



# SIM Venture Securities Exchange Compensation Rules

# SIM VSE Compensation Rules

## 1. Introduction

- 1.1 These SIM VSE Compensation Rules are made pursuant to Part 7.5 of the Corporations Act. They form:
- (a) part of the SIM VSE compensation arrangements; and
  - (b) have force in accordance with the Corporations Act.
- 1.2 The Corporations Act provides that these SIM VSE compensation rules have effect as a contract under seal between SIM VSE as operator of the exchange and each participant in the exchange under which each of those persons agrees to observe the rules to the extent that they apply to the person and engage in conduct that the person is required by the rules to engage in.
- 1.3 Any failure to meet an obligation under these SIM VSE compensation rules may result in court orders under the Corporations Act about compliance with or enforcement of these SIM VSE compensation rules.

## 2. Losses Covered

- 2.1 Claims may be made under these SIM VSE compensation rules to cover losses arising only from the following situations:
- (a) a person (the client) gave money or other property, or authority over property, to a person (the participant):
    - (i) who was a participant in the SIM VSE exchange at that time; or
    - (ii) who the client reasonably believed to be a participant in the SIM VSE exchange at that time and who was a participant in the SIM VSE exchange at some earlier time; and
  - (b) the money or other property, or the authority, was given to the SIM VSE participant in connection with effecting a transaction, or proposed transaction, covered by provisions of the SIM VSE Business Rules relating to transactions effected through the SIM VSE exchange; and
  - (c) the effecting of the transaction through the SIM VSE exchange constitutes or would constitute the provision of a financial service to the client as a retail client; and
  - (d) the client suffers a loss because of:
    - (i) if the client gave the SIM VSE participant money or other property – the defalcation or fraudulent misuse of the money or other property by the SIM VSE participant; or
    - (ii) if the client gave the SIM VSE participant authority over property – the fraudulent misuse of that authority by the SIM VSE participant.
- 2.2 A claim relating to an alleged loss caused by defalcation or fraudulent misuse may be allowed even if:
- a) the person against whom the defalcation or misuse is alleged has not been convicted or prosecuted; and
  - b) 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.

- 2.3 Compensation is not payable under these SIM VSE compensation rules if the loss does not fall within rule 2.1.

### **3. Amount of compensation**

- 3.1 Subject to this rule 3, the maximum amount of compensation payable under these SIM VSE compensation rules in respect of a loss falling within rule 2.1 is limited to the sum of:
- (a) 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; and
  - (b) the claimant's reasonable costs of, and disbursements incidental to, the making and proof of the claim.
- 3.2 The maximum compensation payable to a claimant under rule 3.1 for a claim or claims referable to a particular event or series of related events, including interest payable in accordance with rule 3.3, is \$500,000.
- 3.3 Once a claim is allowed by SIM VSE, interest will be payable to the claimant at the rate applicable under the Regulations on the amount of the actual pecuniary loss, or so much of that loss as from time to time has not been compensated by an instalment or instalments of compensation, in respect of the period starting on the day when the loss was suffered and ending on the day when the compensation, or the last instalment of compensation, is paid.
- 3.4 The amount of compensation payable in accordance with these SIM VSE compensation rules may be reduced by SIM VSE by reference to a right of set-off available to the claimant, whether or not that right be exercised, in which case the compensation paid will not exceed the net amount remaining after the set-off. Where the amount to be set off exceeds the amount of compensation payable, SIM VSE is not obliged to make any payment to the claimant.
- 3.5 Where there are insufficient funds in the Fund to meet in full all claims in respect of losses covered by the SIM VSE compensation arrangements, SIM VSE may, notwithstanding rule 3.1 and on a basis SIM VSE reasonably considers to be fair and reasonable in the circumstances, prioritize claims or apportion available funds between claims on such basis as is determined by SIM VSE.

### **4. Method of payment of compensation**

- 4.1 Where a claim is allowed SIM VSE may choose at its discretion to make payment by a lump sum or by instalments or by transfer of property. SIM VSE will in all instances act reasonably and have regard to the wishes of the claimant in the exercise of its discretion in relation to this rule.

### **5. Making and determination of claims**

- 5.1 Claims must:
- (a) be in writing;
  - (b) set out full particulars of the event or events giving rise to the claim;
  - (c) describe the loss suffered and how the loss is calculated;
  - (d) be signed by the claimant; and
  - (e) subject to rule 5.2 below, be lodged with the SIM VSE Markets Manager within 6 months of the event giving rise to the claim, unless SIM VSE determines, in its absolute discretion, that there are special circumstances warranting the making of a late claim.

- 5.2 Where a claimant is pursuing a claim outside these compensation arrangements in relation to defalcation or fraud (“other claim”) which would otherwise be the subject of a claim under these arrangements, the claimant need only provide notice to SIM VSE of this other claim within the timeframe specified in rule 5.1(e) provided that, in any event, any claim made on the Fund is made within 2 years of the event giving rise to the claim.
- 5.3 Where required by SIM VSE, a claimant must verify a claim by statutory declaration.
- 5.4 Claims will be determined by the SIM VSE Markets Manager who will make determinations in accordance with these Rules.
- 5.5 Notwithstanding rule 3.1, SIM VSE is not obliged to allow claims in full. SIM VSE may in its discretion partially allow a claim and determine that an amount which is less than the maximum amount otherwise payable, be paid to the claimant.
- 5.6 In determining whether to disallow a claim or to reduce (including to zero) the amount of compensation payable under rule 5.5, SIM VSE will take account of the extent to which the claimant’s conduct contributed to the loss or the claimant failed to mitigate the loss and whether the claimant has, without the prior written consent of SIM VSE, adversely affected SIM VSE’s right to be subrogated to any of the claimant’s rights and remedies.
- 5.7 SIM VSE may require the claimant to pay money, or transfer other property, in support of a claim.
- 5.8 The claimant will be notified of the outcome of the claim in writing as soon as practicable after the claim is determined. Where a claim is allowed, the claimant will be notified of the amount payable and the method of payment.
- 5.9 Determinations shall be made within 120 days of receipt of a claim and all submissions or documentation required by SIM VSE in relation to making a determination pursuant to these rules. Should a determination not be made within 120 days, the SIM VSE Markets Manager shall advise the parties to the claim the reasons why no determination has been made and also advise that a determination will be made within a further 60 days. Any claim not determined within 120 days shall be reported to the Board of SIM VSE.
- 5.10 These SIM VSE compensation rules provide compensation only where the claimant has had their claim considered and rejected by the participant responsible for the loss, or where the claimant has made a claim against the participant responsible for the loss and no satisfactory response has been received from the participant within 90 days of the claim.

#### **6. Only one claim in respect of the same loss**

- 6.1 Upon payment of an amount allowed in respect of a claim in accordance with these SIM VSE compensation rules, the Fund is released from all liability in respect of that claim and the event or events giving rise to that claim. Without limiting the preceding sentence, if a claimant makes a claim which has been allowed in accordance with these SIM VSE compensation rules and the claimant makes another claim in respect of the same loss as the firstmentioned claim, the secondmentioned claim must not be allowed.
- 6.2 Compensation under these SIM VSE compensation rules is payable only out of the Fund and only to the extent that funds are available in the Fund. SIM VSE is not personally liable to pay any compensation under these SIM VSE compensation rules. Without limiting the preceding sentences, money or other property of SIM VSE is not available to be applied in respect of a claim that SIM VSE has allowed under these SIM VSE compensation rules.

## **7. Right of subrogation if compensation is paid**

- 7.1 If compensation has been paid in respect of a claim under these SIM VSE compensation rules, SIM VSE is subrogated, to the extent of that payment, to all the claimant's rights and remedies in relation to the loss to which the claim relates.
- 7.2 SIM VSE may also recover from the SIM VSE participant or participants who caused the loss the costs SIM VSE incurred in determining the claim.

## **8. Right to claim once requirement for compensation arrangements cease**

- 8.1 If SIM VSE ceases (for whatever reason) to be required to have compensation arrangements, the rights of people to seek compensation under the arrangements being rights that accrued while SIM VSE was required to have such arrangements, will be adequately protected insofar as SIM VSE will maintain insurance or other funding arrangements for a period of six months from the day upon which SIM VSE ceased to be so required.
- 8.2 The funding arrangements referred to under rule 8.1 need be no greater than the level of funding in place on the day immediately preceding the cessation of the requirement to have compensation arrangements.
- 8.3 SIM VSE will cause public notification to be made of any cessation of compensation arrangements. This may be satisfied by publication of such notice on the SIM VSE website.

## **9. Interpretation**

- 9.1 In these SIM VSE compensation rules unless the context otherwise requires

Fund	means the Fund established for the purposes of the SIM VSE compensation arrangements;
exchange participant in the exchange	means the SIM VSE exchange; means a participant in the SIM VSE exchange who is recognised as a SIM VSE Broker under the SIM VSE Business Rules;
participant	means a participant in the SIM VSE exchange who is recognised as a SIM VSE Broker under the SIM VSE Business Rules;
Regulations	means regulations made for the purposes of Part 7.5 of the Corporations Act;
SIM VSE	means Bendigo Stock Exchange Limited;
SIM VSE Markets Manager	means the person designated SIM VSE Markets Manager or any other person authorised by the Board of SIM VSE to fulfil that role under these rules;
SIM VSE participant	means an entity recognised as a SIM VSE Broker under the SIM VSE Business Rules;
SIM VSE compensation arrangements	includes these SIM VSE compensation rules.

9.2 A reference in these SIM VSE compensation rules to a provision of the Corporations Act includes a reference to that provision as amended or re-enacted from time to time.