF MISSELLING IN POLAND**

The term misselling has its origin in the UK, where it was singled out in connection with the massive occurrence of the practice of selling loans bundled with PPI insurance policies, which took place between 1990 and 2010 (Szakun, 2019: 59–74). The policies offered at the time were not only very expensive, but full of exclusions that limited the likelihood of compensation. In addition, they were offered to unaware customers as a necessary component of a specific financial product. We could also encounter the concept of misselling in the context of the genesis of the financial crisis of 2007–2009. It appeared in descriptions of negative sales practices in the subprime mortgage market in the United States and their securitization, which later led to the spread of the crisis throughout the world.

If we were to give the legal status of this concept, it would unfortunately be difficult, because so far it has not been reflected in national laws or EU regulations. Moreover, there is no uniform and methodologically consistent definition. The first attempt to define the concept was made by the UK Financial Services Authority – Financial Services Authority (FSA), which described it as “the provision of unfair, unsuitable products to consumers” (Financial Services Authority, 2013). Subsequently, the Financial Conduct Authority (FCA),

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<sup>2</sup> According to the Business Insider portal, the scale of the problem is evidenced by the number of aggrieved customers (bondholders) – almost 10 000, most of whom are private individuals (there are 178 institutions), and the amount of losses incurred – it is estimated that on a national scale the losses incurred by individuals in the GetBack affair reach up to PLN 2.5 billion. Professor S. Buczek estimates the scale of the problem at nearly PLN 4 billion, including PLN 740 million in stocks, PLN 2.3 billion in bonds, PLN 500 million in debt funds and several hundred million in bank loans (Nartowski, 2018).

a successor to the FSA<sup>3</sup>, expanded on this definition, indicating that misselling should be associated with giving inappropriate advice, providing unnecessary information with the omission of important features, or failing to explain the risks being taken, resulting in the customer signing a contract that is unfavorable to them (Money Advice Service). Misselling also occurs when the customer admittedly does not lose money, but does not receive complete, reliable and transparent information about the instrument being purchased and its effects on the market (Cichorska, 2017: 18–34). An important position related to the attempt to define this concept is provided by a study prepared for a committee of the European Parliament. The author of this study, Alexander Kern, captures this phenomenon very broadly, listing the following practices as examples (Kern, 2018):

- 1) inadequate, insufficient information about hidden costs, fees and risks of the financial product;
- 2) creating and offering financial products unsuitable for customers, not taking into account their behavioral conditions and level of financial knowledge;
- 3) highlighting the positive features of a financial product while minimizing information about potential risks;
- 4) lack of proper management and control on the part of lenders and investment companies over client intermediaries and advisors motivated to propose high-risk and unsuitable products to clients.

In Poland, the problem of misselling was noticed several years ago, on the occasion of the filing of class action lawsuits against insurers and banks, which began to offer insurance products of an investment nature, so-called polisolokaty. At the time, the hitherto unnamed phenomenon was treated as a manifestation of a practice that violated the collective interests of consumers. It was not until harmful practices of selling financial products on the market, manifesting themselves in the offering of: so-called momentary loans on the consumer credit market, life insurance with an insurance capital fund, mortgage loans denominated or indexed to a foreign currency, that the Competition and Consumer Protection Act was amended. This law introduced, as of April 17, 2016, a new category of prohibited practice that violates the collective interests of consumers – misselling of financial services (Dz.U. 2015, poz. 1634). At that time, it was recorded that misselling is a practice that violates the collective interests of consumers and consists in “proposing to consumers the acquisition of financial services that do not meet the needs of these consumers determined taking into account the information available to the trader, in terms of the characteristics of these

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<sup>3</sup> Due to the perceived regulatory inefficiency of banks during the 2007–2009 financial crisis, the UK government decided to restructure financial regulation and transform the FSA. Its responsibilities were then split between two agencies, the Financial Conduct Authority and the Prudential Regulation Authority of the Bank of England.

consumers, or proposing the acquisition of these services in a manner inadequate to their nature” (Dz.U. 2020, poz. 1076)<sup>4</sup>. Thanks to this regulation, which recognizes the need for special consumer protection, an obligation is imposed on financial institutions to act ethically by offering financial products that are appropriate, adequate and tailored to the needs of the consumer. However, it should not be forgotten that among the EU regulations already enacted, there is a number of other regulations that, in some part, respond to the increase in misselling in the financial market. First and foremost, one can point to the MiFID Directive<sup>5</sup>, which was later modified to MiFID II<sup>6</sup> (*Markets in Financial Instruments Directive*)<sup>7</sup> with its supporting MiFIR (*Markets in Financial Instruments Regulation*) (Official Journal of the EU L 87/1 of 31.03.2017) and guidelines on certain aspects of MiFID II suitability requirements (European Securities and Markets Authority, 2018). Another important EU legislation worth citing here is the IDD (*Insurance Distribution Directive*) (Official Journal of the EU L26/19, 2.02.2016)<sup>8</sup>, which concerns the work of insurance intermediaries: agents or brokers, but also the way the insurance is offered.

An interesting profile of the concept of misselling was presented by J. Cichorska, who, based on various sources, compiled the most common characteristics of misselling (Cichorska, 2017: 18–34). She pointed out, following other authors, that misselling is customer-dangerous behavior (Wierzbicka, 2015: 71–79), referring to unethical behavior of personnel misleading consumers (Wojnowska and Gniadek, 2015), and selling inappropriate products (Wyman, 2011), mismatched to consumer needs (Krasnodębska-Tomkiel, 2016: 30–32).

Importantly, misselling is an unfair practice, an act of unfair competition, which may already occur in the advertising or sale of a financial product or service<sup>9</sup>, that is, before the conclusion of the contract (in the decision-making

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<sup>4</sup> Art. 24, item. 2, p. 4.

<sup>5</sup> MiFID was created to protect clients using the services of investment service providers operating in the European Economic Area. According to the document, banks, brokerage houses and other financial institutions are required to act in the interests of clients. That is, they are to recommend products that suit the investor's profile and to properly carry out the instructions given by the investor (Official Journal of the EU L 145 of 30.04.2004).

<sup>6</sup> In 2018, MiFID was modified. The changes included a reduction in costs, borne by investment clients. According to the latest directive, it is necessary to develop the valuations of individual financial products in such a way that these are as transparent as possible (Official Journal of the EU L 173/349 of 12.06.2014).

<sup>7</sup> This document regulates the provision of investment services in the European Economic Area.

<sup>8</sup> This directive was implemented into the Polish legal area as the Insurance Distribution Act of December 15, 2018.

<sup>9</sup> According to art. 4 ustawy o przeciwdziałaniu nieuczciwym praktykom rynkowym, an unfair sale is contrary to good practice and is likely to materially distort the market behavior of the average consumer before, during or after the conclusion of a contract (Dz.U. 2017, poz. 2070).

phase), which is unsuitable for the consumer. The reason why a consumer decides to buy a particular product may be due to inappropriate (incomplete) information, not adapted to the consumer's capabilities or needs in terms of age, health, financial situation, or economic knowledge.

There are many examples of what misselling can look like in the market of offered financial products. The most well-known example of the occurrence of this phenomenon in Poland to date would be the irregularity of offering and selling loans denominated or indexed with the exchange rate of the Swiss franc. The popularity of such products in the Polish market was due to indirect (related to the general demand of households for real estate loans) and direct (related to the attractiveness of foreign currency loans compared to loans in the native currency) reasons (Penczar, 2020: 125–136).

## **2. THE PHENOMEN OF MISSELLING IN THE PROCESS OF OFFERING AND SELLING GETBACK BONDS**

An interesting example bearing the hallmarks of misselling is the case involving the process of offering and selling GetBack SA bonds. The process involved the wrong entities offering the wrong assets to the wrong buyers in the wrong way. Therefore, this procedure, referred to by the market as the “GetBack affair”, is worth a closer look. The case of the GetBack affair is undoubtedly one of the largest financial scandals of recent years, in which numerous and significant irregularities were committed, great losses incurred and serious damage was done.

The history of GetBack SA begins on March 14, 2012, when it was registered by LC Corp. B.V., a Dutch entity owned by Leszek Czarnecki. Its object is to acquire debt portfolios and collect payment for its own account, and to manage external debt portfolios under the management of securitized receivables of investment funds. The debt portfolios acquired were mainly from the financial industry and the telecommunications and energy sectors (NIK, 2020: 37). In July 2014, the company was acquired by Idea Bank for PLN 270 million, after which, on June 15, 2016, all of the company's shares were purchased for PLN 825 million by a consortium of private equity funds, with the leading role of the Abris fund (Nartowski, 2018: 14). The company's business model was characterized by a high degree of aggressiveness in terms of both debt acquisition and financing. The company showed very high growth dynamics. This is evidenced by changes in the company's balance sheet size. In 2014–2017, the company's assets increased from PLN 289.5 million to PLN 2,312.7 million, i.e. 8 times, total liabilities from PLN 223.9 million to PLN 2,934.7 million, i.e. 13 times (NIK, 2020: 40). The

volumes of loan portfolios managed by the company also grew very dynamically<sup>10</sup> – in 3 years their value grew 6-fold (to nearly PLN 30 billion by the end of 2017) (Mazur, 2018). The loan portfolios were financed with funds from recoveries from debt portfolios, but primarily with debt raised on the capital market. Debt raised on the capital market of GetBack SA's capital group included corporate bonds in both public and private placements. In total, the company issued corporate bonds under private issues of 401 series for a nominal amount of PLN 3,560.1 million, and 6 series of public issues for a nominal amount of PLN 256.4 million<sup>11</sup> (NIK, 2020). GetBack SA issued bonds without restraint. For the company, this was an effective way to raise financing due to its small equity. Unfortunately, as it later turned out, the company issued far more than it could handle. How was it possible to issue such an amount of bonds? Issuing them was possible because of several reasons. First, the first public offering was well received in the market<sup>12</sup>, which over time the company used to issue more bonds<sup>13</sup>. Their conduct was possible because they were supported by several investment banks and the ratings it received<sup>14</sup>. By earning positive ratings from rating agencies, the company has significantly raised analysts' sentiment and the trust placed in its assets by individual investors. The justifications for these ratings were captivating in their optimism, even though a significant risk factor was that some of the securities issues carried high interest rates above market conditions, and some of them were equipped with a PUT option, i.e. an option for early redemption at the request of bondholders (GPW, 2011). Secondly, it was crucial that the issue be non-public (private), because according to the Bond Law (Dz.U. 2020, poz. 1208)<sup>15</sup>, a prospectus or investor information memorandum is then unnecessary (Rogowski and Gemra, 2018: 89–103). And this meant that the entire process took place without the supervision of the Financial Supervisory Commission (FSC), as the documents did not have to be approved by it. The company took advantage of this by dividing the issues into small series of up to 149 people and offering them to a very wide range of investors.

For many months, the company sailed on a wave of media acclaim, allowing business to continue. The industry praised the innovative approach to debt recovery, brokerage houses outdid themselves in issuing positive recommendations (Biedny, 2019: 160–177). Even the Board of Directors of the

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<sup>10</sup> As it turned out later, the company purchased receivables at inflated prices, which negatively affected the company's profitability.

<sup>11</sup> GetBack SA's liabilities from issuing debt securities increased more than tenfold between late 2014 and mid-2017.

<sup>12</sup> The WSE then admitted 600 000 of the company's bonds to trading on the main market in May 2017 (Rogowski and Gemra, 2018: 89–103).

<sup>13</sup> On 17.07.2017, the company also debuted on the WSE, raising PLN 370 million.

<sup>14</sup> Information on the ratings assigned can be found (Nartowski, 2018: 27–28).

<sup>15</sup> Art. 33, 34.



Exchange appreciated the optimal use of the opportunities of the markets run by the Exchange<sup>16</sup>. Unfortunately, the financing model adopted by the company proved to be very risky. From the outside, what might have looked like a role model, turned out to be a disaster up close. The first signs that the company might bear the hallmarks of a financial pyramid came to light thanks to a whistleblower on 30.11.2017, who indicated that the company, although it achieved high profitability in the short/medium term, in the long term the company would be loss-making, which the current owners would probably take advantage of by exiting the shareholding of the listed company (NIK, 2020). Unfortunately, the notice did not elicit the expected reactions, although many entities received it (Kosinski, 2020). Subsequent events in the market suggesting financial instability by regulators were also ignored, i.e. the company's March 2018 announcement that it was looking for a strategic investor, and the announcement that it had applied for a private placement of up to 70 million shares (Poor, 2019: 160–177). It was only when the company published their Current Report No. 39/2018 (GetBack, 2018) on 16/04/2018 and issued an announcement that it was in advanced financing talks with PKO BP and the Polish Development Fund<sup>17</sup>, which caused the company to attract the interest of state authorities. The company's false announcement that talks were underway brought to light the company's insolvency problems and the prevailing disorder that resulted from the lack of corporate governance (Biedny, 2019: 160–177; Nartowski, 2018), lack of ethical standards and organizational culture. For this reason, in the following months, many more irregularities and frauds<sup>18</sup>, which occurred within the company itself and its affiliates, came to light. We can learn about their details from various sources compiled by the supervisory authorities. Among these irregularities we could mention, e.g.: falsification of financial statements (KNF, 2018), moving money out of the company (Nartowski, 2018), irregularities in the servicing of debt funds<sup>19</sup>, rolling over debt portfolios, or finally misselling, which is the main argument of aggrieved investors in the fight for compensation, and will be addressed later in the article (Business Insider, 2018). We can learn that the company conducted its business in violation of the law from the decisions issued by the President of the OCCP, which recognized the violation of collective

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<sup>16</sup> On February 1, 2018. The Board of Directors of the Exchange decided to award the company for 2017.

<sup>17</sup> The message issued turned out to be untrue, which was denied by the aforementioned entities.

<sup>18</sup> In what follows, all irregularities will not be discussed, as this is not the subject of the article's consideration.

<sup>19</sup> The improper process of acquiring debt portfolios, which were bought at inflated prices and sold at lower prices, which reflected on profitability, is pointed out. Interestingly, some debt portfolios were not serviced, instead their value was fictitiously increased (see more: Nartowski, 2018).



consumer interests. In one of them, the Chairman challenged 10 practices related to debt collection involving, among other things, coercion and pressure, multiple lawsuits against the same consumer. At the time, all of these actions were deemed to constitute unfair market practices under the Act of August 23, 2007 on counteracting unfair market practices (RLU-02/2018). In another proceeding, GetBack SA in restructuring<sup>20</sup> was accused of actions involving the dissemination of false information as to the financial situation of GetBack SA. in restructuring by providing consumers with information about the company's stable situation (DOZIK-4/2020)<sup>21</sup>.

The problems related to the company's insolvency are multifaceted and do not only concern the company itself. We are talking about abuses and irregularities related to the offering and sale of GetBack SA bonds. An analysis of the requests sent to the Financial Ombudsman by consumers indicates that unfair market practices were used in the distribution of securities bearing the actions by the President of the OCCP. According to the issued decisions of the President of the OCCP, we can learn that bond sellers disseminated false information as to the safety of investments in issued corporate bonds by providing consumers with information suggesting that the aforementioned investments in corporate bonds are characterized by a high degree of safety, and the loss of invested funds is unlikely (DOZIK-4/2020). Moreover, the sellers compared the aforementioned securities to bank deposits or government bonds, pointing to non-existent similarities, i.e. the high security of the offered bonds guaranteed on many levels – interest rate guarantee and guarantee of return of paid-in capital, and indicating that the issues are supervised by the FSC (RBG-13/2019).

All of these procedures may have caused the consumer to make a decision regarding the purchase of the offered bonds that they would not have made otherwise, which constitutes an unfair market practice, as referred to in art. 5 item 1 in conjunction with art. 4 item 2 of the Act of 23 August 2007 on Combating Unfair Commercial Practices, and thus violates art. 24 item 1 and 2, p. 3 of the Act of 16 February 2007 on the Protection of Competition and Consumers (i.e. Journal of Laws of 2019 item 369 as amended) and collective interests of consumers<sup>22</sup>.

Applications submitted by customers to the Financial Ombudsman show that GetBack SA's bonds were distributed through various channels. These included the company's own sales networks, but also financial market entities, such as

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<sup>20</sup> On 2.05.2018, GetBack filed an application with the District Court in Wrocław–Fabryczna to open restructuring proceedings in the form of accelerated arrangement proceedings.

<sup>21</sup> The OCCP's position is that the company's actions created a misleading perception on the part of the consumer about the safety of the invested capital.

<sup>22</sup> The decision of the President of the OCCP issued against Getin Noble Bank (RWR 9/2020) was similar in tone.

banks and brokerage houses. Due to this situation, the mechanisms of the market players were known, thanks to which it was possible to distribute such a large amount of securities. This gave grounds to conclude that we were dealing here with an unfair market practice contrary to good practice. The allegations against the entities offering GetBack bonds concerned, among other things, misrepresentation of the role the entities played in the mechanism. Irregularities in this regard were shown in particular on the unlawful offering of bonds by Idea Bank SA, and the cooperation of Polski Dom Maklerski SA (PDM for short) with this entity. On the basis of the consortium agreement between PDM and Idea Bank, the client's advisors were responsible for the so-called first contact with the client, which consisted of a telephone conversation or on the spot at the branch, with the aim of offering them the purchase of unsecured corporate bonds (RBG-1/2020). At the same time, the bank's employees reinforced the message about the offer with the fact that it is intended for selected customers and one must decide quickly. This method of operation was intended to exert time pressure on customers, which was supposed to deprive consumers of an informed choice of the product. The offer was presented as unique and attractive. The bank employee gave the customer a few or several hours to think about it, as it was suggested that access to the aforementioned offer was limited (OCCP, 2019: 60), and there were a lot of willing investors to purchase them, or the offer to purchase the aforementioned bonds was unique (DOZIK-4/2020). At the same time, the Bank omitted information about the past frequency of issuance of these bonds, which could be several in as many as one week, and the actual number of future or current bondholders.

Another aspect of misselling in which the collective interests of consumers referred to in art. 24 item 2 p. 4 of the Act on Protection of Competition and Consumers were violated is misleading consumers about the nature of the product. An analysis of complaints received by the Financial Ombudsman and the OCC showed that consumers who were not bound to any product or were contractually bound to a specific product<sup>23</sup> were persuaded (by a customer advisor in a phone call, or on the spot at a branch) to purchase unsecured corporate bonds of a large company listed on the WSE, which is the second largest debt collection company in Poland (RBG-1/2020). An analysis of complaints received by the Financial Ombudsman and the OCCP showed that consumers who were bound by a bank deposit, structured deposit or life insurance contract with an insurance capital fund were persuaded (by a customer advisor<sup>24</sup> in a telephone conversation or on the

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<sup>23</sup> For example, a bank deposit, a structured deposit or a life insurance contract with an insurance capital fund.

<sup>24</sup> In many situations, the calls were made by former employees of the bank, who, using unlawfully taken customers' contact information and information about their cash holdings at their new employers.

spot at a branch) to purchase unsecured corporate bonds of a large company listed on the WSE, which is the second largest debt collection company in Poland (RBG-1/2020). Significantly, some of the applications also included very favorable terms consisting of closing the above-mentioned investments before the deadline without losing interest and at the same time investing in a product that will bring great earnings<sup>25</sup>. The analysis of the conclusions also shows that the employees offering the above-mentioned products did not behave in accordance with the law and ethics, because before proposing this investment, the level of investment knowledge and investment experience necessary to assess whether the proposed instrument is suitable for the customer, including verification of the acceptable risk, was not analyzed (Financial Ombudsman, 2019).

In addition, the bank when offering to sell these securities, did so with improper care, as its employees deliberately misled customers. According to investigators, they used reprehensible sales techniques to do so in order to distribute as many of the debt collector's bonds as possible. This consisted of the fact that the bank, after receiving information from a customer that he or she was interested in the investment, forwarded the customer's data to PDM<sup>26</sup>, which, upon receiving the application, would send a package of documents to the customer's e-mail address, consisting of, among other things: information about the offer, the Terms and Conditions of the bond issue and an electronic Purchase Proposal Acceptance Form (hereinafter: the Form). Interestingly, this form was often filled out and sent from a bank employee's computer!<sup>27</sup>. The whole situation resulted in the potential investor not knowing that the offered product was not that of a bank, but that of a brokerage firm, which, in the opinion of the Financial Ombudsman, should be considered in terms of misleading the consumer about the real nature of the bank's activity.

In the process of offering these bonds, attention is drawn to the abuse of the analyzed bank – as an institution of public trust and a relationship built with an existing client. This is because it should be noted that the bank that offered them did not have the right to do so because it did not follow from its Articles of Association<sup>28</sup> and, in addition, the aforementioned entity did not have the proper authorizations from the FSC (KNF, 2020).

Another disturbing and appalling thing that took place in this offering of the bonds is that the financial products were intensively distributed to trusting

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<sup>25</sup> According to the Financial Ombudsman, the bank's actions here were in the nature of investment advice.

<sup>26</sup> Investment company entity.

<sup>27</sup> Once the condition was met and the deposit made, the bank's customer received from PDM a confirmation of the bond subscription made, along with information about the allocation made (Rzecznik Finansowy, 2019).

<sup>28</sup> Only on October 23, 2017 Idea Bank amended its Articles of Association (Statut Idea Bank, 2017).

customers: these included private banking clients as well as consumers of retirement age, who until then had kept their savings on safe deposits, but were persuaded to invest in a risky financial instrument. According to a lawsuit filed by the Financial Ombudsman, the bank committed the prohibited practice of misselling by offering to purchase a risky investment product that was unsuitable for a person as old as 85 at the time of the bond purchase, and who was not interested in risky investments (Rzecznik Finansowy, 2020). In the Financial Ombudsman's opinion, this was a glaring example of abuse of customer trust in a bank especially since the elderly still view banks as institutions of public trust (Rzecznik Finansowy, 2020).

## **CONCLUSIONS**

The amendment to the Act on Protection of Competition and Consumers, which came into force in 2016, introduced a new category of prohibited practice violating the collective interests of consumers - misselling in the financial market. As we could learn from the article, misselling is a practice that we can associate with a specific financial service, an activity that can be used by a specific entity/s of the financial market. Fraudulent selling can consist of both behaviors and sales procedures and marketing activities that aim to mislead consumers by providing incomplete, or even false information about the purchase and operation of the instruments purchased, and is often characterized by a high level of complexity. The area in which the phenomenon of misselling has occurred is undoubtedly the case involving the process of offering and selling GetBack SA bonds. The circumstances of the case indicate that in the process of distribution of bonds, features of this phenomenon can be identified, consisting of offering the wrong assets by the wrong entities to the wrong buyers in the wrong way. Firstly, the circumstances of the case prove that in the case of GetBack's bonds, they were offered by an entity (here Idea Bank) that had no right to do so because the aforementioned entity did not have the proper permits, and this did not follow from its Articles of Association. Moreover, in the Ombudsman's opinion, the aforementioned entity neglected to provide consumers with information about the role it played in these activities. Secondly, the process of selling the products by salesmen was carried out in an improper manner because the persons offering them fell short of the law and ethics, as no analysis of the level of investment knowledge and investment experience was carried out before this investment. Thirdly, the analysis of the cases involving the offering and sale of bonds indicates that the bank, taking advantage of its position as a public trust institution vis-à-vis the consumer, offered the consumer a product that was unsuitable for their needs and carried a high investment risk. As a result, this led to a distortion of the consumer's market behavior and caused them to make an unfavorable decision

regarding the purchase of GetBack SA bonds, which they would not have made if the entities offering it had not used unfair market practices.

Based on the analysis of the decision of the President of the OCCP, the reports of the Supreme Audit Office and the studies of the Financial Ombudsman, it can be concluded that the purpose of the article that was to identify the occurrence of misselling in the process of offering and selling corporate bonds of GetBack SA, has been achieved.

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