



Staff Notice 11-704 Claims for Financial Compensation

This staff notice sets out information about how to make a claim for a financial compensation order under section 135.6 of *The Securities Act, 1988* (the “Act”).

What is a financial compensation order?

Financial and Consumer Affairs Authority of Saskatchewan (the “Authority”) may make a financial compensation order pursuant to section 135.6 of the Act, upon a request from the Director, following a hearing if, after the hearing, the Authority:

- determines that a person or company has contravened Saskatchewan securities laws,
- determines that the illegal activity has caused a financial loss to a claimant, and
- is able to determine the amount of the financial loss.

In a financial compensation order the Authority orders the person or company that has contravened Saskatchewan securities laws to pay a claimant the amount of money they have lost as a result of the illegal activity. The claimant is then able to enforce the order as if it were a judgment of the Court of Queen’s Bench.

What claims are eligible?

To be eligible, a claim must meet the following criteria:

- there must be evidence of financial loss by the claimant,
- it must be possible to quantify the amount of the financial loss, and
- the loss must have resulted from a person or company’s contravention of Saskatchewan securities laws.

What claims are not eligible?

The following claims are not eligible:

- losses that are caused by changes in the financial markets,
- losses that did not result from a person or company’s contravention of Saskatchewan securities laws,
- if the losses occurred prior to August 15, 2012, losses in excess of \$100,000. This is because prior to this date, the Authority was limited to making financial compensation orders of up to \$100,000.

When can a claim be made?

Authority staff investigate complaints that a person or company may have contravened Saskatchewan securities laws. When an investigation is complete and there is evidence that the person or company has contravened Saskatchewan securities laws, staff will determine whether to seek an enforcement order from the Authority under the Act. For example, staff may request that

the Authority order (among other things):

- that the exemptions in Saskatchewan securities laws do not apply to a person or company pursuant to clause 134(1)(a),
- that a person or company cease trading in securities or derivatives pursuant to clause 134(1)(d), or
- that a person or company pay an administrative penalty pursuant to section 135.1.

Authority staff consider established criteria when deciding whether to proceed to a hearing before the Authority. The main criteria are:

- there is evidence of a contravention of Saskatchewan securities laws,
- there has been harm to Saskatchewan investors,
- there is a public interest in proceeding to a hearing.

If the case meets the criteria, staff will issue a Notice of Hearing to those who contravened Saskatchewan securities law (the Respondents). The Notice of Hearing will include details of the allegations against the Respondent and the type of order the staff seeks from the Authority, which, if appropriate, may include financial compensation orders pursuant to section 135.6 for those who suffered financial loss.

When the hearing has been completed, if the Authority has made a finding that a person or company has contravened Saskatchewan securities laws, and if the case is one that the Director considers may be appropriate to request financial compensation orders, staff will write letters to those investors that the investigation identified as potentially meeting the criteria for a financial compensation order. In the letter staff will advise investors how to submit a claim, if they want to.

How to make a claim

To make a claim for a financial compensation order, investors must do the following:

- file a claim in Form 11-704F1,
- attach all of the documentation relating to the claim
- provide any further information that staff request, and
- if requested, attend at a hearing to present the documentation and information that supports the claim.

What happens with the claim

Authority staff will review submitted claims and any supporting documentation. Staff may contact an investor with follow up questions. Once all of the claims relating to a matter have been reviewed, staff will prepare a memo with a recommendation for the Director of the Authority's Securities Division.

Director's decision

Under subsection 135.6(2) of the Act, the Director must decide whether to request a financial compensation order from the Authority in respect of any claim.

The Director will meet with staff and review each of the claims that has been received in respect of the matter. Staff will provide the Director with a recommendation on each claim.

After hearing from staff, the Director will make a decision about whether, and in what amount, to

request financial compensation from the Authority.

Generally, the Director will request a financial compensation order from the Authority where:

- there is evidence that a claimant suffered a financial loss,
- the financial loss was caused by a Respondents' contravention of Saskatchewan securities laws, and
- the financial loss is quantifiable.

The Director may not send a claim to the Authority in some situations, such as:

- where there is evidence that the claimant colluded or participated with the Respondent in the contravention of Saskatchewan securities laws, or
- where the complexity of the case and the number of claimants would make it difficult to effectively hold a hearing. In that case the Director might conclude that claim is more properly dealt with by the courts.

Actions in the civil courts

Three provisions in section 135.6 are relevant to actions in the civil courts:

- Subsection 135.6(8) requires claimants to promptly inform the Authority after commencing an action or proceeding for the same loss.
- Subsection 135.6(9) provides that once the Authority opens a hearing where a claim for compensation for financial loss is one of the matters before it, any action or proceeding by a claimant for compensation for the same loss is stayed.
- Subsection 135.6(9.1) provides that nothing in subsection (9) precludes a claimant from commencing an action or proceedings for compensation for the same loss, or any unclaimed loss arising out of the same transaction, after the Authority opens a hearing.

It is recommended that potential claimants get legal advice on these issues.

Financial compensation hearings

If the Director has made a request for financial compensation from the Authority, a financial compensation hearing will be held. Financial compensation hearings are open to the public. Reporters may be present, and they may report details of the proceedings including the name of claimants and the amounts that they are claiming. Claimants have the right to be present, and to be represented by counsel. Staff will present evidence to support the claims for financial compensation, including evidence of financial loss. Claimants may also be called upon to present their own evidence or information as well.

The Respondents have the right to challenge the evidence presented, and to present their own evidence. Part 13 of Local Policy 12-602 *Procedure for Hearings and Reviews* sets out procedures that apply where there is a request for a financial compensation order.

Authority's decision following a financial compensation hearing

The Authority will consider the evidence presented at the hearing, and will make a decision, along with written reasons. If the decision is made to grant a request for financial compensation, staff will take out an order on the investor's behalf and provide a copy to the investor.

Orders for financial compensation

A financial compensation order by the Authority will set out the amount to be paid, by whom that

amount is to be paid and to whom. Staff will notify claimants of the Authority's decision. If you have received a financial compensation order, then you can file the order as a judgment with the Court of Queen's Bench of Saskatchewan. You are responsible for taking whatever action is required to collect on the judgment.

January 1, 2008

Amended May 4, 2009

Amended May 7, 2015

Amended January 14, 2020

Contact:

Director, Securities Division
(306) 787-5842

Schedule A to Staff Notice 11-704 Claims for Financial Compensation

Financial compensation

135.6(1) In this section, a person or company is employed by another person or company when:

- (a) an employer-employee relationship exists; or
- (b) the first person or company is registered pursuant to this Act as an employee, agent or representative of the second person or company.

(2) On the application of a claimant, the Director may, when the Commission holds a hearing about a person or company, request the Commission to make an order that the person or company pay the claimant compensation for financial loss.

(3) Notwithstanding subsection 10(2), the Director's decision whether to make a request is not subject to review.

(4) If requested by the Director to do so, the Commission may order the person or company to pay the claimant compensation for the claimant's financial loss, if, after the hearing, the Commission:

- (a) determines that the person or company has contravened or failed to comply with:
 - (i) Saskatchewan securities laws;
 - (ii) a written undertaking made by the person or company to the Commission or the Director; or
 - (iii) a term or condition of the person's or company's registration;
- (b) is able to determine the amount of the financial loss on the evidence; and
- (c) finds that the person's or company's contravention or failure caused the financial loss in whole or in part.

(5) If the contravention or failure occurs in the course of the person's or company's employment by another person or company, or while the person or company is acting on behalf of the other in any other capacity, the Commission may order the other person or company to jointly and severally pay the claimant the financial compensation ordered pursuant to subsection (4).

(6) The Commission may make an order notwithstanding:

- (a) the imposition of any other penalty or sanction on the person or company; or
- (b) the making of any other order by the Commission related to the same matter.

(7) Repealed. 2008, c.35, s.25.

(8) A claimant shall promptly inform the Commission after commencing an action or proceeding for the same loss.

(9) Once the Commission opens a hearing if a claim for compensation for financial loss is one of the matters before it, any action or proceeding commenced by a claimant for compensation for the same loss, or any unclaimed loss arising out of the same transaction, is stayed until the Commission makes a decision after the hearing.

(9.1) Nothing in subsection (9) precludes a claimant from commencing an action or proceeding for compensation for the same loss, or any unclaimed loss arising out of the same transaction, after the Commission opens a hearing.

(10) Notwithstanding subsection (9), a claimant in whose favour the Commission makes an order may file a certified copy of the order with the local registrar of the Court of Queen's Bench.

(11) An order filed pursuant to subsection (10) is enforceable as a judgment of the Court of Queen's Bench.