ISLE OF MAN **OFFICE OF FAIR TRADING**

Summary of the determination dated 19 October 2020 in respect of a complaint made to the Scheme regarding difficulties encountered whilst trying to place a trade on the platform of a life insurance company ('Provider')

The Complaint

The Complainant had, with assistance of their Independent Financial Adviser ("IFA"), set up an account, with the Provider to enable them to buy, sell, or hold, investments quoted on stock exchanges around the world. The Complainant states that his IFA instructed the Provider to purchase shares which are quoted on the New York Stock Exchange ("the NYSE") as the IFA was unable to complete the trade on the platform. The Provider had to enter the details manually into the platform for the IFA.

Because of the time differences, the trade was placed whilst NYSE was closed. The trade could only be effected when NYSE opened, and, by that time, the price of the shares had increased. This left the Complainant overdrawn on his account, something which was against the terms & conditions of the product. The Provider requested that the Complainant provide additional funds to eliminate the overdrawn position on the account. The Complainant believes that the Provider is responsible for the overdrawn balance and as such the loss should be absorbed by the Provider.

Summary of the Life Company's response

The Provider disagreed that they had acted incorrectly stating the following arguments:-

- The trading platform can only deal in equities in round numbers, or units of shares or stocks.
- Equities cannot be traded in fractional units. This means that only whole units can be specified to be traded rather than a monetary value.
- The Provider does not accept and cannot place limits on orders.

Investigation

The Adjudicator established that there were no warnings on the Provider's website or in its T&C's about the unfortunate position which might arise if a trade is placed overnight or when a market is closed to trading and the price of the shares or stock increases. The Adjudicator reviewed the Financial Services Rule book and could not see that allowing the Complainant to go overdrawn on their account is a regulatory infringement. The T&C's

provide for the Complainant to indemnify the Provider if he goes overdrawn or if he over sells.
The Complainant counters that the Provider was instructed to place the trade manually for US$194,000. The instruction was to buy "as close as possible to US$194,000". The Complainant points out that none of the problems would have arisen if the Provider had placed the trade when first instructed, 45 hours before the trade was manually placed. He implies that the Provider should have placed a limit.

Findings
The Adjudicator concluded the following:-

- The IFA knew that trades could only be by whole number of shares or units.
- Both the IFA and the Complainant were aware of the potential risks, but the Provider acted on the direct instructions of the IFA.
- It was for the IFA to decide what instructions to give, to advise the Complainant. The Provider and its platform are execution only. They do not give advice.
- There was no advance enquiry by the IFA or the Complainant as to whether the stock units or shares could be traded on the platform. The IFA and the Complainant just assumed that the shares were available.
- The IFA should have known of the risks of price volatility between a market closing and opening.
- The Complainant and IFA say that a limit should have been put on the trade. But that was never a possibility, it was not possible to put a limit on the trade.
- The Adjudicator found that the Provider was not negligent, nor did it assume, owe or breach any duty of care to the Complainant, in not having the shares listed on its trading platform after the IFA failed to follow correct procedures.

Award
The complaint was not upheld.