

## **The complaint**

Mr H complains that eToro (UK) Ltd unfairly closed his contract for difference (“CFD”) positions when the underlying assets were delisted.

## **What happened**

On 29 February 2022 Mr H opened two CFD positions where the underlying asset was the American Depositary Receipt (“ADR”) of Sberbank of Russia. On 3 March 2022 the ADR was delisted from the London Stock Exchange. In September 2022 eToro closed Mr H’s positions, explaining that due to the geopolitical situation in Ukraine, the ADR was delisted and as a result the CFD positions would be closed at the last available rate.

Mr H complained because he felt he ought to have received the ADRs and have them converted to shares due to the delisting, instead of his position being closed. eToro didn’t uphold the complaint saying that as Mr H didn’t own the ADRs themselves, he couldn’t convert them to shares. They said they’d closed the positions at the last available rate. As Mr H remained unhappy he brought the complaint to our service.

An investigator at our service looked into the complaint and found that eToro had acted in line with their terms and conditions in closing the positions and so they hadn’t done anything wrong. Mr H disagreed, in summary explaining that he’d be happy to leave the positions open indefinitely, rather than close them at a loss. He also felt the way the positions were sold wasn’t fair – he had wanted to buy the ADR itself, rather than a CFD, but this wasn’t available to him, which he says is because of the country he lives in.

The investigator wasn’t persuaded to change her opinion, and so the case has been passed to me for 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 agree with the conclusions reached by the investigator for mostly the same reasons. Firstly, for clarity, I should explain that one of the points Mr H has raised following receipt of the investigator’s opinion is a new complaint point and will be dealt with as a separate complaint. Specifically, this is his point about wanting to buy the ADR itself and as this wasn’t available, he opened the CFD positions instead – but he thinks he ought to have been able to buy the ADR. As such, in my decision I will only be commenting on the closure of those positions and not the way in which they were sold.

I’ve considered the terms and conditions of the account, as these set out the agreement between Mr H and eToro, and they also outline the way in which the account will operate. It’s the type of account in which Mr H can invest in stocks, CFDs, ETFs and cryptocurrency – and from the statements I can see he invests in all of these. There’s a particular section of the terms – Schedule A – which governs CFD trading. Section 11 of this says:

*“11.1 A Corporate Event is something which will result in a change to one or more financial instruments. Examples of Corporate Events include... delistings...*

*11.2 If a Corporate Event impacts the underlying product of a CFD in your eToro account, we will use reasonable endeavours to adjust the open positions on that CFD, in a fair way and in accordance with market practice...*

*11.3 Notwithstanding clause 11.2 above, we reserve the right to close any open CFD positions where the underlying product is impacted by a Corporate Event (including delistings and insolvency)..."*

Based on these terms, I'm satisfied that in closing the positions, eToro has acted in line with their agreement with Mr H. I also consider that closing the positions was fair and reasonable. This is because eToro can no longer retrieve accurate pricing details about the cost of the investment that Mr H's position is based on.

A CFD by nature tracks the way the underlying asset's price moves. Where that asset is a listed investment, that pricing data is easily and reliably retrieved from the exchange on which its listed – in this case the London Stock Exchange. As the ADR is no longer listed on that exchange, eToro no longer have the same data on which to rely. Given the ongoing lack of up-to-date pricing and with no view of when the ADR would be re-listed, I'm satisfied it is reasonable that eToro took the step of closing the positions.

I've considered the price at which eToro closed the positions and I'm satisfied this is a fair price to use, as it's the price available on the day the ADR was delisted. So, it's the last information available for the cost of the asset on which the CFD is based.

Mr H has made the point that he'd have rather kept the position open indefinitely. Technically eToro did have this option – and I can see they kept the position open for several months after the ADR was delisted. However, I don't think the fact they could have kept it open automatically makes eToro's decision to close the position unreasonable. They were supported by the terms in doing so, as they gave eToro discretion in this situation.

As mentioned above, there was no timeline or indication of when the ADR would be re-listed. eToro made this decision on all open CFD positions that were based on this ADR, not just for Mr H. So, I don't think the decision to close rather than to continue to keep the position open was unfair.

Overall I don't think eToro acted unfairly or unreasonably in closing Mr H's CFD positions.

### **My final decision**

My decision is that I don't uphold Mr H's complaint, for the reasons I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 2 January 2024.

Katie Haywood  
**Ombudsman**