DRN-3848022

The complaint

Mr B complains to Monecor (London) Ltd – then trading as ETX Capital – about losses on his trading account flowing from a margin call he believes was triggered by an artificial price.

What happened

The background of this complaint is well known to both parties, so I won't go over it in great detail. However, the key facts and arguments are as follows:

- Mr B first opened a trading account with ETX in September 2020. He told them he had relevant knowledge and experience in order to be considered an appropriate candidate for trading.
- In March 2022, across three ETX accounts Mr B had several spread bet positions open on a stock I will refer to as 'C'. Shortly after 9am on 7 March 2022, Mr B's positions in C were closed due to margin requirement.
- Mr B was unhappy about this as he didn't think the price ETX said C had fallen to was correct. So he complained to ETX later that month.
- ETX looked into Mr B's concerns and sent him their final response letter in April. They pointed to their terms that allowed them to close trades when margin wasn't maintained and referenced their margin call alert to him on 4 March. They set out the levels of each account at the time and didn't think they'd done anything wrong.
- Unhappy with this, Mr B asked for our help. He still felt the price quoted was inorganic and stressed that while he appreciated the margin requirements, he felt ETX didn't have to close as many positions as they had – if they'd have left some, he'd have been able to manage his positions back to profit.
- One of our investigators had a look at what had happened but didn't agree ETX had done anything wrong. They checked the ETX's liquidity provider's price feed and though there was brief fluctuation, they saw the price that triggered the margin call and thought it to have been a valid bid price. For this reason, they didn't think ETX had wrongly closed positions.
- Mr B remained unhappy – he still felt too many positions had been closed and had ETX closed only as many as were necessary, he'd have got a return.
- Our investigator took another look at the regulator's rules but didn't think they supported what Mr B was saying about closing less positions. Instead they thought ETX had acted reasonably and explained the rules were in place to stop retail clients from suffering unlimited losses – they didn't have the flexibility to wait to see if positions recovered.

As our investigator wasn't persuaded to change his mind and agreement wasn't reached, the case was passed to me for review.

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 appreciate Mr B's complaint is two-fold – firstly, he doesn't agree the price for C was actually hit and secondly, that ETX's actions went further than they needed to. I'll look at both in turn.

Before I begin, I note that in offering a platform for spread betting, ETX as a regulated business must follow relevant rules that flow from intervention in the sector by the European Securities and Markets Authority (ESMA) in 2018. Relevant here was the requirement for Mr B to have enough equity – being the total unrealised value of open positions and the account balance – on his account to fund his running positions.

When considering the price of C at the time, ETX have shared data with us from their liquidity provider – they've explained that their price feeds flow from a system that pulls valuations from another independent provider. This shows that at 9:05am on the day in question, C's price fell to 15.503. Until 9:10am the price remained around 15.798, before recovering from 9:21am onwards. Mr B's positions were closed at 15.462. While this was fractionally lower than the independent price feed quote, I'm satisfied that it was indicative of the market at the time. For this reason, I don't agree with Mr B in that the price he was closed at wasn't achieved.

As I'm satisfied we've been able to verify the prices at the time, I've also considered the equity across Mr B's three accounts in order to consider whether the positions were correctly closed. Looking to ETX's terms applicable from October 2021, section 13 discussed margin requirements. Of particular relevance here was 13.7 which reminded Mr B to ensure he was always aware of the status of his accounts and to ensure he had sufficient 'trade funds available' to maintain positions. ETX considered 'trade funds available' to be the amount of money in a trading account that was free to be used for satisfying margin requirements. At 13.8, it said in part:

> *If your Trade Funds Available balance is below zero (0) or we reasonably believe that a fall below zero is imminent regardless of whether or not prior Margin Calls have been issued, we may in our sole discretion close or terminate open Trade(s) on your Trading Account without notice to you immediately…*

And at 13.12, it said:

> *If you do not have sufficient Trade Funds Available or a Margin Call is not met by you … in accordance with this clause 13, depending on the trading platform we may in our discretion:*
> *(a) close out any or all (in whole or in part) of your open Trades;*
> *(b) exercise our rights of set off and netting under this Agreement; or*
> *(c) close all of your Trading Accounts and not open any further Trades for you.*

Looking at the equity on each of Mr B's three accounts at the time, we can see the following:

Account one:
- Balance of £662.06,
- Margin requirement of £386.55,
- Running profit and loss was -£497.76,
- Meaning the trade funds available were -£222.25.
- As this was 43%, the positions were closed. The balance and trade funds available then recovered to £370.75 and £1.95 respectively.

Account two:

- Balance of £423.55,
- Margin requirement of £248.17,
- Running profit and loss was -£298.27,
- Meaning the trade funds available were -£122.90.
- As this was 50%, the positions were closed. The balance and trade funds available then recovered to £265.31 and £0.82 respectively.

Account three:
- Balance of £348.58,
- Margin requirement of £197.14,
- Running profit and loss was -£268.35,
- Meaning the trade funds available were -£116.91.
- As this was 41%, the positions were closed. The balance and trade funds available then recovered to £175.95 and £2.95 respectively.

So from what I've seen, each of Mr B's accounts was at 50% or below when his positions were closed. This was in line with ETX's terms at 13.12 and 13.8. These terms were also in line with the regulator's requirements, where at 22.5.13R the FCA's conduct of business sourcebook said:

> *Margin close out requirements for retail clients*
>
> *(1) A firm must ensure a retail client's net equity in an account used to trade restricted speculative investments does not fall below 50% of the margin requirement (as outlined in COBS 22.5.11R) required to maintain the retail client's open positions.*
>
> *(2) Where a retail client's net equity falls below 50% of the margin requirement, the firm must close the retail client's open position(s) on restricted speculative investments as soon as market conditions allow.*
>
> (3) *In this rule, "net equity" means the sum of the retail client's net profit and loss on their open position(s) and the retail client's deposited margin.*

I appreciate Mr B makes the point that ETX could've closed *some* of his positions, and not all of them – after all, this might've been enough to satisfy margin and he thinks they'd have gone on to be profitable. But their terms allowed them to close '*close out any or all (in whole or in part) of your open Trades'*. The regulator's rules didn't prescribe how firms must handle margin calls or which positions should be closed, so ETX had discretion here – but from everything I've seen they acted reasonably and in line with their terms.

Mr B's positions were spread across three different accounts and all of them needed more margin. But I don't think ETX could have only closed positions on one or two of the accounts and relied on the balances there to run the other account(s) – the European Securities and Markets Authority guidance told ETX they had to manage margin on a 'per account' basis. It wasn't for ETX to manage Mr B's funds for him by moving a balance between accounts, nor could they have been expected to take a higher level view of Mr B's situation before following their terms.

Though Mr B feels ETX's actions were disproportionate, they were required to take steps to protect his account when he fell below 50% margin – even if only briefly as what happened here. Though with hindsight we can see C's price recovered, it's important to remember the regulations require firms to take action at 50% as the market could've slipped lower and lower. And the action ETX took was in line with what the regulator asks and what they said they'd do. So from everything I've seen, I don't think it would be fair to ask ETX to compensate Mr B now.

My final decision

For the reasons given above, I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 July 2023.

Aimee Stanton
Ombudsman