

complaint

V is a limited company which opened an account with Beta 2 Limited. It complains that Beta 2 Limited didn't manage the account in line with what was agreed. It says that as a result, it lost all of the invested capital.

background

In October 2014 V opened a Contract for Differences (CFD) trading account with Beta 2. It invested around £10,000. In opening the account, the directors of V said that they had no experience in CFD trading, or forex. In the application form they confirmed that they were looking for a return of around 5% to 7%, but also that the main purpose of the account was *'speculation'*.

Shortly after opening the account and transferring its funds, V received an email from Beta 2 which explained how it would trade on its behalf. It explained that although the agreement between V and Beta 2 was advisory, it would seek permission in advance for trades which it would place over 9 to 20 business days in the future.

Beta 2 explained that it would generally place 4 to 7 *'core trades'* and 4 to 7 *'secondary positions which act as a hedge and risk 70% of what the CORE positions risk'*. It said that V had a *'relatively mid to high risk threshold'* and so it would *'risk roughly 2% of your equity per CORE trading position'* (about £200 per trade). The secondary positions would risk around £140 per trade.

Beta 2 then listed 7 core trades and 7 secondary trades and asked V to give it permission to execute the trades on its behalf.

In the following months several emails were exchanged between Beta 2 and V. These confirmed Beta 2's strategy of *'sitting in EURCHF'* and that, although this currency pair had generated losses, Beta 2 was still confident that the market would move in their favour. It said that EUR/CHF had *'felt like a fail safe trade'* which had *'worked well'* for it.

In November Beta 2 explained that the reason they had incurred some losses on the EUR/CHF position. It said that there had been a *'plethora of speculation that the SNB [Swiss National Bank] may have to change their cap/floor as other policies potentially changed on the back of a referendum'* later in the month.

V emailed Beta 2 in January 2015 because its account had lost 40% of its value. It said that *'our risk appetite of 40% losses will be exceeded as the current balance is just over 6k'*. It also said that it was *'only holding positions in EURCHF'*. V asked whether it was necessary to review its trading strategy. Beta 2 replied to confirm that the account was *'predominantly sitting in EURCHF'*. It explained that the markets were volatile and *'slightly unpredictable'*. But the *'EURCHF [was] currently at its floor/cap and downside risk [seemed] marginal'*. It explained that it was confident the market would move in its favour. It said that given *'the size of exposure we have on account, I expect us to profit greatly from this position'*. Shortly after this, the rest of V's funds were lost following the extreme volatility seen in the value of the Swiss franc after Swiss National Bank's (SNB) decision to remove the Euro peg.

One of our adjudicators looked at the complaint and thought it should be upheld. He was satisfied that the account hadn't been managed the way V expected it to be. And he thought that V's account was overexposed to the Swiss franc which caused the total loss of funds.

The adjudicator said that the business should refund the initial investment of £10,000 plus additional interest. And it should assume responsibility for any additional losses that V's account had incurred.

Beta 2 didn't agree. Through its legal representative it said that V was fully aware of the risks of having a CFD account. It said that V agreed with Beta 2's strategy and was fully aware of the trades which it was placing. This included the significant exposure to the Swiss franc. And it argued that the losses which V suffered were a direct result of the market conditions caused by the SNB's decision to unpeg the Swiss franc from the Euro. It said that Beta 2 couldn't be held responsible for this event, which it said was unforeseeable and unforeseen.

It said that it was *'clear that V specifically agreed to the EURCHF trading strategy which was adopted in relation to the FX account'*. And so V was *'well aware of the risks associated with the FX account and it was those risks, rather than any failings on the part of Beta 2, which were causative of the loss suffered'*.

The adjudicator didn't think these points made a difference. He said that it was clear that Beta 2 relied on almost one trade being successful (the EUR/CHF trade) and this was not the strategy which V had agreed to when it opened the account.

my findings

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 agree with the adjudicator and for essentially the same reasons.

The account V had with Beta 2 was an advisory account. In practice this isn't how Beta 2 managed V's account – because it effectively placed trades on V's behalf as if the account was a discretionary one. Beta 2 wasn't authorised to manage accounts in this way, but it's clear that V was happy with this arrangement.

But, in any event, the advice Beta 2 was providing needed to be suitable. And, given the risks involved in CFD trading, any increase in those risks needed to be clearly explained to V.

And I'm satisfied that Beta 2 didn't actually trade in the way it told V it would. The email which Beta 2 sent to V shortly after it opened its account gives the impression of a well diversified strategy with some core trades and some secondary trades. The email emphasises how it handles risk. But in fact Beta 2 invested overwhelmingly in what it called a secondary trade, without sufficient diversification, and this was never part of the agreed strategy.

The key issue in my view is Beta 2's decision to expose virtually all of V's positions to the same currency pair – EUR/CHF.

Beta 2 did this because it clearly believed that this was a *'fail safe'* option for generating returns in the long run, regardless of the short term movement of the Swiss franc. And it explained this to V in November 2014. It also explained that the reason their approach to this currency pair hadn't worked as well was because there was *'a plethora of speculation that the SNB may have to change their cap/floor'*. So I'm afraid I don't agree with Beta 2's

representatives that what happened on 15 January 2015 was unforeseeable, nor unforeseen.

But even if it was, I'm not persuaded that Beta 2's advice to remain almost solely invested in one currency pair was suitable.

In my view, this complete lack of diversification significantly increased the risk of the account.

And while I accept that V was prepared to take high risks with its account, I'm satisfied that the very significant risk which this strategy carried wasn't explained to V's directors at all. On the contrary, Beta 2 clearly told V that the risks of this strategy seemed '*marginal*'. And it explained that it expected a significant movement in EUR/CHF in the future and that given the '*the size of exposure we have on account, I expect us to profit greatly from this position*'. But it didn't explain that the opposite was true as well. That is that all of V's capital (and more) was at risk if its prediction was wrong.

So for these reasons, I'm satisfied that Beta 2's advice to V wasn't suitable and I uphold the complaint.

compensation

Beta 2 Limited should put V as close to the position it would now be in if it had managed its account in a suitable way.

But I can't say what reasonable trades would've been at the time or whether or not V would've made a profit. In fact it's entirely possible that V would still have made a loss.

So in my view it would be fair and reasonable for Beta 2 Limited to pay V the initial investment of £10,000, plus interest at 8% simple per annum. This should be calculated from the day V transferred the money to Beta 2, until the day of settlement.

If Beta 2 Limited believes that basic rate tax should be deducted from the interest payment then it can do so as long as it provides the relevant tax certificate.

And I agree with the adjudicator that the directors of V were caused trouble and upset by losing all of their funds, being pursued for additional losses and not having a timely response to their complaint. So it would be fair and reasonable for Beta 2 Limited to pay V £500 in compensation for that.

In addition, I understand that V is also liable to a third party for additional losses on the account over and above the £10,000. These losses were caused by Beta 2 Limited's unsuitable management and advice. And so Beta 2 Limited should be responsible for them, not V.

So V should provide Beta 2 Limited with confirmation of precisely how much it paid to the third party. And Beta 2 should pay V that amount within 14 days of receiving that confirmation.

my final decision

My final decision is that I uphold V's complaint about Beta 2 Limited. Beta 2 Limited should:

- Pay V the initial investment of £10,000 plus interest outlined above;
- Pay V £500 for the trouble and upset caused to its directors;
- Repay V for the negative balance owed to the third party once V provides confirmation to Beta 2 Limited of the exact amount it has had to pay.

Under the rules of the Financial Ombudsman Service, I'm required to ask V to accept or reject my decision before 11 May 2016.

Alessandro Pulzone
ombudsman