



BBY Claims Update

January 2017

In this Claims Update, we focus on providing current information about claims on the National Guarantee Fund (NGF) in relation to the insolvency of BBY Ltd (In Liquidation) (Receivers and Managers Appointed) (BBY).

Contract Guarantee Claims

SEGC has received, processed and paid a number of contract guarantee claims.

We have paid over \$1.6 million to claimants in respect of more than 50 claims.

There are still a number of contract guarantee claims outstanding and we continue to work through these.

Property Entrusted Claims

SEGC has received a significant number of property entrusted claims. These claims are made under subdivision 4.9 in Part 7.5 of the *Corporations Regulations 2001 (Cth)* (**Subdivision 4.9**).

Those claims largely fall within the following categories (which correspond with the different product lines operated by BBY):

- Claims by clients who traded in Australian exchange-traded equities/options;
- Claims by Futures and FX clients for cash;
- Claims by Saxo clients for cash or securities;
- Claims by Interactive Brokers (IB) clients for cash or securities; and
- Claims by clients who traded in foreign securities.

To give claimants and potential claimants some clarity and guidance, below is a summary of the views which SEGC is likely to take in relation to these categories of claims generally.

Please note that the views expressed in this Claims Update do not concern any specific claim, and should NOT be taken by claimants or potential claimant as legal or other advice or, in the case of claimants, as SEGC's determination of their claims. SEGC will determine each individual claim on its merits, having regard to the particular circumstances of that claim. Where SEGC has determined a particular claim, the relevant claimant will be separately notified of the outcome of that determination.

Australian exchange-traded equities/options

SEGC has received a number of property entrusted claims from clients of BBY who traded in Australian exchange-traded equities and options. As explained in our previous Claims Update, because of the operation of the statutory cap and the uncertainties surrounding the BBY liquidators' proceedings, SEGC is not currently in a position to finally determine to allow and pay any property entrusted claims.

Despite this restriction, SEGC is processing these property entrusted claims and notifying those claimants whose claims it intends to allow. However, at this stage, SEGC is unable to quantify the amount of payment following allowance of the claim.

Futures and FX

In general, SEGC is of view that claims of Futures and FX clients of BBY are not likely to be covered by the NGF. More specifically, they are unlikely to meet the criteria for property entrusted claims in Subdivision 4.9.

A Subdivision 4.9 claimant must show that its property (including cash) was entrusted to BBY in the course of, or in connection with, BBY's business of dealing in securities. Generally, Futures and FX contracts are not "securities" for the purposes for Subdivision 4.9, because they are not equities and are not traded on any market operated by ASX Limited. BBY's business of dealing in Futures and FX contracts is therefore not a business of dealing in securities.

In the paragraphs that follow, SEGC summarises the basis for its general view that Futures (whether exchange traded or not) and FX contracts are not "securities".

The NGF was established in 1987 with the primary purpose of compensating investors in respect of losses from trades in equities, in particular, trades in equities that are executed on the market operated by ASX Limited (that being the sole member of SEGC). The equities market operated by ASX Limited is currently known as "ASX Trade".

Exchange-traded Futures were traded on a separate market operated by a different entity, the Sydney Futures Exchange Limited (now known as Australian Securities Exchange Limited) (SFE). The market operated by SFE is currently known as "ASX 24". The merger of ASX Limited and SFE in 2006 did not result in the extension of the NGF compensation regime to trades of Futures on ASX 24.

As regards FX contracts and non-exchange traded Futures, these are mostly over-the-counter (OTC) derivative products that are not traded on any exchange and do not otherwise qualify as "securities".

Saxo clients

Similarly, Saxo clients of BBY are unlikely to have a valid claim against the NGF because of their inability to satisfy the "securities business" requirement.

As SEGC understands it, each Saxo client was a holder of a derivative product known as a "BBY Contract". A BBY Contract is an OTC product issued by BBY, which was not traded on any Australian exchange. It is therefore not a "security" for the purposes of Subdivision 4.9, and so property received by BBY from Saxo clients could not be said to have been received in connection with BBY's business of dealing in "securities".

IB clients

SEGC is of the view that claims of IB clients of BBY are also not likely to be allowable under Subdivision 4.9. The effect of regulation 7.5.69(a) of the Corporations Regulation is that a person will not have a property entrusted claim if before the date of the insolvency of the dealer, the property had, in the due course of administration of the trust, ceased to be under the sole control of the dealer. As SEGC understands it:

- BBY had, prior to 17 May 2015, ceased to have sole control of property which it received from, or on behalf of, IB clients; and
- control of that property was surrendered by BBY to IB in accordance with the contractual arrangements between BBY and its IB clients on the one hand and BBY and IB on the other.

It follows that, unless there are some exceptional circumstances which a claimant can demonstrate, regulation 7.5.69(a) will likely exclude claims of IB clients.

Foreign securities

For BBY clients who traded only in foreign securities through BBY, and where those foreign securities were not quoted on any ASX market, those clients' claims are generally not covered by the NGF regime.

This is because the NGF is a compensation scheme for losses that are connected with a financial market to which Division 4 in Part 7.5 of the *Corporations Act 2001 (Cth)* applies (**Division 4 Market**). A Division 4 Market is a market operated by ASX Limited (being the current sole member of SEGC) or by one of ASX Limited's subsidiaries.

Where a client of BBY only traded in foreign securities, which are not quoted on any ASX market, they will have difficulty satisfying SEGC that the loss it suffered as a result of BBY's insolvency has the requisite connection with a Division 4 Market, so as to qualify for compensation from the NGF.

Further information

If you have any queries about this Claims Update or your specific claim, please email segc@segc.com.au or call Gabby Hart on (02) 8216 0232.

We look forward to providing another update in the next quarter of 2017.