Financial Ombudsman Service

complaint

E, a limited company, has complained about its broker, TD Direct Investing (Europe) Limited (TD). It says TD was wrong to say its shares couldn't be traded and that TD has delayed the process of transferring its shares to its new broker.

background

E held shares in a company that was listed in the London Alternative Investment Market (AIM). In 2014 the company moved its listing to the United States' Over The Counter market. TD updated E's account to show the new shares but told E that they couldn't trade the shares because their custodian considered the approval process too risky and complex.

In late 2015 E decided to move its account from TD to another broker. By 2016 other assets were moved to E's new account but the shares weren't, so it complained about this. TD said they couldn't move the shares for the same reasons why they couldn't trade them and that the matter was being addressed by their legal team and company directors.

E says it knows that the shares can be traded and can be transferred. It knows that other brokers have been able to transfer and trade in them. It recently bought additional shares in the company. E also says it spoke to the share registrars in the United States and in London and was told that the shares can be transferred and traded. It is particularly unhappy that TD hasn't applied the same amount of effort it has applied to try to resolve the matter.

The complaint was referred to this service and was considered by one of our adjudicators. He took the view that TD had taken too long to transfer the shares and he proposed a way for them to sort out the problem. E agreed with this view but TD disagreed. They insisted that they'd exhausted all options and that the situation is beyond their control, pending consideration by their legal team.

E recently learnt, through a corporate notice sent by TD, that the company plans to apply a reverse stock split to its shares. Before this, E had considered the option of taking a direct payment for the current value of the shares. However, in light of this news, E is certain that it wants its shares, which will be consolidated, back and transferred to its new broker.

The matter couldn't be resolved and was passed to an ombudsman.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In doing so I've come to the same conclusion as the adjudicator for similar reasons.

I'm satisfied by evidence, including the recent corporate notice, that the shares can be traded and can be transferred. E also says that its director and his wife hold the same shares privately and have transferred them without the problems TD has claimed. I'm also satisfied by this evidence.

TD had an early opportunity to work with E and with this service to resolve the matter amicably. Unfortunately, having first been engaged in that effort they then withdrew from it. Whilst they were entitled to do so, I consider it unfortunate. TD had no alternative suggestion to resolve the matter and the delay has since continued.

On balance and mindful of the effort they say they've made, I consider the delay in transferring E's shares to have been caused by TD and to be unreasonable. As I'm satisfied that the shares can be moved I'm not convinced that the delay has resulted because TD cannot find a way to do so.

I agree with the adjudicator's suggestion that a payment of £200 should be made into E's new account. I consider that enough to cover the inconvenience caused in the matter and to cover possible exchange rate movements relevant to my redress orders below.

In order to resolve E's complaint we need to find a way to move its shares to its new broker. The adjudicator's proposal in this respect was very helpful and I have used that as a basis for the redress orders I give below.

my final decision

For the reasons given above, I uphold E's complaint.

I order TD Direct Investing (Europe) Limited to make a payment of £200 into E's new account for the reason given above.

I also order TD Direct Investing (Europe) Limited to take ownership of the shares that haven't been transferred. E must agree with that. TD Direct Investing (Europe) Limited must then resolve the complaint as follows:

- They must establish an offer price for E's shares and must give E reasonable evidence to support the price. Given that E's shares will now be consolidated, they must calculate the current market value of the consolidated shares in US dollars and on an offer basis.

- They must transfer this value to E's new account, thereby allowing E to buy and receive the shares in his new account. As that is the aim of this exercise, they must tell E about the transfer within one working day of it taking place. If they notify E later than this and if the price of the shares (on an offer basis) rises during the delay they must pay E the difference between the value of the shares on the working day after the transfer and the value of the shares on the day they tell E about the transfer.

- They must also pay £40 into E's new account to cover the cost the account may incur on the trade to buy back the shares.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 28 July 2016.

If E accepts my decision it will be binding on TD Direct Investing (Europe) Limited and they will be given notice. My orders must be met within five working days of us giving such notice otherwise TD Direct Investing (Europe) Limited will be responsible for any financial loss arising from their delay.

Roy Kuku
ombudsman