DRN-4816688

The complaint

Mr K complains that eToro didn't pay him the correct entitlements when it sold his shares following a corporate action. He complains this caused him a financial loss for which he believes he is entitled to compensation.

What happened

Mr K held shares in Whiting Petroleum Corp (WLL). Mr K also held some long Contract for Differences (CFDs) in this same company.

In March 2022 WLL announced a "merger of equals" with another petroleum company called Oasis Petroleum Inc. The two companies would create a new company called Chord Energy Corp (Chord). The merger would take place on Friday 1 July 2022, with the conversion of shares into newly formed company. Chord's shares were listed on the New York Stock Exchange on or around 5 July 2022.

As part of the merger, shareholders in WLL were entitled to:

- $6.25 per share of WLL they owned;
- 0.5774 shares in Oasis common stock for every WLL share, then converted into Chord shares.

On 1 July 2022, eToro sent Mr K a message that informed him of the Whiting Petroleum Corp merger/acquisition. It said:

"*A merger is an agreement that unites two companies into one new entity. There are several types of mergers, which are carried out for various reasons. Mergers and acquisitions are commonly carried out to expand a company's reach into new segments, or gain market share. All of these are done with the aim of increasing share value. If the aforementioned stock is the acquired party, then it will be delisted from the platform and users will receive the notional amount according to the acquisition terms. If the aforementioned stock is the acquirer, it will continue to be offered on our platform.*

Should the terms of the agreement call for it, we may credit your account with the value of any additional shares or dividends offered for this action".

At around the same time, it proceeded to sell all his shares (and close his CFD positions) at the price of $67.7590. Mr K's account was credited with the proceeds of the sale, but no further cash or entitlements were given.

Mr K complained. He said that he expected the special dividend of $6.25 to be paid to him, and he noted that given the time it took for eToro to credit his account, he was also not in a position to buy the shares in Chord which is what he would've done. He said he had been treated unfairly.

eToro looked into his complaint but didn't think it had done anything wrong. There was some

correspondence between eToro and Mr K during which it said, in short:

- The price he received reflected any applicable entitlement.
- It had not received any special dividends for his shareholding.
- It did not facilitate replacing one share with another following a merger, so its process was to sell the stock.
- It wasn't obliged to notify him early about the corporate action.

Mr K asked for the actual trade confirmation showing the sale of his shares on the relevant exchange, but eToro declined to provide this. It provided his account statement which Mr K said was not enough. As Mr K remained unhappy, he referred his complaint to this service.

One of our investigators looked into Mr K's complaint and didn't think it should be upheld. In short he was satisfied the price he received reflected the various entitlements he was due following the merger. Mr K didn't agree. He said he held these shares with other brokers and received the entitlements. He said he understood the way eToro's terms operated in relation to his CFDs, but in relation to the actual shares he owned, he didn't think he had been treated fairly.

Before the case was passed to me, I asked eToro to clearly explain why the dividend was not credited Mr K's account, and in what way Mr K's entitlements as shareholder of WLL were reflected in the price he received – I asked for specific evidence on this point. I explained that in addition to having insufficient evidence that the price did indeed reflect all these entitlements, my own research had identified that the last price of WLL in the market was $68.03, and not $67.759. I asked eToro to provide evidence to show that Mr K was given best execution by eToro and, furthermore, was not treated less favourably than if he had received the special dividend and additional shares he was entitled to.

eToro provided a copy of a previous response and exchange with our investigator. In that response it said the close price Mr K received reflected his entitlements as follows:

"*We are positive that the WLL close price reflected the additional $6.25 cash merger consideration. Please refer to the deal terms as shown in the below Bloomberg extract (showing the additional cash merger consideration value and Oasis common stock value for WLL shareholders).*

Oasis closed at a rate of 121.65 (with the Oasis Board of Directors declaring a special dividend of $15.00 per share to be paid to Oasis shareholders). As a WLL shareholder, [Mr K] received 0.5774 shares of Oasis common stock and the additional $6.25 cash merger consideration for each share of WLL common stock owned. Therefore:

Oasis close value LESS special dividend = 106.65 (A)

A at rate of the Stock Terms for WLL shareholders (0.5774) = 61.53705 (B)

B PLUS cash merger consideration = 67.78705 (C)

C rounded up to 2 decimal places = 67.79 (representing the close rate that [Mr K] received)."

In this email exchange, the investigator pointed out that those figures didn't in fact tally, namely B amounted to 61.57971 and therefore the WLL dividend made this 67.78705. Furthermore Mr K received 67.7590 and not 67.79.

eToro in response said that the discrepancies were "*most possibly due to factors related to slippage and the prices reflected on our Platform as received from our liquidity provider*". No evidence was provided of this.

In response to my specific queries, it said:

- WLL became delisted at the time, and therefore it was delisted on the eToro platform. It said that as expected for such a corporate event, "*for clients who held positions in WLL, [Mr K] included, we performed a mass-closure of this instrument due to its delisting from NYSE*".

- It said it used the last "*Bid and Ask*" in the system, and this last price reflected the Markets evaluation.

- It said for "*the avoidance of doubt, if we had allowed clients to continue to hold positions in the delisted instrument, these positions would have retained zero value and caused them detriment*". It said Mr K "*would have been in a potentially more detrimental position had we not carried out the steps described as a result of the Corporate Event*". It said it was under no obligation to take these steps and "*did so according to our sole discretion*".

- It confirmed that the "*price we had on the Market for WLL that we held on the Platform at the time of closure reflected the deal terms of the merger*". It said "*the price on the Market at the time of closure of WLL reflected the stock value PLUS the cash payment*".

Mr K also provided some further information. Broadly speaking, this showed that other brokers had converted his shares as per the merger terms, giving him shares in Chord, and provided him a separate cash credit for the $6.25 per share dividend he was entitled to.

I issued a provisional decision in March 2024. In it I said:

I've first set out the relevant standards that I think apply to Mr K's complaint about eToro and then my provisional findings.

The relevant standards

The Principles for Businesses, which are set out in the FCA's handbook "are a general statement of the fundamental obligations of firms under the regulatory system" (PRIN 1.1.2G). I consider that Principles 6 and 7 are of particular relevance to this complaint.

They say:

- *Principle 6 – Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly.*

- *Principle 7 - Communications with clients – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

The FCA Handbook also sets out the standards of conduct which it expects firms to adhere to – these are call the Conduct of Business rules (COBS).

COBS 2.1 "Acting honestly, fairly and professionally" says:

(1) *"A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule)."*

COBS 4.2 "Fair, clear and not misleading communications" set out the standards for communicating with clients.

COBS 4.2.1 says:

(1) "A firm must ensure that a communication or a financial promotion is fair, clear and not misleading."

Mr K had an agreement which governed his contractual relationship with eToro. Of relevance, Schedule B "Investing in securities" sets out the terms under which eToro allowed Mr K to buy and sell securities via its platform. This section is distinct from its terms governing the trading of CFDs.

Section 9 "Custody" specifically says that "eToro Europe will hold the securities on your behalf" (9.1) and that "Detailed records of all your securities held by the custodian or sub-custodian will be kept by us at all times to show that your securities are held on your behalf, for your benefit and do not belong to the custodian or any sub-custodian" (9.2).

Section 10 "Corporate Events" says:

- *10.2 – "If a Corporate Event impacts a security in your eToro account, we will use reasonable endeavours to adjust the securities in your account in a way that is fair and which aligns with market practice, depending on the circumstances of each event and according to our sole discretion, although we are not obliged to do this. Adjustments may include changing the price or quantity of securities in your account, to reflect the economic equivalent of such rights".*

- *10.3 – "Notwithstanding paragraph 10.2, we reserve the right to close out any open positions impacted by a Corporate Event (including delistings and insolvency) in a fair way and taking into account the treatment we may receive from our counterparty and/or any relevant third party. In this respect we may make any required adjustment (price, quantity or any other adjustment) resulting from the Corporate Event as may be applicable. We may close out open positions prior to or following such Corporate Events, at our sole discretion".*

Section 7 "Conflicts of interests" is also relevant, and I have set out this section in full:

"7.1

We are required to act in your best interest when providing our Services. However, there may be instances where your interests conflict with our interests, or with another client's interests. For example:

(a) *We may execute hedging transactions before or after entering into a transaction with you to manage our risk in relation to the transaction, which may impact the price you pay or receive for such transactions, and we will retain any profits generated by such hedging. However, we are not required to hedge transactions if we do not want to;*

(b) *We may enter into arrangements with third parties, or with other clients, where we make payments to them or receive payments from them based on your trading activity or volume where such arrangements are permitted by Applicable Law. These payments may include rebates, commissions, widened spreads and profit sharing;*

(c) We may provide, pay or receive fees, commissions or non-monetary benefits where such payments are permitted by Applicable Law;

(d) We may share dealing charges with our affiliate companies or receive remuneration from them in respect of transactions carried out on your behalf;

(e) eToro UK, eToro Europe or an affiliate company may be the counterparty to a trade you enter into; and

(f) we are responsible for setting the price of instruments and products which can be traded on the eToro platform. This means that our prices will be different from the prices provided by other brokers and the market price, as well as the current prices on any exchanges or trading platforms.

7.2

We have in place a number of internal policies and arrangements to help manage any conflicts including as set out in our Conflicts of Interest Policy which is available on our website. In addition, the potential conflicts related to trading detailed above are subject to a detailed objective criteria which is set out in our Best Execution and Order Handling Policy."

My provisional findings

Mr K complains about how his shares in WLL, which he had purchased via eToro, were disposed of – and crucially, whether his rights as shareholder of WLL were respected by eToro.

eToro has provided a number of explanations about how it enacted this corporate action – but whatever eToro's internal processes, it's clear that Mr K was, at the very least, the beneficial owner of shares in WLL and had shareholder rights that eToro needed to ensure were fairly respected.

Furthermore, I'm not persuaded in the particular circumstances of this case that it was fair and reasonable for Mr K to have been treated differently, or less favourably, than other shareholders in WLL simply because he had bought his shares through eToro and not another broker.

I say this because the terms of the account clearly do not make this distinction as they do, for example, when defining CFDs. In other words, eToro's share-dealing service doesn't differentiate itself from other brokers. It doesn't tell consumers that if they buy shares through it, they will not have the same beneficial rights or interests as other shareholders. I have looked through its website, and I cannot see any mention anywhere that buying shares through eToro means a fundamentally different beneficial relationship with the underlying security.

The key issue is therefore that, under the terms, Mr K's beneficial ownership of WLL shares wasn't in dispute – and those shares were held in custody for him as per clause 9 of the terms. This means that he ought to have enjoyed all the beneficial rights that those shares entitled him to. I acknowledge that eToro's terms give it discretion, in some circumstances, to give effect to corporate actions via the sale of shares "in a fair way".

But in my view, in the particular circumstances of this case, and for the reasons I go on to give below, I don't agree it was fair to sell Mr K's shares, without his instructions, at the prevailing market price. And so my aim, when putting things right, is to ensure that he is in the same overall financial position he would've been in had eToro facilitated the merger

under the same terms as the merger itself.

I've firstly considered eToro's explanations around what would've happened had it not taken the relevant action – namely Mr K would've been worse off because he would've had unlisted shares which it says would've been worthless. I don't agree that's a credible position. Mr K would not have had unlisted shares. By virtue of the merger, he would've been entitled to $6.25 per WLL share he owned, and he would've been entitled to a certain number of shares in Chord – and that is regardless of whether eToro chose to list Chord on its platform or not. So the alternative to eToro's actions was not Mr K having nothing, or owning worthless shares.

eToro hasn't explained why it couldn't give Mr K exactly what he was entitled to under the merger. It has at varying points said this was because it didn't list the new company, Chord. But I can see that it does. It would be helpful on this point if eToro could confirm, with evidence, exactly when it started selling Chord shares on its website – Mr K's evidence, which I find persuasive, is that it was selling them as soon as they were listed on NYSE. So there too, I can't see any reason why eToro couldn't simply give Mr K exactly what he was entitled to as shareholder – the $6.25 dividend, and however many Chord shares he was entitled to. And as I mention above, the terms are clear that Mr K's shares were held on his behalf in a pooled account, by a custodian. This means that those actual shares gave eToro's custodian (or whoever was the legal but not beneficial owner of the shares) the right to benefit from the terms of the merger. It would have received the special dividend, and Cord shares from that company's registrar. So somewhere eToro, or its agent, is holding on to cash and shares which Mr K was beneficially entitled to.

I've seen insufficient evidence from eToro that it could therefore not pass on these entitlements to Mr K. And to my mind, in order for it to have exercised the discretion it gave itself in the terms in a fair and reasonable way, it would've needed to weigh up the relative benefits to Mr K of giving effect to the terms of the merger versus simply selling his shares – bearing in mind, as I've said above, that it or its agents must have received those entitlements, if it did in fact hold Mr K's shares.

So in principle, I'm not persuaded Mr K was treated fairly by eToro. In my view, Mr K ought to have been given the entitlements he was beneficially entitled to following the WLL and Oasis merger, and it wasn't fair and reasonable for eToro to simply have sold his shares at the prevailing market price on the day.

Even if I was persuaded to conclude that eToro, paying due regard to the regulatory obligations it was obliged to adhere to, didn't have to give effect to the merger in the way I've described above, I'm also not persuaded it treated Mr K fairly by failing to tell him or notify him in advance that this is how his entitlement would be treated.

eToro has said that it wasn't obliged to notify Mr K any sooner about the corporate action. But if eToro knew from the beginning that it wouldn't allow Mr K to fully enjoy his beneficial rights as WLL shareholder (which it appears to me it did), then I'm afraid I don't agree – in order to pay due regard to Mr K's interests, and to his information needs, it needed to tell Mr K this as soon as it found out about the merger. And it goes without saying that not providing this information to him at an early stage was not in his best interests.

This is because knowing in advance how eToro (whether correctly or not) would've given effect to the terms of the merger, would've allowed Mr K to find an alternative way to benefit from the merger – or to decide for himself if he was happy to accept his shares being sold at whatever the market price would be. I say this bearing in mind, as I've noted above, that the

terms make clear that buying securities via eToro's platform meant owning those shares, and those shares being held for him. So Mr K wouldn't have realised, from the terms, that his ownership of WLL shares via eToro meant that he had less entitlements, or that he would be treated less favourably, once the merger took place.

The public announcement of the merger between WLL and Oasis Petroleum was held on 7 March 2022 – four months before the merger took place. The details of the merger did not change. The merger was subject to a shareholder vote for both companies and, of relevance to Mr K, WLL shareholders voted and agreed to the merger on 28 June 2022, and the merger took place on 1 July 2022. Shares of Chord began trading on or around 5 July 2022. The timeline above means that eToro had a number of months to take action and provide more information or options to Mr K. At no point did eToro, during this period, communicate to Mr K that he would not have the same entitlement as other shareholders in WLL.

In my view, given that its intention was never to facilitate the merger in the same terms, it should've written to all clients who held shares in WLL and let them know, in March 2022, that if the merger took place as anticipated, it would simply sell shares at the closing price. This was clearly possible, because it did send such a communication on 1 July 2022. Pausing here – I think it's important to reflect on the communication it did send to Mr K. This communication told Mr K that if his stock was "the acquired party", it would be delisted from the platform and he would receive "the notional amount according to the acquisition terms". It then said that if the stock was the "acquirer" it would continue to be offered on the platform. It then told Mr K that if "the agreement calls for it, we may credit your account with the value of any additional shares or dividends offered for this action".

If eToro's intention was to simply sell Mr K's shares at the market price, and take no further action, I don't agree this communication was clear, fair and not misleading. I say this because the communication itself wasn't precise – this was described as being a "merger of equals", the purpose was to create a new company and not have an "acquirer" or an "acquired" company (and in fact WLL shareholders owned marginally more shares in Chord than Oasis shareholders).

But that aside, the communication led Mr K to believe that he would receive other entitlements or dividends "according to the acquisition terms" – when eToro clearly had no intention of doing so.

In any event, this communication was provided far too late Mr K to have taken any action. However, I'm persuaded that earlier, more precise communications, would've been in Mr K's best interests and would've given Mr K the choice, at a much earlier stage, to decide what options he had available. It would've potentially caused some clients to move their holdings elsewhere – but it would've meant treating its customers fairly and acting in their best interests at all times.

And with sufficient time, Mr K could've taken the following actions:

- *He could've asked eToro to certificate his shares – thereby allowing him to move to another broker which would facilitate the merger under the same terms.*

- *He could've sold and immediately rebought his shares elsewhere, either in one transaction or over time and bought those shares somewhere else – although this would almost certainly have given rise to a tax liability.*

- *He could've simply asked eToro to transfer his shares to another firm. And whilst I note eToro's shares say that can't be done, I'm not persuaded it would have good reason to decline this.*

But by not giving him any time or options, Mr K was essentially forced to accept eToro's sale – and I accept that he was unable, in the short term, to purchase the amount of shares in Chord he wanted (and was entitled to) with the sale proceeds because of the time it would take for those to settle. I'm satisfied based on his testimony and the evidence he has provided of holdings he has with another broker, that Mr K wanted to retain ownership of these shares, and so would have more likely than not taken the steps I've outlined above to ensure this occurred.

Taking all this into account, I'm therefore satisfied that Mr K wasn't treated fairly by eToro and I think, on balance, he has been caused a financial loss for which eToro should pay compensation. However, I've considered the matter of compensation in more detail below.

Putting things right

As I've said above, I think it's likely that eToro did offer trading in Chord at the time – and I'm not persuaded by the comments it has made, at varying points, that it was not allowing shares in that company to be bought and sold on its platform. eToro has not explained, in any detail, why Mr K could not simply be given the dividend and shares he was entitled to as per the merger. And even if I'm wrong on this point, I've also concluded that eToro ought to have explained to Mr K earlier what was going to happen once the merger took place – and I'm satisfied that if it had done so, Mr K would've pursued alternative options that would've allowed him to receive the benefits of the corporate action, including ownership of Chord shares.

So in either event, my starting point is that Mr K should be in that financial position. In coming to what I currently think is a fair and reasonable way to put things right for Mr K, I've also taken into account that Chord's share price began to rise steeply from 20 July 2022 onwards – that is over two weeks after these events. This means that Mr K had some time to take the proceeds of eToro's sale and invest them in Chord if that is what he wished to do. This would've limited his ongoing loss considerably. So I don't agree it would be fair to compensate Mr K based on what the value of Chord's shares now is. Instead I think eToro needs to do the following:

- *Calculate the overall dividend Mr K would've received based on his total shares in WLL ($6.25 times the number of shares) – A.*
- *Calculate the total number of Chord shares Mr K would've owned, based on the number of Oasis shares he was entitled to (0.5774 Oasis shares for every WLL share) – B.*
- *Workout the average share price of Chord between its first listing and 20 July 2022 – C.*
- *Mr K's overall financial position would therefore have been: A + (B x C)*
- *If that figure is lower than what Mr K actually got via the sale of his shares, then I'm satisfied Mr K has not suffered a financial loss through eToro's actions. If that figure is higher than what Mr K actually got, then eToro needs to pay that to Mr K. And it needs to add 8% per year simple interest from the date of the sale of Mr K's shares, until the date of settlement.*
- *I'm also persuaded that Mr K has been caused a considerable amount of distress and inconvenience in this matter, for which I think £500 is fair and reasonable compensation.*

Comments in response to my provisional decision

eToro didn't provide any comments in response to my provisional decision.

Mr K agreed with my provisional decision, but disagreed with the end date for compensation. He considered that he ought to be compensated until eToro responded to his complaint. He thought this was the date when he could make a decision whether to repurchase the shares or not. This date was 7 November 2022.

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've considered Mr K's reasons for wanting the average price to be calculated over a long time period – namely to 7 November 2022. However, although I can understand why he wanted to wait until eToro responded to his complaint before deciding to invest the money he had received from eToro's liquidation of his WLL positions into Chord shares, I don't agree that he should also receive compensation for that period when he was not invested.

In my view, Mr K's ability to invest his money in Chord arose once he received the proceeds of the sale from eToro. I've accepted that Mr K may have wanted to assess the market for a period of time before investing, and for that reason I've allowed two weeks for that happen –I acknowledge I can't say precisely when Mr K should've proceeded to invest.

But Mr also had a duty to reasonably mitigate his losses. In this case, that means purchasing the shares he says he always wanted to own, as quickly as he reasonably could. As I've said, I think that opportunity arose at some point in the two weeks from when the Chord shares were listed – because he had the proceeds of the sale of his WLL shares, and he could've subsequently claimed for any additional entitlements as part of his complaint.

In my view, this two-week period is a long enough time frame during which Mr K could've significantly reduced his losses, while waiting for eToro to respond to his complaint. Although I can understand, as I've said above, why Mr K wanted to wait for eToro to respond to his complaint before investing in Chord, I don't consider he was prevented from doing so by eToro for that whole period of time. For these reasons, I've not been persuaded to change my provisional conclusions on putting things right, and I finalise them below.

As there were no other comments in response to my provisional findings, I confirm them here as final.

Putting things right

As I concluded in my provisional decision, eToro has not explained, in any detail, why Mr K could not simply be given the dividend and shares he was entitled to as per the merger. And even if I'm wrong on this point, I concluded that eToro ought to have explained to Mr K earlier what was going to happen once the merger took place – and I'm satisfied that if it had done so, Mr K would've pursued alternative options that would've allowed him to receive the benefits of the corporate action, including ownership of Chord shares.

So in either event, my starting point is that Mr K should be in that financial position. In coming to what I think is a fair and reasonable way to put things right for Mr K, I've also taken into account that Chord's share price began to rise steeply from 20 July 2022 onwards

– that is over two weeks after these events. This means that Mr K had some time to take the proceeds of eToro's sale and invest them in Chord if that is what he wished to do. This would've limited his ongoing loss considerably. So I don't agree it would be fair to compensate Mr K based on what the value of Chord's shares now is – and I've explained above why I don't consider extending this timeline is fair and reasonable either.

Instead I think eToro needs to do the following:

- Calculate the overall dividend Mr K would've received based on his total shares in WLL ($6.25 times the number of shares) – A.

- Calculate the total number of Chord shares Mr K would've owned, based on the number of Oasis shares he was entitled to (0.5774 Oasis shares for every WLL share) – B.

- Workout the average share price of Chord between its first listing and 20 July 2022 – C.

- Mr K's overall financial position would therefore have been: A + (B x C)

- If that figure is lower than what Mr K actually got via the sale of his shares, then I'm satisfied Mr K has not suffered a financial loss through eToro's actions. If that figure is higher than what Mr K actually got, then eToro needs to pay that to Mr K. And it needs to add 8% per year simple interest from the date of the sale of Mr K's shares, until the date of settlement.

- It needs to provide to Mr K a detail of this calculation.

- I'm also persuaded that Mr K has been caused a considerable amount of distress and inconvenience in this matter, for which I think £500 is fair and reasonable compensation.

My final decision

My final decision is that I uphold Mr K's complaint against eToro (UK) Ltd and I award the compensation I've outlined above. eToro (UK) Ltd must pay this compensation to Mr K within 28 days of when we tell it he has accepted this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 21 June 2024.

Alessandro Pulzone
Ombudsman