

Appendix J

BC Policy 15-603 *Returning Funds to Investors*

The British Columbia Securities Commission, considering the public interest, makes BC Policy 15-603 *Returning Funds to Investors*, effective March 27, 2020.

March 9, 2020

Brenda M. Leong
Chair

(This part is for the administrative purposes only and is not part of the Order)

Authority under which Order is made:

Act and sections: Securities Act, section 188

BC Policy 15-603 *Returning Funds to Investors*

Introduction

After a hearing, the BC Securities Commission can order a person to pay to the Commission money obtained because of a contravention of the *Securities Act*. The court can make a similar order for money obtained because an offence was committed under the *Securities Act*. Collectively, these orders can be made under section 155.1(b), 157(1)(b) or 161(1)(g). In this policy we will refer to these orders as “orders that give rise to a claims process”.

If the Commission collects money in payment of orders that give rise to a claims process, under the *Securities Act*, victims of the misconduct can make a claim to the Commission for payment.

This policy provides guidance about how the Commission handles these claims.

Who can make a claim?

Only eligible applicants can make a claim. An eligible applicant is someone who:

- (a) suffered a pecuniary loss as a direct result of misconduct that resulted in an order that gives rise to a claims process under the *Securities Act*
- (b) did not directly or indirectly engage in the misconduct that resulted in the order that gives rise to the claims process
- (c) has not been denied a claim under 7.4(6) of the *Securities Regulation*.

How does the commission provide notice?

If the Commission receives money from an order that gives rise to a claims process, it must publish a notice letting the public know it has received money.

The Commission will:

- issue a press release about the notice, and
- post the notice on the *Enforcement – Returning Funds to Investors* page on the Commission’s website.

What will the notice tell you?

The notice will:

- tell you how long you have to make a claim - you will have at least 3 months from the date of the notice
- describe the misconduct that resulted in the order that gave rise to the claims process
- give you information about the case including:
 - the names of the parties
 - the amount of the order that gave rise to the claims process
 - the amount the Commission has received as of the date of the notice
 - the date of the notice
- tell you if the Commission has deducted any amounts as of the date of the notice. The Commission is permitted by s.15 of the *Securities Act* to use money collected under an order that gave rise to the claims process to pay for costs it incurs collecting the payment or to develop and administer the claims process.
- tell you how to make your claim

If the commission receives additional money after the date of the notice, it will add that amount to the “amount received” on its *Enforcement – Returning Funds to Investors* webpage. The “amount received” on this page will show the total amount the commission received before deducting any costs the Commission is entitled to deduct or any payments to eligible applicants.

After the date of the notice, if the Commission incurs additional costs that it has deducted from the amount received this will be reflected in the summary the Commission will provide when making any final payment to eligible claimants. See “Receiving your payment”.

How do you make a claim?

A claim form will be on the Commission’s website under the heading *Enforcement – Returning Funds to Investors*, beside the name of the relevant case.

The Commission will create a form for each case but you will always need to provide at least the following information:

- your name, address and contact information
- information about your claim including:
 - how much you lost
 - whether you received anything back from your investment and if so, how much
 - whether you are entitled to receive compensation from another source for your loss
 - information about any involvement you may have had in the misconduct
 - whether you engaged in any hedging or risk limitation transactions and if so, the outcome of the hedging or transactions
 - whether the Commission has ever denied a claim you made for this or any other loss
- your certification that the information in your completed form and, where applicable, material that you submit in support of your claim is true and correct
- updated information if anything changes in what you provided to us

The Commission can deny your claim if you make a statement or provide information that is false or misleading or omit facts that make the statement or information false or misleading. It is your responsibility to make sure the Commission has correct and updated information about your claim.

To make a claim, you must act within the time period stated in the notice and do one of the following:

1. submit your application using the on-line application form available on the Commission’s website; or
2. complete the PDF version of that application and submit it, along with any supporting documents to:

Enforcement – Claims Process
Claim number: BCSECCOM #
British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia, V7G 1L2

What happens after you make your claim?

After receiving your claim, the Commission will determine if you are an eligible applicant. If you are, the Commission will then make a decision about your claim. The Commission will make these decisions after considering recommendations from Commission staff who will review all claims.

Section 7.4 of the *Securities Regulation* applies to the Commission’s decisions about your claim and it requires the Commission to consider the following when making decisions about payment:

- (a) the amount of money the Commission received from the order that gave rise to the claims process
- (b) the loss you suffered
- (c) the losses all eligible applicants suffered
- (d) any other information the Commission considers appropriate in the circumstances.

When determining the amount of your loss, the Commission:

- (a) cannot include any amount attributable to a loss of opportunity, including interest on any loss
- (b) must consider whether you are entitled to or received compensation from other sources
- (c) must consider whether you benefitted from the misconduct that resulted in the order
- (d) must consider the results of any hedging or other risk limitation transactions you made

Denying your claim

If the Commission intends to deny your claim, before doing so it must provide you with an opportunity to say why your claim should not be denied.

Prorating claims

If the amount of money the Commission receives is not enough to cover all claims, the Commission may prorate payment among eligible applicants. The Commission is required to use the formula in section 7.4(5) of the *Securities Regulation* if it prorates claims. The Commission is not required to provide you with an opportunity to be heard if the Commission decides to prorate your claim.

Advance, partial or installment payments

Where it is fair and appropriate, the Commission may make advance, partial or installment payments to an eligible applicant (section 7.6 of the *Securities Regulation*). The Commission will usually not make any payments until the period for making claims set out in the notice has expired.

Receiving your payment

If the Commission makes a decision to pay all or part of your claim, the Commission will send you your payment. If the payment is the final payment for your claim, you will also receive a summary of the total amount the Commission received, any costs the Commission has deducted from the amount received, and the remaining amount that was available to pay claimants.

Effective date

This policy is effective March 27, 2020.