

- (b) The investments and funds of the Fidelity Fund shall at all times be kept separate and apart from the general funds of the Company and may from time to time be held by a nominee company as trustee for the Fidelity Fund.
- 52.10 (a) Subject to the provisions of this Rule 52, where:
- (i) a person (the "claimant") suffers pecuniary loss because of a defalcation, or because of fraudulent misuse of money or other property, by a Dealer or agent of a Dealer; and
  - (ii) the loss is suffered in respect of money or other property that was, in connection with the Dealer's dealings in Contracts (whether or not any of those dealings was effected on the Exchange) entrusted to or received by the Dealer or an agent of the Dealer:
    - (aa) for on behalf of the claimant or any other person; or
    - (bb) because a Dealer was trustee of the money or other property;
 

the Fidelity Fund shall be applied for the purpose of compensating the claimant to the extent that that pecuniary loss cannot be compensated by recourse to the Dealer's resources.
- (b) The Company may disallow a claim against the Fidelity Fund in respect of a Dealer where the claimant was aware, or in the opinion of the Company ought reasonably to have been aware, that the Dealer was not permitted to trade on behalf of other persons, or was not permitted to receive or hold money or property on behalf of other persons.
- (c) The Company may in assessing the amount payable to the claimant rely on the advice of the receiver, statutory manager, official assignee, provisional liquidator, liquidator or similar officer (as the case may be) of the Dealer, as to the amount, or maximum amount which will, or is likely to, be payable to that claimant out of the assets of the Dealer available for distribution to creditors.
- (d) Except as otherwise provided in this Rule 52.10 and Rule 52.18, the maximum aggregate amount that may be paid to all claimants for the purpose of compensating them in accordance with this Rule 52.10 for pecuniary loss in respect of any one Dealer shall not exceed the sum of One Hundred Thousand Dollars (\$100,000) or the amount then in the Fidelity Fund, whichever is the lesser. Any amount that is paid from the Fidelity Fund shall, to the extent to which it is subsequently repaid to the Fund, be disregarded.
- (e) If the Company, having regard to the ascertained or contingent liabilities of the Fidelity Fund, considers that the assets of the Fund so permit, it may apply out of the Fund such sums in excess of the amount limited by or under this Rule 52.10 as the Company, in its absolute discretion, thinks fit in or towards compensating persons who have suffered pecuniary loss and would but for such limitation be entitled to compensation in accordance with this Rule 52.10.
- 52.11 (a) Subject to the provisions of this Rule 52, a person who suffers pecuniary loss of the nature referred to in Rule 52.10 shall be entitled to claim compensation from the Fidelity Fund.
- (b) A person shall not have a claim against the Fidelity Fund in respect of pecuniary loss in relation to money or other property suffered after the money or property has, in the due course of the administration of a trust, ceased to be under the sole control of the Dealer or its agent (as the case may be), in respect of whom the claim is made.
- (c) A claimant shall not be entitled to receive any compensation pursuant to this Rule 52 until the claimant has taken all actions which the Company may in its absolute discretion prescribe in order effectively to recover or mitigate the pecuniary loss suffered by the claimant, including (without limitation) filing of a proof of debt with any receiver, statutory manager, official assignee, provisional liquidator, liquidator or similar officer, as the case may be, of the Dealer, and pursuit of such proceedings, or other legal or equitable remedies, as may be reasonable in the circumstances.
- (d) A person shall not have a claim against the Fidelity Fund where that person:
- (i) is a relative of; or
  - (ii) is a partner of; or
  - (iii) (being a company) is a related company of; or
  - (iv) is an officer of, or an officer of a related company of; or
  - (v) is a controller of;
 

a Dealer or its agent to whom Rule 52.10 applies; provided that the Company may in its absolute discretion allow a claim by a relative of a Dealer but shall not be obliged to give any reasons for allowing or disallowing a claim by any such relative.
- (e) Subject to the provisions of this Rule 52, the amount which a claimant shall be entitled to claim as compensation from the Fidelity Fund shall be the amount of the actual pecuniary loss suffered by the claimant (including the reasonable costs of, and disbursements incidental to, the making and proof of the claim) less the amount or value of all moneys or other benefits received or receivable by the claimant from a source other than the Fidelity Fund in relation to the loss.
- 52.12 Where all persons who have submitted claims pursuant to Rule 52.11 have been fully compensated for pecuniary loss in accordance with the provisions of Rule 52.10 any agent of the Dealer in respect of whom compensation was paid who has made payment to a person in compensation for loss suffered by that 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 Company, having regard to all the circumstances, determines that the agent was not wholly or partly responsible for the loss and acted honestly and reasonably in the matter.
- 52.13 The Company shall cause to be published in a daily newspaper circulating in the locality in which the Dealer or the Dealer's agent to whom Rule 52.10 applies has or had its principal place of business a notice specifying a date, not being earlier than three 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 and a copy of such notice shall be sent to every Dealer. All claims shall be made in writing to the Company on or before the date specified in the notice and any claim that is not so made shall be deemed to be barred unless the Company in its absolute discretion shall determine otherwise.
- 52.14 (a) Subject to the provisions of this Rule 52, the Company may allow and settle a proper claim for compensation from the Fidelity Fund at any time after the occurrence of the pecuniary loss in respect of which the claim arose.