complaint

Ms M complains that CMC Spreadbet Plc (CMC) unfairly liquidated her positions on SPX 500 (Cash) and US30 (Cash).

background

Ms M had an execution-only relationship with CMC. On 5 December 2018 she had buy bets of £40 per point on SPX 500 and £50 per point on US30.

She complained that CMC used incorrect pricing and didn't give her enough time to fund her account before the close-out of her trades.

CMC said the buy positions were closed at the first available prices corresponding to the order quantity on their price ladder. It also said the liquidation of the buy bets happened automatically when the '*Account Revaluation Amount*' (ARA) fell below the close-out level of the account.

It said the trades were liquidated due to a disruption in the futures market that occurred following the funeral of ex-US President George Bush sr, which led to a break in the US trading day between 14:30 and 23:00. When the market re-opened at 23:00, CMC says there was a sharp downward movement in pricing for the first few minutes of trading. This sudden move caused the ARA to fall below her close-out level and triggered the liquidation of her positions.

An investigator at this service sought extensive data from CMC about the market movements in question and CMC's actions on the day, and concluded that it had not done anything - for these key reasons:

- It's clear the market experienced a very sudden and rapid fall in prices; prices falling within a matter of 22 seconds
- This sharp fall reasonably explains CMC's decision to suspend its market for the SPX 500
- While Ms M says she'd only seen the S&P move 70 points in a whole day of trading, as opposed to just two minutes, the data confirms there was a sudden and unexpected move in the market (even though there was a subsequent correction). As this move occurred when the market re-opened, and in response to an important event in the US, it's not unusual that prices moved so rapidly and within an extremely short time
- She was satisfied that CMC's pricing reflected what was happening in the underlying market and that Ms M's trades were executed at the best possible price available to it at that time
- While Ms M refers to other traders who had live prices, quoting 2684 at 23:16 on the IG platform and 2680 at 23:17 on the FXCM platform, the liquidation of her positions occurred between 23:00 and 23:05, several minutes before other traders received their prices for the same contracts on other platforms. As such, this didn't demonstrate that Ms M received less favourable prices than other traders could've got using different platforms at the same time
- With regards to the margin requirements, the sharp drop in prices around 23:00 caused the unrealised net losses on her account to increase. In turn, this caused the ARA to fall below her close-out level

- While Ms M had £50,000 on the account to accommodate price volatility, when the market re-opened at 23:00:00, she had a live cash balance of £106,356.08 and an unrealised net loss of £100,749.30
- When the platform generated its first price for the US30 contract the unrealised net loss on the account increased to £105,899.30. This meant she only had an ARA amount of £456.78; below the close-out level requirement of £2,290.54
- By the time the platform was able to generate a price for the SPX500, she had a cash balance of £55,617.28 and an unrealised net loss of £55,092.50. This left an ARA amount of £524.78, below the close-out level of £1,060.71
- CMC were entitled to close her positions when her ARA fell below the close-out level: and it could do so automatically and without giving prior notice – as explained in the terms and conditions
- While Ms M may not have had time, once notified of the problem, to add the necessary funds, this was an inherent risk in this very high-risk activity and was clearly spelt out in the terms and conditions
- Overall, she was satisfied that each account close-out followed the procedure detailed in CMC's order execution policy and that it provided sufficient risk warnings about this possibility

Ms M did not agree, and asked for an ombudsman to review the case, reiterating her key complaint points.

She subsequently said she had received a margin call recently, on 26 January 2020, when the Asian markets opened, and yet again she couldn't access CMC's platform to deal with this which lead to it liquidating her positions. This, she said, demonstrated its platform was not fit for practice and showed why her complaint should be upheld.

The investigator said this recent issue would need to be looked at as a separate complaint.

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 this case I agree with the investigator and for the same reasons. In my view, her analysis satisfactorily explains what took place and answers a number of Ms M's central concerns: including the fact that there was a sudden and rapid dip, far more dramatic than the 70 point fall over the day and that falling below her ARA gave CMC the power to close her positions automatically and without notice. And that this was clearly spelt out in her terms and conditions.

As Ms M did not contest the details of the investigator's findings – merely reiterating her original complaint – I have not seen any new evidence requiring me to reassess the figures or timeline.

I note that Ms M has raised a new concern about CMC's platform's reliability, which will need to be dealt with separately, but I don't think the available evidence indicates that what occurred in December 2018 was as a result of any platform failures. I therefore don't believe it is relevant to the specific complaint first raised, which I have now assessed.

Overall, I am satisfied that CMC spelt out the very high risks involved in what is, in effect, financial gambling. The situation Ms M faced, while unusual, was far from unique and an inherent risk as CMC clearly explained on its website when describing, “The Risk of Account close-out” and “Market volatility and gapping”. Under the first heading it specifically outlines the risk of rapid changes outside normal UK hours when spread betting on international markets and the risk of an account being closed automatically if one’s account falls below close-out level.

my final decision

I do not uphold the complaint or make any financial award.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms M to accept or reject my decision before 17 May 2020.

Tony Moss
ombudsman