

Ombudsman Determination**CIFO Reference Number: 17-000303****Complainant: [The complainant]****Respondent: [Company X]**

It is the policy of the Channel Islands Financial Ombudsman (CIFO) not to name or identify complainants in any published documents. Any copy of this determination made available in any way to any person other than the complainant or the respondent must not include the identity of the complainant or any information that might reveal their identity.¹

[The complainant] complained about the decision taken by [Company X] to withdraw a limit order facility for trades which he conducted.

Background

[The complainant] invested with [Company X] within its Professional Portfolio product for approximately seven years, placing trades with limits, with a maximum period of three months before the trades would lapse.

On 17 November 2016, the broker of the trades, [redacted for anonymisation purposes], wrote to [Company X] to advise that, from 12 December 2016 onwards, the limit order facility would be discontinued. Since February 2017, [Company X] has removed a limit option for the prices on trades which [the complainant] has placed. As a result of a risk review conducted by [the broker] which withdrew the limit option, [Company X] concluded that it was unable to offer this option going forward and this did not form a sufficient basis to change broker.

[The complainant] wanted [Company X] to reinstate the option. [Company X] refused, but offered to waive the portfolio's early discontinuance charge of £16,715, and also offered [the complainant] a refund of the administration charge from the first quarter of 2017. In addition, [Company X] offered to re-register or transfer securities rather than sell them if [the complainant] preferred this course of action.

[The complainant] told CIFO he thought some of the positions might not be transferable, if the portfolio was to be transferred. He would, therefore, have to close out those positions, without limit, at prices over which he had no control and may not want to accept. [The complainant] rejected [Company X's] offer and made a counter-offer asking for £30,000, which was rejected by the firm.

The case handler did not uphold [the complainant's] complaint. He concluded that the limit order facility was offered on a discretionary basis and no provision was made for it in the terms and conditions agreed between [the complainant] and [Company X]. The

¹ Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

subsequent decision by [Company X] to withdraw the limit order option was an exercise of its commercial judgement with which CIFO would not generally interfere.

Findings

I agree with the conclusions of the case handler, and for largely the same reasons. The decision by [Company X] not to offer the limit order option following a risk review is a legitimate exercise of its commercial judgement.

In his letter in response to the case handler's conclusions, [the complainant] submitted that he had not received a warning from [Company X] that the facility would be discontinued. [The complainant] thought he should have been given three months' notice to rearrange his portfolio. I agree with [the complainant] that further notice should have been provided; however, [Company X] has offered to compensate him with £16,715, representing a waiver of [Company X's] early discontinuance charge. I consider this to have been a reasonable compensation for the lack of notice given.

I acknowledge [the complainant's] view that [Company X] should be stopped from claiming the limit order option was value added because a significant period of time has passed, but I do not agree. The option was not provided for in the terms and conditions of the Professional Portfolio product; instead, [Company X] offered the service to [the complainant] because it was available previously from the broker. It would not be reasonable for me to force [Company X] to continue offering a service which was only provided on a discretionary basis and was no longer available from their provider of brokerage services. The only issue is whether any compensation is warranted as a result of the change. I consider the compensation offered to have been sufficient.

I recognise that [the complainant] may incur costs with a new provider because [Company X] has not undertaken to replace [the] broker. [The complainant] informed CIFO that, in his view, these costs mean he will lose £80,000. Nevertheless, following the withdrawal of the limit order option, [Company X] offered compensation and gave [the complainant] the option to transfer or re-register his portfolio. In the circumstances, I consider that [Company X] has not acted unreasonably. [Company X] tried to provide [the complainant] with a viable alternative after making the change to its commercial offer. I see no basis to compel a financial service provider to offer a limit order capability.

Final decision

My final decision is that I uphold this complaint. I also conclude that the compensation previously offered by [Company X] was fair and reasonable in the circumstances. [Company X] should pay [the complainant] £16,715, together with a refund of the administration charge from the first quarter of 2017.

[Company X] should also re-register or transfer securities from [the complainant's] portfolio if he chooses and if the issuer allows this to happen.

[The complainant] must confirm whether he accepts this determination either by email to ombudsman@ci-fo.org, or letter to Channel Islands Financial Ombudsman, PO Box 114, Jersey, Channel Islands JE4 9QG, by **18 October 2017**. The determination will become

binding on [the complainant] and [Company X] if it is accepted by this date. If we do not receive an email or letter by the deadline, the determination is not binding. At this point [the complainant] would be free to pursue his legal rights through other means.

If there are any particular circumstances which prevent [the complainant] confirming his acceptance before the deadline of 18 October 2017, he should contact me with details. I may be able to take these into account, after inviting views from [Company X], and in these circumstances the determination may become binding after the deadline. I will advise both parties of the status of the determination once the deadline has passed.

Please note there is no appeal against a binding determination, and neither party may begin or continue legal proceedings in respect of the subject matter of a binding determination.

Douglas Melville
Principal Ombudsman and Chief Executive

Date: 18th September 2017