

MSC Notice 2003-4

The Securities Act Claims for FINANCIAL LOSS

The Securities Act (Manitoba) permits a claim to be made for repayment of money lost through illegal or improper trading of securities conducted in Manitoba.

An order for compensation for financial loss may be issued following a Commission hearing if there is evidence at the hearing to show:

- there has been illegal or improper trading or advising in the trading of securities in Manitoba
- this trading or advising has resulted in a financial loss to the claimant
- the amount of the financial loss

Types of eligible claims

- maximum claim is \$100,000
- there must be evidence available (such as account statements) to permit the calculation of the amount lost by the claimant
- the loss must have been caused by the illegal or improper conduct of a person or company trading or advising in the trading of securities in Manitoba

Non-eligible claims

- losses caused by changes in financial markets
- matters that are not within the jurisdiction of the commission
- where a court action has been commenced or concluded to recover the same financial loss

To make a claim

- file a claim form
- attach all documentation relating to the claim
- provide any information requested by staff of the commission relating to both the matters under investigation and the claim

Review of claim

- staff will review each claim to determine if an investigation is required
- the investigation must show evidence of illegal or improper conduct relating to the trading of securities or the providing of advice relating to the trading of securities
- there must be sufficient evidence to lead the Director to conclude that the misconduct requires a hearing before the commission

- the Director must also conclude that there is sufficient evidence to bring a claim for financial loss to a commission hearing
- in some cases a matter will be referred to another regulatory, investigative or third part agency that is better able to investigate the matter. Examples of agencies where matters are referred include the police, Investment Dealers Association, Mutual Fund Dealers Association or the Financial Services Ombudsman. A decision to refer the matter to another agency, as well as a decision not to present a claim to a hearing does not prevent a claimant from proceeding to court or arbitration (if available) to seek compensation

If your claim goes to a hearing

The Manitoba Securities Commission holds hearings to determine whether a person or company should be permitted to trade in securities in Manitoba. Hearings are held before members of the Commission who are independent of staff of the Commission. These members have not seen the evidence of the claim prior to the hearing and make a decision based on the evidence presented at the hearing.

Some facts about hearings

- hearings are public
- hearings are commenced by way of a Notice of Hearing and a Statement of Allegations
- commission staff will present evidence to the hearing to establish either illegal or improper conduct, as well as evidence to support a claim for an order directing repayment of a financial loss. This is done without cost to the person making the claim
- you may be required to testify at the hearing
- you have the right to retain your own lawyer both prior to and during the hearing, at your own expense
- the person or company alleged to have acted improperly has the right to challenge the evidence presented, and present other evidence
- you lose your right to start a court action for the same loss once the hearing has commenced

Following a hearing

Similar to a court, the members of the commission will review the evidence presented at the hearing and will make one of the following decisions:

- the evidence does not show misconduct. This will result in a claim for financial loss being rejected
- improper or illegal misconduct is proven, but there is not enough evidence to prove the claim
- both the improper or illegal misconduct and the claim for financial loss have been proven

- What penalty should be imposed

Once an order for compensation for financial loss is made

- The order will set the amount of loss to be repaid, as well as who is responsible to pay the loss
- you can file the order as a judgment with the Court of Queen's Bench of Manitoba
- you are responsible for taking whatever action is required to collect on the judgment.

As a decision to make a claim can affect your right to commence an action in court for loss or damages, it is strongly recommended that you seek independent legal advice to determine whether it is in your best interest to make a claim to the Commission. In addition, all court actions are subject to limitation dates, which means any court action must be started before a specific date. The limitation date to start a court action does not change as a result of a claim being made to the Commission. It is your responsibility to comply with any applicable limitation dates as there is no guarantee a decision will be made by the Director on a claim prior to the date a court action must be started.

Manitoba Securities Commission
January 31, 2003
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