

## **COMPENSATION RULES FOR SYDNEY FUTURES EXCHANGE LIMITED**

### **1 GENERAL**

1.1 A fidelity fund, in relation to a financial market, means a fund consisting principally of contributions made by:

- (a) participants and past participants in the market; or
- (b) participants and past participants in:
  - (i) the market; and
  - (ii) one or more other financial markets

the purpose, or the main purpose of which is to provide a source of funds for the payment of compensation to clients of participants. Any investments made using money in the fund are taken to form part of the fund.

1.2 The fidelity fund that was kept by the Exchange immediately before the commencement of these Compensation Rules and under Part 8.6 of the Old Corporations Act, shall, after commencement of these Rules, be kept for the purposes of and in accordance with these Compensation Rules and the Corporations Act.

1.3 Subject to Rule 13, the fidelity fund kept by the Exchange shall be a minimum of \$10 million or such other amount as the Minister is satisfied is adequate.

1.4 The Board may exercise all powers and perform all functions conferred on the Exchange by these Compensation Rules and the Corporations Act in respect of the fidelity fund.

### **1.5 Contents of Fidelity Fund**

The fidelity fund shall consist of:

- (a) money and other property which was contained in the fidelity fund immediately before the commencement of these Compensation Rules;
- (b) money paid by the Participants to the Exchange in accordance with these Compensation Rules;
- (c) interests and profits from time to time accruing from the investment of the fidelity fund;
- (d) money paid into the fidelity fund by the Exchange;
- (e) money recovered by or on behalf of the Exchange in the exercising of any right of action conferred by these Compensation Rules;
- (f) money paid by an insurer pursuant to a contract of insurance or indemnity entered into by the Exchange pursuant to these Compensation Rules; and
- (g) all other money lawfully paid into the fidelity fund.

### **1.6 Management Committee**

- (a) The Exchange may appoint a fidelity fund management committee comprising not less than three (3) and not more than five (5) persons, at least one of whom shall be a Director of the Exchange Board.
- (b) The Exchange may delegate to the committee all or any of its powers, authorities and discretions vested in the Exchange under these Compensation Rules (other than this Rule 1.6(b)).
- (c) A power, authority or discretion delegated under Rule 1.6(b) may be exercised by members forming a majority of the committee as if that power, authority or discretion had been conferred by this Rule on a majority of the members of the committee.
- (d) A delegation by the Exchange under Rule 1.6(b) may at any time be varied or revoked.
- (e) The Exchange may at any time remove a member of the committee appointed by it under this Rule and may fill a vacancy arising in the membership of the committee.
- (f) A delegation by the Exchange under Rule 1.6(b) does not prevent the exercise of a power, authority or discretion by the Exchange.

- (g) A committee appointed by the Exchange before the commencement of this Rule 1.6 under a corresponding previous Compensation Rule or law in existence immediately before that commencement of this Rule shall be deemed to have been appointed by the Exchange on the commencement of these Compensation Rules.
- (h) Where the Exchange has before the commencement of these Compensation Rules, delegated to a committee equivalent to that referred to in this Rule 1.6, any powers, authorities or discretions under the corresponding previous Compensation Rules or law and has not revoked the delegation before that commencement, the Exchange shall be deemed to have, on commencement, delegated to the committee its corresponding powers, authorities and discretions under these Compensation Rules.

## 2 NATURE OF FUND AND MANNER OF INVESTMENT

- (a) The assets of the fidelity fund shall be the property of the Exchange. All assets of the fidelity fund shall be kept separately from all other property, and shall be held in trust for the purposes of these Compensation Rules.
- (b) Money held in the fidelity fund that is not immediately required for the purposes of the fidelity fund may be invested by the Exchange in the manner authorised by the Corporations Act.
- (c) Until it is so invested, it shall be kept in a separate account with an Australian ADI (as that term is defined in the Corporations Act) or otherwise as permitted by the Corporations Act.

## 3 PURPOSE OF FUND

The purpose of the Fund is, subject to these Compensation Rules:

- (a) to cover losses suffered by a claimant, for recovery of the loss, where:
    - (i) the claimant gives money or other property or authority over property, to a Participant:
      - (A) who is a Participant of the Exchange at that time; or
      - (B) who the claimant 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
    - (ii) the money or property or authority was given to the Participant in connection with effecting a transaction, or proposed transaction covered by the provisions of the Operating Rules of the Exchange relating to transactions effected through the Exchange; and
    - (iii) the effecting of the transaction through the Exchange constitutes or would constitute the provision of a financial service to the claimant; and
    - (iv) the claimant suffers loss because of:
      - (A) if the claimant provided money or other property to the Participant – the defalcation or fraudulent misuse of the money or other property by the Participant; or
      - (B) if the claimant gave the Participant authority over property – the fraudulent misuse of that authority by the Participant
- and
- (b) to cover losses suffered which, before the commencement of these Compensation Rules would have been subject to Part 8.6 of the Old Corporations Act , PROVIDED THAT:
    - (i) any claims in respect of losses referred to in this Rule 3(b) shall be dealt with by the Exchange as though they had been made after the commencement of and in accordance with these Compensation Rules and as though a reference in Part 8.6 of the Old Corporations Act to:
      - (A) ‘futures organisation’ means the Exchange or the company now known as SFE Corporation Limited, whose ACN is 000 299 392; and
      - (B) ‘contributing member’ means a Participant of the Exchange or a Participant or Member of SFE Corporation Limited;
    - (ii) claims shall not be disallowed merely because loss was suffered in respect of money or other property or authority over property that was entrusted to or received by the contributing member in connection with the contributing member’s dealings in futures contracts other than those effected through the Exchange; and

- (iii) references in these Compensation Rules to ‘Participants of the Exchange’ shall, except in Rule 13, include persons who were, prior to the commencement of these Compensation Rules, members of the Exchange or of SFE Corporation Limited.

#### **4 APPLICATION OF THE FUND**

- (a) A person who suffers loss as described in Rule 3 is, subject to these Compensation Rules, entitled to claim compensation from the fidelity fund.
- (b) Subject to these Compensation Rules, the Exchange may allow and settle a proper claim for compensation from the fidelity fund at any time after the occurrence of the loss in respect of which the claim arose.
- (c) The amount that a claimant is entitled to claim as compensation from the fidelity fund is, subject to this Rule 4:
  - (i) the lesser of
    - (A) the amount of the actual pecuniary loss suffered by the claimant, calculated by reference to the market value of any relevant assets or liabilities as at the date on which the loss was suffered, less the total amount or value of all amounts or other benefits received or receivable by the claimant from a source other than the fund in reduction of the loss; and
    - (B) the maximum amount payable from the fidelity fund pursuant to Rule 4(d);
  - (ii) the claimant’s reasonable costs of, and disbursements incidental to, the making and proof of the claim; and
  - (iii) interest at the rate prescribed by the Corporations Act on the amount of the compensation paid, calculated from and including the day on which the pecuniary loss was suffered until the day on which the claim is satisfied.
- (d) The maximum amounts which may be paid from the fidelity fund in respect of claims arising from a particular event or set of related events are:
  - (i) \$250,000 per claimant;
  - (ii) \$2,000,000 per Participant;
  - (iii) \$4,000,000 in the aggregate (ie if more than one Participant is involved).
- (e) A claim duly made before the commencement of this Rule against the fidelity fund under a previous corresponding law shall be deemed to have been duly made against the fidelity fund under these Compensation Rules. Any such claim shall be treated by the Exchange as though it had been made under these Compensation Rules and any information provided by the claimant in support of such claim shall be treated by the Exchange as though it had been provided under these Compensation Rules.
- (f) A claim against the fidelity fund relating to an alleged loss caused by defalcation or fraudulent misuse may be allowed even if:
  - (i) the person against whom the defalcation or fraudulent misuse is alleged has not been convicted or prosecuted; and
  - (ii) the evidence on which the claim is allowed would not be sufficient to establish the guilt of that person on a criminal trial in respect of the defalcation or fraudulent misuse.
- (g) Where all persons who have submitted claims have been fully compensated in accordance with these Compensation Rules for loss in relation to a Participant of the Exchange, being loss as described in Rule 3 suffered in relation to money or other property, any partner of the Participant who has made payment to a person in compensation for loss suffered by the person in relation to that money or property shall be deemed to be subrogated to the extent of that payment to all the rights and remedies of that person against the fidelity fund if the Exchange, having regard to all the circumstances, determines that the partner was in no way a party to the loss and acted honestly and reasonably in the matter.

#### **5 CIRCUMSTANCES WHERE THE FUND DOES NOT APPLY**

- (a) A person does not have a claim against the fidelity fund in respect of:

- (i) loss suffered before 1 July 1986; or
  - (ii) subject to Rule 5(b), a loss which is taken not to be a Division 3 loss within the meaning of Part 7.5 of the Corporations Act.
- (b) A person shall not be excluded from making a claim merely because that person is a not a Retail Client.

## **6 CLAIMS - PROCEDURES, APPROVALS, DISALLOWANCES**

- (a) A claim for compensation from the fidelity fund shall be made in writing to the Exchange:
- (i) where a notice under Rule 6(b) has been published, on or before the date specified in the notice; or
  - (ii) where no such notice has been published, within six (6) months after the claimant became aware of the loss
- and a claim that is not so made is barred unless the Exchange otherwise determines.
- (b) The Exchange may cause to be published in a daily newspaper circulating generally in each State and Territory, a notice specifying a date, not being earlier than three (3) months after the publication of the notice, on or before which claims for compensation from the fidelity fund, in relation to the person specified in the notice, may be made.
- (c) A notice published by the Exchange, before the commencement of these Compensation Rules under a previous law corresponding to Rule 6(b), shall be deemed to have been duly published under Rule 6(b).
- (d) Claims made for compensation from the fidelity fund should be made to the Secretary of the Exchange setting out:
- (i) the names of the parties involved;
  - (ii) the details of the transaction(s) or proposed transaction(s) for which the money or property or authority over property was given, including the date, time, place and type of contract(s) traded or proposed to be traded;
  - (iii) a statement of the alleged defalcation or fraudulent misuse of funds;
  - (iv) details of the loss suffered as a result of the defalcation or fraudulent misuse, including precise details as to how the amount was calculated;
  - (v) details of all efforts which have been made to recover the amount of the loss from the participant concerned, and any other proceedings taken to recoup the loss prior to the application being made;
  - (vi) all correspondence, documentation and supporting evidence concerning the matters listed in (i)-(v) above, including all agreements entered into between the client and the Participant.
- (e) Following receipt of such a claim, the Exchange may request further information to clarify or add to the information provided.
- (f) The Exchange may at any time require a person to produce and deliver any documents or statements of evidence necessary to support a claim made or necessary for the purpose either of exercising its rights against a Participant of the Exchange or a partner or the partners in a partnership that is a Participant of the Exchange or any other person or of enabling criminal proceedings to be taken against a person in respect of a defalcation or fraudulent misuse of property, and in default of delivery of such documents or statements of evidence by the first-mentioned person the Exchange may disallow any claim by the first-mentioned person under these Compensation Rules.
- (g) Following receipt of a claim and any additional information which may have been sought, the Exchange shall refer the claim to the Board or management committee, for consideration. The Board or committee shall, so far as is practical, meet to consider the claim within one month of receipt of all relevant documentation.
- (h) The Board or management committee may call for such additional information as it considers necessary to enable it to allow a claim for compensation, and shall advise the claimant of its decision as soon as practical after its decision has been made.
- (i) The Board or management committee may approve a claim in full or in part. The Exchange may approve a part payment of claim where the Exchange reasonably considers that the part payment is

warranted, having regard to the purpose of the compensation arrangements such as a part payment to the extent that the claimant contributed to their loss.

- (j) Where a claim is allowed, in full or in part, the Exchange shall, subject to Rule 9, forward payment of the amount allowed, in a lump sum, to the claimant or as the claimant may direct, as soon as practicable
- (k) The Exchange shall serve on the claimant formal notice of the outcome of the claim.

## **7 SUBROGATION OF EXCHANGE TO RIGHTS, ETC. OF CLAIMANT ON PAYMENT FROM FIDELITY FUND**

On payment out of the fidelity fund of any money in respect of a claim under these Compensation Rules, the Exchange is subrogated to all the rights and remedies of the claimant in relation to the loss suffered by the claimant from the defalcation or fraudulent misuse of property, where as a result of Rule 4(d) a payment is made to the Claimant which is less than the amount of the claim and the Exchange recovers an amount pursuant to the exercise of the right of subrogation under Rule 7, then after deducting a sum equal to the amount paid to the Claimant from the fidelity fund and reasonable costs incurred in exercising those rights, the Board may pay the balance of the amount recovered to the Claimant.

## **8 PAYMENT OF CLAIMS ONLY FROM FIDELITY FUND**

Money or other property belonging to the Exchange, other than its fidelity fund, is not available for the payment of a claim under these Compensation Rules, whether the claim is allowed by the Exchange or is made the subject of an order of a court or a relevant tribunal.

## **9 PROVISIONS WHERE FIDELITY FUND INSUFFICIENT TO MEET CLAIMS OR WHERE CLAIMS EXCEED TOTAL AMOUNT PAYABLE**

- (a) Where the amount in the fidelity fund is insufficient to pay the whole of the amount of all claims against it that have been allowed or in respect of which orders of a Court or relevant tribunal have been made, the amount in the fidelity fund shall, subject to Rule 9(b), be apportioned among the claimants in such manner as the Exchange, on a reasonable basis, thinks equitable, and such a claim so far as it then remains unpaid shall be deemed to be charged against future receipts of the fidelity fund and paid out of the fidelity fund when money is available in the fidelity fund.
- (b) Where the aggregate of all claims that have been allowed or in respect of which orders of a Court or relevant tribunal may have been made in relation to defalcations or fraudulent misuses of property by or in connection with a Participant of the Exchange exceeds the total amount that may, pursuant to Rule 4, be paid under these Compensation Rules in respect of that Participant, the total amount shall be apportioned among the claimants in such manner as the Exchange, on a reasonable basis, thinks equitable, and on payment out of the fidelity fund of that total amount in accordance with that apportionment all such claims and any orders relating to those claims and all other claims against the fidelity fund that may thereafter arise or be made in respect of defalcations or fraudulent misuses of property by or in connection with that Participant are discharged.

## **10 PAYMENTS OUT OF FIDELITY FUND**

### **Repayment to General Fund**

- (a) The Exchange may, from its general funds, give or advance, on such terms as the Exchange thinks fit, any sums of money to its fidelity fund.
- (b) Money that is advanced under Rule 10(a) may, provided it does not result in the total amount in the fund falling below the minimum amount which the Minister has determined to be adequate, at any time be repaid from the fidelity fund to the general funds of the Exchange.
- (c) Where the Exchange, under Rule 10(b) requires the repayment of the money paid under Rule (10(a), then the Minister may approve in writing, on such conditions (if any) are specified in the approval, the repayment of the whole or a specified part, of the amount from the fidelity fund to the general funds of the Exchange. If the Minister does approve the repayment of an amount in accordance with any specified conditions then that amount can be repaid to the Exchange from the fidelity fund.

**Excess Moneys**

- (d) Where a determination is made that the fidelity fund has excess money, then the Minister, pursuant to the Corporations Act, can approve a purpose for which excess money may be used by the Exchange.

**Payments out of the Fund**

- (e) Subject to these Compensation Rules, there shall be paid out of the fidelity fund, in the order the Exchange deems proper:
- (i) the amount of all claims, costs and interest as described in Rule 4 which may be allowed from time to time.
  - (ii) all costs and expenses incurred by the Exchange where the source of funds consist of contracts of insurance or indemnity, irrevocable letters of credit or such other arrangements;
  - (iii) the expenses incurred in the administration of the fidelity fund, including the salaries and wages of persons employed by the Exchange or the Board in relation to the fidelity fund and reasonable consultancy fees relevant to the administration of the fidelity fund; and
  - (iv) all other money payable out of the fidelity fund in accordance with the provisions of these Compensation Rules and the Corporations Act including any excess funds that may be determined to be excess in accordance with the Corporations Act.
  - (v) all expenses properly incurred in the administration of the fidelity fund maintained by SFE Corporation Limited which have not been paid prior to the commencement of these Compensation Rules.

**11 ACCOUNTS OF FIDELITY FUND**

- (a) The Exchange shall establish and keep proper accounts of its fidelity fund and shall, within the period of two (2) months that next succeeds the end of its financial year, cause an audit in respect of those accounts to be made out as at the end of that financial year. These audited accounts shall be lodged in accordance with the provisions of the Corporations Act.
- (b) The Exchange shall appoint a registered company auditor to audit the accounts of the fidelity fund.

**12 CONTRIBUTIONS TO FIDELITY FUND**

- (a) A person will not be admitted as a Participant of the Exchange unless the Participant has paid to the Exchange, as a contribution to the fidelity fund, such an amount, if any, as the Exchange may determine in relation to the Participant or a class including the Participant.
- (b) A Participant of the Exchange must in each year, pay to the Exchange, as a contribution to the fidelity fund, such amount (if any) as the Exchange may determine in relation to the Participant or a class including the Participant.

**13 LEVIES**

- (a) If at any time the amount of the fidelity fund falls below the amount specified in Rule 1.3 or is insufficient to pay all amounts that, at that time, are required to be paid under Rule 4, the Exchange may determine that a levy of a specified amount must be paid equally between all the Participants.
- (b) The amount of the levy must be paid within the time, and in the manner, specified by the Exchange, provided however, that:
- (i) if the amount in the fund does not fall below \$5 million, a Participant need not pay by way of levy more than \$20,000 in total in any period of 12 months; and
  - (ii) if the amount in the fund falls below \$5 million, a Participant need not pay by way of levy more than \$50,000 in total in any period of 12 months.
- (d) An amount of any levy paid under this Rule shall be paid to the Exchange and dealt with in accordance with Division 3 of Part 7.5 of the Corporations Act.

- (e) Subject to 13(b) the Exchange shall for the purpose of Rule 13(a) determine the amount of the levy in accordance with the following formula:

$$D = \frac{A - B}{C}$$

A = the amount specified in Rule 1.3

B = the amount in the fidelity fund immediately prior to an Exchange determination in Rule 13(a)

C = number of Exchange Participants

D = amount of levy to be paid by each Participant

## 14 INTERPRETATION

Compensation Rules means the rules entitled 'Compensation Rules for Sydney Futures Exchange Limited

Corporations Act means the Corporations Act 2001 (Cth) as amended from time to time.

Exchange means Sydney Futures Exchange Limited

Participant means a person who has been approved as a Participant of the Exchange

Part 8.6 of the Old Corporations Act means Part 8.6 of the Corporations Act as that Act was in force prior to its amendment by the Financial Services Reform Act 2001

Retail Client means a 'Retail Client' as that term is defined in the Corporations Act

The table below indicates which of the Compensation Rules deals with the matters which S885B(1) requires to be included therein. (The table is provided for reference only and is not intended to be part of the Rules).

Corporations Act Provision	Compensation Rule No
S.885B(1)(a) adequate coverage for Division 3 losses (as per S. 885C and 885D)	
S.885C(1).....	Rule 3(a)
S.885C(2) .....	Rule 4(g)
S.885C(3).....	N/A (No exclusions are proposed)
S.885D .....	Rule 5(c)
S.885B(1)(b) adequate compensation to be paid in respect of Division 3 losses (as per S.885E)	
S.885E(1) .....	Rule 4(d)
S.885E(2) .....	Rule 4(b) and (d)(i)
S.885E(3) and (4).....	Rule 4(e)
S.885E(5).....	Rule 4(d)
S.885E(6).....	Rule 9
S.885E(7).....	N/A
S.885B(1)(c) adequate rules dealing with how compensation in respect of Division 3 losses is paid (as per S.885F)	
S.885F(1).....	Rule 6
S.885F(2) .....	Rule 9
S.885B(1)(d) adequate rules dealing with the making and determination of claims in respect of Division 3 losses and with notification of the outcome of such claims (as per S.885G)	
S.885G(1) .....	Rule 6
S.885G(2).....	Rule 4(b), 4(d)(i), 6(a), 6(i)