

The complaint

Mr O complains about the service that he received from eToro (UK) Ltd when trading contracts for difference (CFDs) with them. Mr O states that:

- He wasn't given a warning that the three futures trades he placed had an expiration date. He says that this means they unexpectedly expired at a point he wasn't anticipating.
- The trades he placed were based on the Chicago Board Options Exchange (CBOE) volatility index (VIX), but he says the prices were derived from another index.

Mr O would now like eToro to void the trades he made, return his losses and pay him \$5,000 compensation for the distress he says the events have caused him.

What happened

In January 2022, Mr O opened a trading account with eToro. On 6 April 2023, 12 April 2023 and 13 April 2023, he purchased futures in VIX which all expired on 18 April 2023 and were subsequently closed. The closure resulted in a loss of c\$29,000 to Mr O.

Shortly afterwards, Mr O decided to formally complain to eToro. In summary, he said that he was unhappy that the VIX futures had expired and that from what he'd seen, eToro had derived their prices for the instrument from the Chicago Mercantile Exchange (CME) rather than the CBOE. Mr O said that he'd based his trading decisions on the contract pricing being based on the CBOE volatility index rather than the prices from the CME.

After reviewing Mr O's complaint, eToro concluded they were satisfied that they'd done nothing wrong. They also said, in summary, that having looked at the VIX futures that Mr O had purchased, they were correctly closed on 18 April 2023. eToro went on to say that the contract's expiration date is clearly noted on the trading screen of their website and as such, the automatic closure of Mr O's positions was handled fairly and in line with the terms of the instrument.

In addition, eToro explained that VIX futures contracts pricing is based on the Chicago Mercantile Exchange (CME) future contracts.

Mr O was unhappy with eToro's response, so he referred his complaint to this service. In summary, he said that he didn't believe eToro had been transparent with him - he felt that their explanation about how the VIX futures were priced was misleading and that eToro had not been clear about the expiration of the futures that he'd purchased. He also explained that eToro hadn't been clear about which index they were pricing the VIX against.

The complaint was then considered by one of our Investigators. He initially concluded that eToro hadn't treated Mr O unfairly. However, after Mr O provided additional evidence showing the lack of warning about the expiration date of the futures contracts on the trading screen, our Investigator was minded to alter his initial view. He concluded that eToro should

pay Mr O £250 for the trouble that they'd caused him because the expiration information wasn't initially where eToro said it was and in any event, it wasn't as prominent as it could have been.

During the course of our Investigator's review, he also established that eToro had incorrectly stated in their final resolution letter that the VIX was based on CME prices rather than the CBOE.

Mr O, however, disagreed with our Investigator's findings. In summary, he said that other platforms worked to a 365-day expiration deadline on their futures contracts, so it was fair and reasonable for him to conclude that eToro also adopted the same approach. In addition, he felt that as the expiry information wasn't particularly prominent at the time of his trades, his complaint should be upheld.

Our Investigator was not persuaded to change his view as he didn't believe Mr O had presented any new arguments he'd not already considered or responded to. Unhappy with that outcome, Mr O then asked the Investigator to pass the case to an Ombudsman 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.

I have summarised this complaint in less detail than Mr O has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts.

My role is to consider the evidence presented by Mr O and eToro in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm upholding Mr O's complaint in part – and, whilst it's largely for the same reasons as our Investigator, I'll explain why below.

Mr O has stated that it wasn't clear from the trading screen on eToro's website that the contracts he purchased had an expiration date. Mr O shared a video that, he says, shows a lack of information within the purchasing screen which he feels should typically have been present. And, in their complaint response to Mr O, eToro initially stated that the expiration details were included. I've looked closely at the video that Mr O has provided and, having reviewed it against the screenshot that eToro shared which does show the expiration warning, it would appear that at the time Mr O undertook the trade, that warning was absent. However, I don't think that's the end of the matter.

There's no dispute that Mr O was trading as an execution only client – this meant eToro was not responsible for advising him or managing his positions. They were also not responsible for explaining the terms and unique features of each individual instrument to

him; it was up to Mr O to do his own research and satisfy himself that he understood how any instrument he was considering purchasing (including any expiration terms), worked. He alone was responsible for deciding how much money to deposit, when to open trades and on what markets, monitoring those positions, and when to close them. But in any event, from what I've seen of eToro's terms and conditions, they didn't need to forewarn him that his positions were about to close out – that responsibility rested with him. It therefore seems very clear to me that given the agreement that Mr O entered in to with eToro, he alone was responsible for regularly checking his positions and ensuring that they didn't expire.

So, even though the purchasing screen on eToro's trading platform may not have given the expiration terms to Mr O in this specific instance, I think he should have made himself aware of what the terms were, even before advancing to the purchasing stage of the transaction.

In his submissions to this service, Mr O has shared a table showing the futures expiration terms from four other providers. Mr O says that given each of those other businesses work to a standard of 365 days until expiration, it wasn't unreasonable for him to assume that eToro also applied the same default term. However, I don't agree and that's because whilst there will be some degree of uniformity across providers around how certain instruments are treated, there will be distinctions that set firms apart and it's up to the consumer to satisfy themselves that they fully understand the terms of the transaction that they're entering into beforehand.

Mr O has therefore indirectly conceded that he knew that the futures contracts would expire at some point (albeit he says he thought it would've been 365 days later). And, as I've already explained, as he wasn't receiving any advice or direction from eToro, it was up to him to identify when that would be before entering into the transaction. That means I can't conclude that the missing information from the trading screen was sufficient to say that the transactions were made in error. As an experienced trader, on balance, Mr O ought to have known that all futures contracts have a limited life span and would eventually necessitate action on his part. I've not been presented with any evidence to show me that the contracts were closed out incorrectly, so I can't conclude that eToro have treated Mr O unfairly when they closed his positions.

Whilst it would seem that the information about the VIX futures expiration date was missing from the trading screen at the time of the transaction, it was available in other areas of eToro's website. So, I've thought carefully about the impact that the lack of prominence that this information has had on Mr O. It seems that eToro have now rectified the missing expiration wording on the purchasing screen, but as I've already explained, I am of the view that whether a warning was given or not, Mr O should have known that they would expire. However, in the circumstances, I do feel an award of £250 reflects the inconvenience that the prominence of the missing information has had on Mr O as eToro stated that the information was clearly visible to the consumer and it wasn't (but, it normally is available), so I'm satisfied that this approach is fair and reasonable in the circumstances.

I am therefore upholding in part, this element of Mr O's complaint and I require eToro to pay him £250 for the trouble that they have caused him in respect of this particular issue.

I've also looked at the pricing issue that Mr O raised as part of his complaint; Mr O states that eToro mistakenly advised him that the prices for his VIX futures were taken from the CME rather than the CBOE. I can see why Mr O was confused; eToro initially stated that his contracts were based on the CBOE volatility index but subsequently altered their explanation to say that they were based on the CME's prices. He says he based his trading decisions on prices quoted by the CBOE rather than the CME. eToro have since confirmed

that VIX futures pricing is based on the CBOE which is in line with what their website states.

Whilst Mr O has provided some data from an Australian broker that, he says, shows eToro couldn't have used the CBOE in their pricing, I don't agree. That's because the Australian firm is a broker rather than a market maker, so they don't set the prices and they simply take the information from the same index. So, as I've not been provided with any evidence to prove that eToro didn't use the CBOE in their pricing and, as Mr O based his decisions on the CBOE VIX, it therefore follows that he wasn't misled (because he was only incorrectly told that the CME was being used *after* he had placed his trades) so I can't conclude that eToro have misled or treated him unfairly in respect of this specific issue.

My final decision

I'm upholding Mr O's complaint in part and require eToro (UK) Ltd to pay him £250 for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 22 July 2024.

Simon Fox
Ombudsman