

The complaint

Mrs K complained that Trading 212 UK Limited ('Trading 212') didn't tell her early enough that shares she held would be available to be traded on the over-the-counter (OTC) market after being delisted from the Nasdaq. She said this caused her to sell her shares at a loss instead of continuing to hold them.

What happened

Mrs K had an execution-only share trading account with Trading 212. On Trading 212's platform Mrs K held shares in a US company which I'll refer to as 'B'.

On 23 April 2023 B filed for bankruptcy.

On 25 April 2023 B announced that the Nasdaq had decided to delist its shares and trading would be suspended from 3 May 2023.

Trading 212 placed a delisting notice about B on its app. The notice said, '*This stock is to be delisted on 03.05.2023*'.

On 27 and 28 April 2023 Mrs K sold her shareholding of B. By doing so she realised a loss of more than £8,000.

Trading 212 said it received an email on 3 May 2023 saying B had moved to the OTC market. This meant Trading 212 could continue to facilitate the buying and selling of B by Trading 212 customers.

Mrs K said she became aware after the delisting that B shares could still be traded on Trading 212's platform.

Mrs K's complaint

Mrs K complained to Trading 212. She said Trading 212 should've made its customers aware earlier that they'd be able to trade B shares on the OTC market after B was delisted by the Nasdaq. She said other platforms kept their customers up-to-date. And Mrs K said if Trading 212 had kept her informed she wouldn't have sold her shareholding in B when she did.

Trading 212 said firstly that whether an instrument became available for trade on the OTC market was outside the control of Trading 212. And so Trading 212 had to wait to be told by a third party whether a particular instrument would be available on the OTC market after being delisted from the Nasdaq.

Trading 212 further said it couldn't have kept Mrs K informed about the availability of B on the OTC market before she sold her B shareholding because the delisting '*event*' wasn't finalised, and further information about the delisting of B shares was still pending.

And Trading 212 said it wasn't obligated to notify customers when a stock was moved to a different market. It said customers should follow corporate news about their investments on

their own. And Trading 212 also referred to its Help Centre article called *'What happens if my stock gets delisted from the market?'* The article said the following:

'When a stock is delisted from its trading venue, trading is temporarily suspended until further information about the delisting is provided. Once the official terms of the delisting are clarified, we take appropriate actions on our platform following those terms.'

In most cases, delisted stocks undergo a liquidation process at a specific price, or they may be deemed worthless with a price of 0. In the context of US markets, there are instances where stocks listed on NYSE or NASDAQ are moved from the main market to the OTC (Over-the-Counter) Markets. In such cases, if the stock is eligible, we may allow trading with it on the Invest and ISA accounts.'

Mrs K wasn't happy with Trading 212's response. So she referred her complaint to this service.

Our Investigator's view

One of our Investigators looked into Mrs K's complaint. She said she didn't think Trading 212 had done anything wrong. She said Trading 212 provided an execution-only service which meant it had only a very limited responsibility to keep its customers informed about their shareholdings. She said Trading 212 was responsible for telling customers about upcoming delistings, but it wasn't responsible for telling customers if a share would, in future, be available for trading on the OTC market. The Investigator also said Mrs K had access to the Help Centre article and could've sought more information online about the future of the listing before deciding to sell her shareholding.

The Investigator added that, because B had filed for bankruptcy, Mrs K would most likely have sold her B shares anyway – even if she'd known they would be tradable on the OTC market – in order to cut her loss.

Mrs K didn't agree with the Investigator's view. She said Trading 212 had been asked many times about whether the shares would go to OTC, and Trading 212 would've known in advance that it would happen, like she believed other brokers did.

Mrs K said she was familiar with the OTC market. She referred to the following excerpt from Trading 212's terms and conditions:

'6.10 If a company goes bankrupt or is delisted from the respective stock exchange, we may attempt to obtain prices for the instrument on the over-the-counter (OTC) market. If this is not possible, you shall be informed that your positions in shares of this company shall be closed, and you agree to the closing prices.'

Mrs K said Trading 212 informed her after the delisting instead of before. *'My understanding is as above if delisted they would know of going to OTC before the deadline not after'*.

Mrs K said she didn't agree that she would've sold her shares anyway. She said she held other shares on OTC markets which she hadn't sold.

Because no agreement could be reached, this complaint was passed to me to review afresh and make a decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've decided not to uphold the complaint. I'll explain why.

In considering what's fair and reasonable in all the circumstances of this complaint, I've taken into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

Trading 212 said it wasn't generally responsible for keeping customers updated about their shareholdings. But Trading 212 appears to accept it was responsible for flagging a scheduled delisting to customers – and it did flag the upcoming delisting of B in this case. As Trading 212's Help Centre article says, Trading 212 also says it will '*take appropriate actions*' on its platform '*Once the official terms of the delisting are clarified*'. Where an instrument has been flagged as scheduled for delisting but Trading 212 are aware in good time that it will be available for trading on a different market using Trading 212's platform, an appropriate action would, in my view, be for Trading 212 to flag on its platform that the instrument will be tradable on the different market. However, it's important to keep in mind that Trading 212 was not obligated to provide trading of B on the OTC market, even if such trading was possible and was offered by other brokers. And whether or not such trading would be possible was outside Trading 212's control.

With this context in mind, I don't think Trading 212 has acted unfairly or unreasonably on this occasion. If Mrs K was disadvantaged by not knowing earlier than she did that B would be tradable on the OTC market using Trading 212's platform, I don't think that's due to any shortcomings on the part of Trading 212.

Trading 212 said it found out on the day of delisting – which was 3 May 2023 – that B would be tradable on the OTC market – and that that meant Trading 212 could continue to offer trading of B to its customers. Mrs K has doubted this. She said Trading 212 must have known at an earlier date. And she provided evidence from online forum discussions which she said showed that other trading platforms knew earlier and communicated earlier to their customers that B would be available for trading on OTC markets.

Having looked at the online forum posts, and other posts in the same forum threads online, I'm not persuaded they show that other brokers knew and communicated significantly earlier than Trading 212 that B would be available for trading on the OTC market. Most importantly for Mrs K, I think it's clear that Trading 212 didn't know as early as 27 or 28 April 2023 – when Mrs K sold her shareholding – that it would be able to offer OTC trading for B.

One of the online forum posts Mrs K shared was a forum post from Trading 212 on 27 April 2023 which said:

'At the time of writing, the exact terms of the delisting are yet to be confirmed. Once they are and the event is executed, we will reflect on the platform.

We'll keep you posted.'

In that same forum thread an update was requested on 1 May 2023 and Trading 212 said the following on 2 May 2023:

'At the time of writing this, we do not have definitive information on what will happen next. Currently, the available information indicates that the stock will be suspended on the 3rd of May.'

'We'll keep an eye out for updates and share any news as they come in. In the meantime, we added a trading notice on the instrument's page.'

And on 3 May 2023 at about 10.30am Trading 212 added the following to the same forum thread:

'Hey, everyone.'

'We have an update: The company will move to the OTC market as of today and undergo a ticker change...'

The other online forum excerpt submitted by Mrs K included the following which was posted at 1.41am on 3 May 2023:

'Spoke with [another broker] 12 minutes ago and confirmed otc listing tomorrow and options will carry over under [a new ticker] effective 8:30am est.'

In the same thread the following had been posted earlier, at 12.27am on 3 May 2023:

'My brokerage ... has the same info and left this message'

... After checking with our related team, we have no further information about the [B].

If it delists to OTC, typically, you can still liquidate the position on [the platform] after the corporate action is completed, but it cannot trade here.

Please kindly wait for an update from the related party...'

And the following further post was made at 12:35am on 3 May 2023:

'I talk[ed] to [two other brokers'] representatives today and neither one could tell me for certain [B] was being delisted other then (sic) news that it would be tomorrow.'

The online forum posts indicate to me that on 2 May 2023 at least three other brokers – as well as Trading 212 – were unsure of the future trading position of B. And awareness of its availability on the OTC market began to emerge late on 2 May 2023 and in the early hours of 3 May 2023.

Trading 212 has said it only received notice on 3 May 2023. This is consistent with the information it was cascading to customers. I think it's persuasive that Trading 212 did inform the forum when it says it became aware. I can't see that there would've been any benefit to Trading 212 in not notifying customers earlier if it had been aware earlier. It was clearly monitoring the position with B, and providing what updates it could. On balance it seems more likely than not that it was 3 May 2023 when Trading 212 found out that it would be able to offer trading of B on the OTC market. And even if Trading 212 could have – or *should* have – become aware on 2 May 2023, it couldn't have given Mrs K the information before she sold her shareholding on 27 and 28 April 2023.

Taking into account all the evidence, I'm satisfied that Trading 212 didn't know the position regarding OTC trading of B any earlier – or at least not significantly earlier – than it said it did. And I certainly don't think Trading 212 knew the position early enough that it could've

communicated it to Mrs K before she sold her shareholding on 27 and 28 April 2023. So I don't think Trading 212 was at fault for not making Mrs K aware before she sold that she could've continued holding her shares in B after they were delisted from the Nasdaq.

I accept that Mrs K might not have sold her B shareholding if she'd known it would be possible to trade B on the OTC market. However, although the price of B rallied after B was delisted and moved to the OTC market, its shares have since been valued at nil and cancelled. If Mrs K had simply continued to hold the shares, she might have suffered a bigger loss.

I'm sorry for Mrs K's experience with her shareholding in B. I understand she lost a significant sum of money and this will naturally be very upsetting for her. But I don't think Trading 212 did anything wrong to cause her loss.

My final decision

For the reasons I've set out above, I don't uphold Mrs K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 29 November 2023.

Lucinda Puls
Ombudsman