

Comments on Proposed Model Act to Create a Restitution Assistance Fund for Victims of Securities Violations

1. The definition of “final order” in Section 2, sub. 2, should be tightened, to ensure only those orders from courts of competent jurisdiction are included. The risk, to the fund and to prospective claimants, is that a final order issued under the first clause, “means a final order issued by the [jurisdiction] under this Chapter...” This may give rise to orders from an agency that are final as to the executive branch – but are still assailable by a court, and create interests that will cause the administration of the fund to become involved in the litigation.
2. The phrase, “for good cause” is used in Section 6, subd. 3; and Section 7, subd. 2. This is a subjective standard, and there could be guidance on what “good cause” is. Rules may help, but there should be some guidance in the law. An example for statutory language would be, for example on the extension language in Section 6, subd. 3: “Good cause exists when the claimant can show they did not know, or was incapacitated and incapable of knowing, the final order awarding restitution to the victim.”
3. The prohibition on participating in the fund, in Section 8, subdivision 1 & 2, is very broad. Anyone who has ever had a securities violation, whether or not in connection with the scheme that caused the restitution order, is not permitted to participate in the fund. This section should be harmonized with Section 10, in which if the persons participated in the fraud that gave rise to this specific claim they are ineligible.
4. The extension for filing an application for restitution assistance is indefinite if the extension is granted by the jurisdiction. Because court cases can go very long, and because issues/heirs/estates can ask for restitution assistance, it would be hard to budget restitution payments from the fund, and very old claims with lengthy and now-forgotten histories may be claimed in the future. This concern would be mitigated by only allowing extensions that are requested before the deadline for filing a claim has been reached. That way an allowance for potential claims could be set aside in the fund.