

Guidance Note

Released:

07 June 2019

Version: 3

Key concepts:

Retail clients may seek compensation where Trading Participants and Clearing Entities have defaulted in their fiduciary obligations in relation to activities on the FGL market.

Related information:

FGL Compensation Rules

Notice of Compensation Claim Pro Forma

Corporations Act (2001)

Section 885D

Recommended Audience:

Retail Clients

Previous Issues:

Nil

GN 50 – Client Application for Compensation

Introduction

As an obligation under its Australian Market Licence, FGL has established compensation arrangements in the form of a Compensation Fund to protect the retail clients of Trading Participants and Clearing Entities under certain circumstances. The Compensation Fund was created and operates in accordance with the Corporations Act and the FGL Compensation Rules. These Compensation Rules have been approved by the Minister. This Guidance Note provides an explanation of when and how a retail client may seek compensation from this fund.

Guidance

What losses are covered by the Compensation Fund?

For a retail client to be able to successfully claim compensation from this fund the retail client must be able to demonstrate that they:

- 1 gave money or other property, or authority over property to a person in the market (the Defaulter), and the Defaulter was:
 - (i) a Trading Participant or Clearing Entity at that time; or
 - (ii) a person whom the retail client reasonably believed to be a Trading Participant or Clearing Entity of the Exchange and who had been a Trading Participant or Clearing Entity at some earlier time; and
- 2 the money or other property, or the authority, was given to the Defaulter in connection with a transaction or a proposed transaction on the Exchange that:
 - (i) was covered by provisions of the Operating Rules of the market relating to transactions effected through the market; and
 - (ii) related to a product that is not covered by a compensation regime constituted by Division 4 of the Corporations Act; and
- 3 the transaction constituted or a proposed transaction would constitute the provision of a financial service to the Claimant as a retail client within the meaning of Chapter 7 of the Corporations Act; and
- 4 the Claimant suffers a loss because of:
 - (i) where the Claimant gave the Defaulter money or other property – the defalcation or fraudulent misuse of the money or other property by the Defaulter; or
 - (ii) where the Claimant gave the Defaulter authority over the property – fraudulent misuse of that authority by the Defaulter; and
- 5 the loss suffered by a Claimant is a Division 3 loss under Section 885D of the Corporations Act.

A claim does not rely upon the Defaulter being convicted or prosecuted under criminal law and a compensation claim may still be successful whether or not the evidence supporting the claim is sufficient to establish the guilt of the person under criminal law.

How much compensation can be sought?

A retail client whose claim meets all of the criteria above may seek the full amount of their pecuniary loss and reasonable costs of and disbursements incidental to making and proving the compensation claim.

However, the Exchange may reduce the amount of compensation paid under a claim by setting-off the claim against other costs due by the Claimant and by the extent to which the Exchange determines that the Claimant was responsible for causing the loss.

Should the Exchange determine a reduction in payment is appropriate there is no right of appeal available to the Claimant.

There is a maximum limit on any one claim relating to the size of the Compensation Fund as a whole.

How is a claim made?

A retail client wishing to claim compensation from this fund must apply in writing to the Exchange within 6 months of the Claimant becoming aware of the loss and may use the form provided by the Exchange for this purpose. Any written claim for compensation must at least include the following information:

- (a) details of the Claimant;
- (b) details of the alleged pecuniary loss sustained by the Claimant;
- (c) details of the Defaulter;
- (d) details of the relationship and dealings between the Claimant and that Defaulter;
- (e) details of the Defaulter's conduct which allegedly constitutes defalcation or fraudulent misuse and which allegedly caused the Claimant to sustain a pecuniary loss; and
- (f) any other details which the Claimant considers may assist the Exchange in assessing and considering its Compensation Claim.

To assist clients in lodging a claim, a Notice of Compensation Claim Pro Forma has been prepared by FEX Global and is available on the FEX website.

The Claimant may be requested to provide further information to the Exchange during the assessment process of the claim.

The Exchange may, at its complete discretion, consider a late application for compensation.

Under no circumstances will the Exchange consider a second claim for the same matter.

What happens when a Determination is made?

At any time after an application has been received the Exchange may make a determination. However, as soon as practical after the Exchange has made a determination, the Exchange will notify the Claimant of the determination and any procedural requirements to effect the determination.

Where a determination disallows or partly disallows a Compensation Claim the Claimant may submit further information regarding the claim within ten (10) business days of the notice. The Exchange has absolute discretion as to whether to reconsider the claim.

The Exchange will make payments in accordance with its determination and will commence payment in seven (7) days of notifying the claimant.

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