भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

CIRCULAR

SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 September 07, 2016

To,

The Managing Directors/Chief Executve Officers,
National Commodity Derivatives Exchanges

Sir/Madam,

Sub: Mechanism for regular monitoring of and penalty for short-collection/non-collection of margins from clients

1. As per Section 131 (4) of the Finance Act, 2015 all rules, directions, guidelines, instructions, circulars, or any like instruments, made by the erstwhile Forward Markets Commission (FMC) or the Central Government applicable to recognised associations under the Forward Contracts Regulation Act, 1952 (FCRA) would continue to remain in force for a period of one year from the date on which FCRA was repealed (September 29, 2015), or till such time as notified by SEBI, whichever is earlier.

2. Erstwhile FMC, had prescribed mechanism for regular monitoring of and levy of penalty for short-collection/non-collection of margins from clients and had issued clarifications on the same from time to time. This circular is being issued to consolidate and update such norms prescribed by the erstwhile FMC.

3. The penalty structure and framework for short-collection/non-collection of margins by members from their clients shall be as under:

   i. The ‘margins’ for this purpose shall mean initial margin, extreme loss margin (ELM), mark to market margin, special / additional margin, delivery margin or any other margin as prescribed by the Exchange to be collected by member from their clients.

   ii. The members are required to collect upfront initial margins from their clients. The members will have time till ‘T+2’ working days to collect margins (except initial margins) from their clients. (The clients must ensure that the initial margins are paid in advance of trade and other margins are paid as soon as margin calls are made by Exchanges/Members. The period of T+2 days has been allowed to members to collect margin from clients taking into account the practical difficulties often faced by them only for the purpose of levy of penalty and it should not be construed that clients have been allowed 2 days to pay margin due from them.)

iii. The members shall report to the Exchange on T + 5 day the actual short-collection/non-collection of all margins from clients.

iv. Penalty shall be levied as per the details given below on the members for short / non-collection of margins from their clients beyond T + 2 working days:

For each member	
'a'	Per day penalty as % of 'a'
(< INR 1 lakh) and (< 10% of applicable margin)	0.5
(>= INR 1 lakh) or (>= 10% of applicable margin)	1.0

Where a = short-collection / non-collection of margins per client per day

v. In case of short-collection /non collection of initial margins, the above penalty structure would be applicable from T day.

vi. The Exchanges should put in place a suitable mechanism to enable the members to report the collection of all margins from their clients at the end of each trading day and to report short collection/non-collection of all margins on the T+5 day.

vii. All instances of non-reporting shall amount to 100% non-collection of margin and the penalty as prescribed above shall be charged on these instances in respect of non-collection.

viii. The penalty shall be collected by the Exchanges not later than five days of the last working day of the trading month.

ix. With respect to repeated defaulters, who default 3 times or more during a month, the penalty would be 5% of the shortfall in such instances.(Every short/non collection of margin is to be considered as one instance of default. In case margin shortage is reported for a client 3 times or more during a month, i.e., either in consecutive instances or in 3 different instances, the penalty would be 5% of the shortfall from 4th instance of shortfall. E.g. shortage is reported for a client on 1st and 2nd day of month consecutively; thereafter again on 10th day shortage is reported. So the number of instances are 3 and in case shortage is reported on any day later in the month, the penalty shall be 5% of the shortfall amount for all such instances beyond 3rd instance.)

x. All the penalties collected as prescribed above shall be credited to the Investor Protection Fund.

xi. Report on the penalties as collected by the Exchanges shall be submitted to SEBI by the 10th day of the following month.

xii. Exchanges shall examine implementation of these instructions during the inspection of its members. If during inspection or otherwise, incorrect reporting on collection of margin from client by member is found, the member shall be penalized up to 100% of such amount short collected.

xiii. The Exchange shall direct their members to monitor trades of every client. Suitable mechanism may be put in place to intimate the clients as and when the margins are used up to an appropriate level as considered fit.

xiv. In exceptional situations wherein members and/or clients were not in position to square off the open positions to avoid levy of penalty for margin shortfall due to lack of adequate liquidity and/or high market volatility, exchanges may take a suitable decision depending upon the merit of the circumstances and keep SEBI informed of the same. Further, the exchanges are directed to take such exceptional matters to their Board of Directors for decision.

4. The provisions of this circular shall come into effect immediately.

5. Exchanges are advised to bring the provisions of this circular to the notice of their members and also to disseminate the same on their website.

6. This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 to protect the interest of investors in securities and to promote the development of, and regulate the securities market.

7. This circular is available on SEBI website at www.sebi.gov.in.

Yours faithfully,

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