

Investor Compensation Arrangements

Practice Note 5

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The purpose of this Practice Note

The National Stock Exchange of Australia Limited (NSX) maintains investor confidence in the integrity of its markets by regulating the conduct of market participants and monitoring market activity for any irregularities.

The Investor Compensation Arrangements provides a mechanism whereby retail clients of *Participants* may claim recompense for losses under certain circumstances.

The Compensation Arrangements are in two parts and comprise both a Fidelity Fund and monies set aside by the *Exchange* for the purpose. This Practice Note describes the arrangements in place, how they may be triggered and how a claim can be made.

The main points

1. Definitions
 2. History of the Compensation Arrangements
 3. Purpose of the NSX Compensation Arrangements
 4. What makes up the Compensation Arrangements
 5. Participant Contributions to the Compensation Arrangements
 6. Payments out of the Compensation Arrangements
 7. Making a claim against the Compensation Arrangements
 8. Time limits for payments
 9. Determination of your claim
 10. Maximum claim amount
 11. Claims prior to 11 March 2004
 12. Important disclaimer
 13. Claim Form
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Related materials

- NSX Business Rules
 - Australian Corporations Act 2001 (Cth)
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Guidance

The NSX issues practice notes to promote commercial certainty, reduce costs to business and assist market participants, and we are available to discuss any questions you have in relation to a practice note.



NSX may replace practice notes at any time. Issuers should contact NSX to ensure that they have the latest version of a practice note. As a practice note is only a guide to NSX practice, Issuers are advised to contact NSX to discuss their particular circumstances and the application of the listing rules. NSX cannot give legal advice to Issuers and recommends that they consider taking advice from a qualified professional person.

Section 1 – Definitions

1. “**Act**” means the Corporations Act 2001, as amended.
2. “**client or Person**” means a retail client as defined in section 761G of the Corporations Act.
3. “**exchange**” means the National Stock Exchange of Australia Limited or NSX
4. “**financial service**” means a financial service within the meaning given in division 4 of part 7.1 of the *Corporations Act*.
5. “**letter of credit**” means an irrevocable letter of credit.
6. “**levy**” means the *exchange* fidelity fund contribution
7. “**participant**” means
a company or partnership that is recognised as and remains recognised as a Participating Organisation by the *Exchange*; or any entity which is or was a member of the *Exchange* as at the date of adoption of these Rules; and who has not ceased to be a participant under the rules.
8. “**subsection**” refers to subsections under the Corporations Act 2001

Section 2 – History of the compensation Arrangements

1. The current Fidelity Fund has been in operation since 2000, the year the NSX was granted its current licence. The current compensation arrangements have been in place since 2004. The form of and establishment of the Fund was agreed with ASIC and NSX was part of its licence, with rules created in the NSX Business rules as part of the compensation arrangements.

Prior to 11 March 2004 – Fidelity Fund

2. Fidelity Fund operated under Part 7.9 of the old Corporations Act for the purpose of compensating persons who have suffered pecuniary loss because of a defalcation, or fraudulent misuse of securities or documents of title to securities or of other property, by:
 - a) a member of the securities exchange who, when the loss was suffered, was a sole trader; or
 - b) a person who, when the loss was suffered, was a partner in a member firm; or
 - c) an employee of such a member or firm; in respect of money, securities, documents of title to securities or other property that, in the course of or in connection with that member's or firm's business of dealing in



securities, was or were entrusted to or received by the member, a partner in the firm, or an employee of the member or firm (whether before or after the commencement of this Part); or

- d) on behalf of another person; or
- e) because the member, or the firm or a partner in the firm, was a trustee of the money, securities, documents of title or other property.

From 11 March 2004 – Compensation Arrangements

- 3. The Compensation Arrangements operate under Part 7.5 of the Corporations Act 2001 for the purpose of covering Division 3 losses specified by section 885C, but excluding losses under section 885D.
- 4. To date there have been no claims made against the Fund.
- 5. For further information please refer to the NSX Business Rules.

Section 3 – Purpose of the Compensation Arrangements

- 1. The Compensation Arrangements operate for the purpose of compensating persons who have suffered pecuniary loss because of a defalcation, or fraudulent misuse of securities or documents of title to securities or of other property known as Division 3 Losses.
- 2. The *Exchange* shall, as long as it holds a *market licence*, have arrangements in place that comply with the *Corporations Act* to compensate a client who has incurred losses of the following kind:
 - a) the client gave money or other property or authority over property to a person (“the defaulter”)
 - i. who was a *participant* of the *Exchange* at that time; or
 - ii. who the client reasonably believed to be a *participant* of the *Exchange* at that time and who was a *participant* of the *Exchange* at some earlier time; and
 - b) the money or other property or the authority was given to the defaulter in connection with effecting a transaction or proposed transaction covered by these *rules*;
 - c) the effecting of the transaction through the market constitutes or would constitute the provision of a *financial service* to the client as a client; and
 - d) the client suffers a loss because of:
 - i. if the client gave the defaulter money or other property – the defalcation or fraudulent misuse of the money or other property by the defaulter; or
 - ii. if the client gave the defaulter authority over property – the fraudulent misuse of that authority by the defaulter; or
 - iii. the defalcation or fraudulent misuse of money or other property or authority over property by a settlement agent of the defaulter (“the settlement defaulter”). Any such defalcation or fraudulent misuse is deemed to be the defalcation or fraudulent misuse of money or other property or



authority over property by the defaulter, even though the settlement agent may have acted beyond its, express or implied, authority.

Section 4 – What Makes up the Compensation Arrangements

1. The two sources of funds¹ for the Compensation Arrangements are:
 - a) Money from NSX’s previous fidelity fund (a minimum of \$100,000) that has been established as Fidelity Fund under Part 7.5 of the Act which arises due to Participant contributions and currently has a balance of \$590,000: and
 - b) A *letter of credit* of \$700,000.
2. This provides for the minimum cover required by the *Exchange’s* Australian Market Licence of \$800,000.
3. The Exchange may hold more than this amount in its Compensation Arrangements so as to meet additional claims as and when required.

Section 5 – Participant Contributions

1. In accordance with s883D of the Corporations Act, or as otherwise determined by the *Exchange*, *Participants* will pay a fidelity fund contribution or contributions, the amount of which will be prescribed by the *Exchange*.

	Payable on Application for Membership	Annual fee
Levy ²	waived	waived

2. If, at any time, the amount of a fidelity fund is insufficient to pay all amounts that, at that time are required to be paid, the *Exchange* may determine that a levy is to be paid by each *Participant* of the securities exchange who is liable to pay the levy.
3. When such a determination is made, the levy is payable to the *Exchange*, as agent for the Commonwealth, by each of those *Participants*.
4. The *Exchange* pays the legal and administration costs associated with the operation of the Fund.

¹ Allowable sources of funds are prescribed by the Corporations Act 2001 (cth) s885H, s882A(4)(b), s882B(4)(b)(ii), and s883C.

² The Participant levy is currently waived by the Board.



Section 6 – Payments out of the Compensation Arrangements

1. The amounts of all claims, including costs, allowed by the Board are established under Part 7.5 of the Corporations Act.

Section 7 – Making a Claim

1. In the first instance, claims against the Compensation Arrangements should be immediately addressed to the Head of Compliance including all relevant documentation, securities or statements of evidence concerning the claim.
2. The Head of Compliance will review all claims and make a recommendation to the NSX Compliance Committee. The NSX Compliance Committee has the power, under the Act and as delegated by the Board, to settle valid claims.
3. All claims must be in writing using the form attached to this Practice Note.
4. The details of the claim must include:
 - a) Name and address.
 - b) Date(s) when loss occurred.
 - c) The amount of the actual pecuniary loss that occurred.
 - d) How this loss was calculated including security details, price traded, volume at or other details used to derive the amount.
 - e) The Name of the *Participant*, *Responsible Officers* and Authorised Representatives of the *Participant* that were involved.
 - f) Amounts received that reduce the amount of the loss.
 - g) Other information as may be requested by the *Exchange* in the course of its investigation.

Section 8 – Time limits for payment

1. The Compliance Committee will make a determination on the status of the claim within 2 months of receipt of the claim in writing. Timing of payments for claims will follow NSX Business Rule Part F 4A.21 as follows:
2. For approved claims that are to be paid directly of the *Exchange* Fidelity Fund, payments will be made for claims within 30 days of the claim being upheld by the Compliance Committee.
3. For approved claims requiring recompense to the *letter of credit* then the claim will be paid within 30 days of the claim being upheld by the Compliance Committee.



Section 9 – Determination of your claim

1. *Persons* making claims will be notified by written notice of the success or otherwise of their claim within 2 months of written notice of the claim having been received by the *Exchange*.
2. The *Exchange* may find that the claim was partially successful, where the Compliance Committee in its discretion finds that the person making the claim contributed to the pecuniary loss. Where this is found, the amount payable by the *Exchange* will be reduced by the same proportion that it is determined that the *client* contributed to the loss.
3. *Persons* making claims will be notified by written notice of the success or otherwise of their claim within 2 months of written notice of the claim having been received by the *Exchange*. The *Exchange* may find that the claim was partially successful, where the *board* in its discretion finds that the person making the claim contributed to the pecuniary loss. Where this is found, the amount payable by the *Exchange* will be reduced by the same proportion that it is determined that the *client* contributed to the loss.
4. Claims will be prioritised by the *Exchange* on a proportional basis.
5. If a claim is successful (either fully or partially), the *Exchange* will provide written notice to the person of their successful claim at the address notified to the *Exchange* in the notice of that claim. The exchange has the absolute discretion in determine the validity and amount of the claim.
6. Successful claims will be paid by way of cheque. The *Exchange* will pay the claim within 30 days, once the *Exchange* has provided written notice to the person of their successful claim.
7. Claims may be paid in a lump sum or by way of instalments, as determined by the *Board* in its discretion.
8. Interest on the amount will accrue during this period in accordance with section 885E(5) of the *Corporations Act*.
9. Once a claim has been found to be successful (either fully or partially) and the *Person* has been provided with written notice to this effect by the *Exchange* and payment has been made, that same person may not make a claim in respect to the same subject matter of the claim dealt with by the *Exchange*

Section 10 – Maximum claim amount

1. The limit of compensation to be awarded is \$100,000 per claim.
2. The *Exchange* may from time to time amend this limit in accordance with s884B of the *Corporations Act*.

Section 11 – Claims prior to 11 March 2004

1. Losses which were incurred prior to 11 March 2004, but claimed by persons after this date, are eligible to be compensated under NSX Business Part F Rule 4A.



Section 12 – Important disclaimer

1. This practice note has been prepared to provide a basic outline of the operation of the Compensation Arrangements and the provisions of the Corporations Act and Regulations which govern it, and to guide you if you wish to make a claim or make further inquiries.
2. It is not intended to be a precise statement of the legislative provisions many of them very technical, which govern the operation of the Compensation Arrangements and the availability of claims.



Section 13 – Claim form

Please complete, sign and return this form:

If there is insufficient space for details, please attach a separate sheet.

Contact Details

Salutation

Given Name

Surname

Contact Phone

Mobile

Email Address

Postal Address

_____ State _____ Postcode _____

Nature of Claim (please attach details as required and attach supporting documentation)

Claimant Name (print)

Claimant Signature

Date



Section 14 – Further Information

1. Further information can be obtained by contacting:

Head of Compliance

National Stock Exchange of Australia

Phone: +61 (2) 8378 6400

Email: compliance@nsx.com.au