



Practice Note #5

NSX Fidelity Fund

Issued:
2 February 2004

Qualifications

The Stock Exchange of Newcastle Limited (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.

Practice Note History

First Issued 4/3/2002
Revised: 22 January 2004

Introduction

The Stock Exchange of Newcastle 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 Fidelity Fund provides a mechanism where by retail clients of NSX Participants may claim recompense for losses under certain circumstances

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Definitions

- (a) “**Act**” means the Corporations Act 2001, as amended.
- (b) “**participant**” means
 - (i) a company or partnership that is recognised as and remains recognised as a Participating Organisation by the *Exchange*; or
 - (ii) 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.
- (c) “**client**” means a retail client as defined in section 761G of the Corporations Act.
- (d) “**financial service**” means a financial service within the meaning given in division 4 of part 7.1 of the *Corporations Act*.
- (e) “**letter of credit**” means an irrevocable letter of credit.
- (f) “**levy**” means the *exchange* fidelity fund contribution
- (g) “**exchange**” means the NSX or other recognised Securities Exchange – Appendix 3 of Business Rules
- (h) “**subsection**” refers to subsections under the Corporations Act 2001

History of the Fidelity Fund

The current NSX Fidelity Fund has been in operation since 2000, the year the NSX was granted its current licence. 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 11th March 2004

NSX Fidelity Fund operates 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.

The Funding for the Fund was sourced from an NSX contribution. To date there have been no claims made against the Fund. On going sources of Funding include contributions from new and existing participants.

The NSX Board has also authorized and sought insurance for claims made against the Fund. The Fund was insured by Lloyds of London. The insurance policy is being replaced by an irrevocable letter of credit.

From 11th March 2004

NSX Fidelity Fund operates 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.

Purpose of the NSX Fidelity Fund – Division 3 of Part 7.5 of Corporations Act 2001

The NSX Fidelity Fund operates 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, by:

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.

What makes up the NSX Fidelity Fund – s885H, s882A(4)(b), s882B(4)(b)(ii), s883C

The two sources of funds of funds for the compensation arrangements are:

- (i) Money from NSX's previous fidelity fund (a minimum of \$100,000) that will be established as the new fidelity fund under Part 7.5 of the Act. The fidelity fund will continue to be topped up by annual levies on participants. ; and
- (ii) A letter for credit of \$700,000

Payments out of the Fund

The amounts of all claims, including costs, allowed by the board or established against the *exchange* under Part 7.5.

Contributions to the fund - s883D Payment of levies

A person is not to be admitted as a:

- (a) participant of the *exchange*; or
- (b) membership of a partnership in a member firm recognised by an *exchange*;

unless the person has paid to the *exchange*, as agent for the Commonwealth, the levy known as *exchange* (application for participation) fidelity fund contribution and continues to pay the annual levy.

The NSX Board will vary these levies in accordance with s884B.

	Application for membership	Annual fee
Levy	\$5,000 per participant	\$1,000 per participant

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 NSX may determine that levy is to be paid by each participant of the securities exchange who is liable to pay the levy. When such a determination is made, the levy is payable to the NSX, as agent for the Commonwealth, by each of those participants.

The NSX pays the legal and administration costs associated with the operation of the Fund.

The Exchange may from time to time amend the amount of these levies in accordance with s884B.

Making a claim against the fund

- (a) In the first instance, claims against the NSX Fidelity Fund should be immediately addressed to the Compliance Officer including all relevant documentation, securities or statements of evidence concerning the claim.

Compliance Officer
Stock Exchange of Newcastle Limited
PO BOX 283
Newcastle NSW 2300

- (b) The Compliance Officer will review all claims and make a recommendation to the NSX Board. The NSX Board has the power, under the Act, to settle valid claims.
- (c) All claims must be in writing using the form attached to this Practice Note.
- (d) The details of the claim must include:
 - Name and address.
 - Date(s) when loss occurred.
 - The amount of the actual pecuniary loss that occurred.
 - How this loss was calculated including security details, price traded, volume at or other details used to derive the amount.

- The Name of the Participant and Responsible Officers of the Participant that were involved.
- Amounts received that reduce the amount of the loss.
- Other information as may be requested by the NSX in the course of its investigation.

Determination of your claim

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.

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Claims will be prioritised by the *Exchange* on a proportional basis.

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.

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.

Claims may be paid in a lump sum or by way of installments, as determined by the *Board* in its discretion.

Interest on the amount will accrue during this period in accordance with section 885E(5) of the *Corporations Act*.

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*.

Time limits for payment

The Board 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:

- (a) For approved claims that are to be paid directly out of the Fidelity Fund, payments will be made for claims within 30 days of the claim being upheld by the NSX Board.
- (b) 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 NSX Board.

Maximum Claim Amounts

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

Time limits for making a claim

A client making a claim must notify the *Exchange* in writing within six (6) months of becoming aware of the pecuniary loss. A claim that is not so made is barred unless the *Exchange* determines otherwise. If the *Exchange* ceases to be an *Australian Market Licencee* then all outstanding claims must be made within six (6) months of the *Exchange* ceasing to be an *Australian Market Licencee*.

Claims prior to 11th March 2004

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.

IMPORTANT DISCLAIMER

This practice note has been prepared to provide a basic outline of the operation of the NSX Fidelity Fund 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. It is not intended to be a precise statement of the legislative provisions many of them very technical, which govern the operation of the Fund and the availability of claims.

FIDELITY FUND CLAIM FORM

Please complete, sign and return this form to the:

Compliance Officer
Stock Exchange of Newcastle Limited.
PO BOX 283
Newcastle NSW 2300

Or

FAX: +61 2 4929 1556

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

Contact Details

Salutation	Given Name	Surname
_____	_____	_____
Home Phone	Work Phone	Fax
_____	_____	_____
Mobile	Email	
_____	_____	

Postal Address

_____	State _____	Postcode _____

Nature of Claim (please attach details as required)

Claimant Signature

Date

_____	_____
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