

## NSE Clearing Limited

### Circular

**DEPARTMENT: COMPLIANCE**

Download Ref No: NCL/CMPL/ 59930

Date: December 26, 2023

Circular Ref. No: 51/2023

To All Clearing Members

**Sub: Uniform penalty structure for Clearing Members**

NSE Clearing Limited (NCL) in consultation with other Clearing Corporations and SEBI has formulated an indicative penalty structure for violations observed during various types of inspections of clearing members like Regular Inspection, SEBI Joint Inspection, Limited Purpose Inspection, Offsite Inspection including enhanced monitoring and supervision or any other type of Focused Inspection/ Audit/Investigation/Forensic Audit etc.

It may be noted that these regulatory measures including advisory, warning, monetary fines, penalties, suspension, other regulatory action etc. are indicative in nature and could undergo change in specific case depending on frequency and gravity of violations. The enforcement actions are decided by the Relevant Authority of NCL by actual imposition of appropriate regulatory measures on the clearing members. The regulatory measures in respect of violations having high impact would be dealt with on case-to-case basis depending on the seriousness and gravity of such violations.

The regulatory measures to be taken are prescribed in the enclosed Annexure 1 and shall be applicable in respect of inspections commenced from January 1, 2024 onwards.

Members are advised to take note of the same and put in place systems and procedures so as to ensure adherence to the compliance requirements.

**For and on behalf of**  
**NSE Clearing Limited**

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Senior Manager

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## Annexure 1

### List of non-procedural non-compliances

Sr. No.	Violations	Penalty/disciplinary action for first time Violation	Penalty/disciplinary action in case of Repeat violation/contravention
1	<p>Use of TM/ CP funds / securities for other than specified purposes/Use of TM/CP funds/ securities for own purpose/for other clients</p> <p>a) Misuse up to Rs. 50 Lakhs</p> <p>b) Misuse above Rs. 50 Lakhs and up to Rs.2 crores</p> <p>c) Misuse above Rs.2 crores and less than Rs. 10 Crore</p> <p>d) If misuse of Funds &amp; Securities is equal to or more than Rs. 10 Crores</p>	<p>a) Monetary penalty of Rs. 1 Lakh + Direction to recoup shortfall within reasonable time</p> <p>b) Monetary penalty of 2% of the misuse or Rs. 2 lakh whichever is higher + no onboarding new Trading Member/CP up to three months + Direction to recoup shortfall within reasonable time. Member can be expelled and/or declared defaulter depending upon gravity of violation</p> <p>c) Monetary penalty of 3% of the misuse + no onboarding new Trading Member/CP up to six months + Direction to recoup shortfall within reasonable time Member can be expelled and/or declared defaulter depending upon gravity of violation</p> <p>d) SEBI SOP Circular no. SEBI/HO/MIRSD/DPIEA/ CIR/P/2020/11 dated July 01, 2020 will be applicable</p>	<p>For a), b) and c) Direction to recoup shortfall within reasonable time + Monetary penalty of 4% of misuse or Rs. 4 lakhs whichever is higher + No onboarding new Trading Member/CP up to six months + Member can be expelled and or declared defaulter depends upon gravity of violation.</p> <p>For d) SEBI SOP Circular no. SEBI/HO/MIRSD/DPIEA/ CIR/P/2020/11 dated July 01, 2020 will be applicable</p>
2	<p>Submission of information for inspection</p> <p>a) Delay in submission of documents/data/records sought for inspection</p> <p>b) Non co-operation in providing data/records/documents to inspecting officials for inspection resulting</p>	<p>a) Rs.1,000/- per day starting from final due date for submission of data/records/documents sought for inspection subject to a cap of Rs 1 lakh.</p> <p>b) Monetary penalty of Rs. 1 lakh besides not allowing member to clear trades till the time of completion of inspection/Surrender/cessation</p>	<p>a) Rs.10,000/- per day starting from final due date for submission of data/records/documents sought for inspection subject to a cap of Rs 10 lakh.</p> <p>b) Monetary penalty of Rs. 10 lakh besides not allowing member to clear trades till the time of completion of inspection/Surrender/cessation</p>

<b>Sr. No.</b>	<b>Violations</b>	<b>Penalty/disciplinary action for first time Violation</b>	<b>Penalty/disciplinary action in case of Repeat violation/contravention</b>
	in non-completion of inspection.  c) Wrong/incorrect submission of data towards Inspection	of membership/ Declaration as default/ Expulsion.  c) Penalty may vary from warning to Rs.1 lakh on case to case basis.  (The serious case shall be discussed separately in applicable committee, which may enhance the penalty as deemed fit)	of membership/ Declaration as default/ Expulsion.  c) Penalty may vary from Rs.1 lakh to Rs. 10 Lakh on case-to-case basis.  (The serious case shall be discussed separately in applicable committee, which may enhance the penalty as deemed fit)
3	Cash dealings with TM/CP	10% of the amount of cash dealing or Rs. 1,000/- whichever is higher	2nd time - 50% escalation 3rd time - 100% escalation
4	Non-maintenance of a) Client/TM ledger b) Register of Securities (Client/TM wise scrip wise Register) (as applicable)	Rs. 1 Lakh + Direction to comply	2nd time - 50% escalation 3rd time - 100% escalation
5	Client/TM ledger not maintained properly (i.e. incomplete/ erroneous/ delay in entries)	Rs.25,000/-	2nd time - 50% escalation 3rd time - 100% escalation
6	Register of Securities not in the prescribed format (as applicable) Discrepancies / Incorrect details in Register of Securities, non reconciliation of balances between client beneficiary accounts and register of securities ( as applicable)	Rs.25,000/-	2nd time - 50% escalation 3rd time - 100% escalation

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7	<p>Non segregation of transactions between Custodial Participant/TM and own bank accounts</p> <p>(money deposited in own account or expenses routed through CP/TM Bank Account or own money deposited in CP/TM account)</p> <p>Non segregation of CP/TM and own money and securities</p>	<p>a) If cumulative value of non-segregated transactions is less than Rs 1 crore – 0.5% of the cumulative value</p> <p>b) If cumulative value of non-segregated transactions is more than Rs 1 crore but less than Rs 5 crore – 0.75 % of the cumulative value</p> <p>c) If cumulative value of non-segregated transactions is more than Rs 5 crore – monetary penalty and/or any other disciplinary action, as may be decided by the Relevant Authority</p>	<p>2nd time - 50% escalation</p> <p>3rd time - 100% escalation</p>
8	Facilitating financing through NBFC in contravention of SEBI Circular	Rs. 5 Lakhs	<p>2nd time- 50% escalation + No New Clients till such activity is discontinued</p> <p>3rd time- 100% escalation + No New Clients till such activity is discontinued</p>
9	Delay in release of payout of funds or securities (beyond one working day) or commodities	<p>a) up to 5% of no. of instances – Rs. 15,000/-</p> <p>b) In excess of 5% and upto 10% of no. of instances - Rs 45,000/-</p> <p>c) In excess of 10% and upto 20% of no. of instances - Rs 75,000/-</p> <p>d) In excess of 20% of no. of instances-Rs.1,00,000/-</p>	<p>2nd time - 50% escalation</p> <p>3rd time - 100% escalation</p>
10	Non-appointment of compliance officer	Rs. 50,000/-	<p>2nd time - 50% escalation</p> <p>3rd time - 100% escalation</p>

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11	a)Books (Except Client ledger) not maintained including: i ) General Ledgers , ii) Journals, iii) Cash and Bank Book, iv) Margin Deposit details, v) Register of complaints vi) Register of transaction vii Register of commodity (as applicable)	Rs. 50,000/- per book + No new TMs/CPs till the said records are maintained	2nd time - 50% escalation 3rd time - 100% escalation
12	Books (Except Client ledger) not maintained properly (i.e. incomplete/ erroneous/ delay in entries ) including i ) General Ledgers , ii) Journals, iii) Cash and Bank Book, iv) Margin Deposit details, v) Register of complaints vi) Register of transaction vii Register of commodity (as applicable)	Rs. 25,000/- per book	2nd time - 50% escalation 3rd time - 100% escalation
13	Incomplete / Non- display of details by member viz: Notice Board/name, its logo, registration no, address with telephone no, compliance officer name, telephone no, email id, SEBI Registration certificate/ other prescribed details	Rs.10,000/- per location	2nd time - 50% escalation 3rd time - 100% escalation
14	Clearing member has outsourced activities in violation of SEBI prescribed rules	To be decided on a case to case basis based on nature of non-compliances	To be decided on a case to case basis based on nature of non-compliances

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15	Non-compliance with PMLA requirements based on confirmation from Compliance Officer		
	a. Non maintenance of Written Policy and Procedures relating to PMLA	Rs. 25,000	2nd time - 50% escalation 3rd time - 100% escalation
	b. Non Appointment of Principal Officer /Designated Director/ Non Intimation of Designated Director or change of Principal officer to FIU Delhi	Rs. 25,000	2nd time - 50% escalation 3rd time - 100% escalation
	c. Non-Implementation of systems in place to monitor, identify suspicious transaction and procedures for reporting the same	Rs. 25,000	2nd time - 50% escalation 3rd time - 100% escalation
	d. Non Adoption of customer due diligence	Rs. 25,000 per client	2nd time - 50% escalation 3rd time - 100% escalation
	e. Financial information of clients not obtained / updated / documentary evidence related to financial information not obtained in case of clients trading in derivatives segment	Rs. 25,000 per client	2nd time - 50% escalation 3rd time - 100% escalation
	f. Non Maintenance of records regarding ongoing training to staff relating to PMLA	Warning	2 <sup>nd</sup> time- Rs.25,000 3 <sup>rd</sup> time- 50% escalation
	g. Disproportionate Exposure	Upto Rs.2,00,000/-	2nd time - 50% escalation 3rd time - 100% escalation
	h. Any other observation /violation which is required as per PMLA and not covered above	Warning	2 <sup>nd</sup> time- Rs.25,000 3 <sup>rd</sup> time- 50% escalation

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16	Non adoption / Maintenance of prescribed policies	1. Non adoption / Maintenance of policies - Rs. 25,000/-  2. Per line item not followed – Rs. 2,500/- subject to maximum of 25,000/-	2nd time - 50% escalation 3rd time - 100% escalation
17	Non - adherence to Rule 8(1)(f) and 8(3)(f) of Securities Contract (Regulation) Rules, 1957, relating to fund based activities of member and in connection with / incidental to /consequential upon the securities business	Amount involved <= Rs. 5 Crores : 1% of the amount involved + Direction to recover the funds given as Loans/advances within the time allotted  Amount involved > Rs. 5 Crores : Penalty of Rs. 5 Lakhs + No new Trading Member/CP if funds given as loans / advances are not recovered within the time allotted	2nd time – Amount involved <= Rs. 5 Crores : 50% escalation + No new Trading Member/CP till CA certificate certifying that funds are recovered is submitted  3 <sup>rd</sup> time- Amount involved > Rs. 5 Crores : 50% escalation + appropriate disciplinary action such as suspension / disablement of clearing & settlement / Expulsion etc. as deemed fit by the relevant authority
18	False/Incorrect Reporting of Margin Collection to Clearing Corporation	As per NCL/CMPL/42946 dated December 19, 2019	As per NCL/CMPL/42946 dated December 19, 2019
19	Clients/TM securities lying with the CM cannot be pledged to the Banks/NBFCs or any other persons/entities for raising funds	Rs. 1,00,000/- or 2% of the Value of securities involved, whichever is higher. Direction to be given to un-pledge the securities within 10 calendar days failing disciplinary action will be taken by the Relevant Authority	2nd time - 50% escalation 3rd time - 100% escalation Disciplinary action such as suspension / disablement of clearing & settlement / Expulsion etc. depending upon the gravity of the case may also be considered
20	Incorrect / non-reporting under collaterals segregation reporting T+1 (checked during inspection)	As per NCL/CMPL/50662 dated Dec 17, 2021	As per NCL/CMPL/50662 dated Dec 17, 2021
21	Non maintenance of prescribed minimum net-worth	As per NSE/COMP/47735 dated March 24, 2021	As per NSE/COMP/47735 dated March 24, 2021
22	Non-adherence to effective oversight over trading members/ Custodial Participants cleared by Clearing Members	Rs.25,000/ per clause and submission of Compliance Officer certifying that necessary corrective measures are taken as directed by NCL	50% escalation and submission of Internal Auditors certifying that necessary corrective measures are taken as directed by NCL

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23	Failure to monitor cash and cash equivalents reports received by CMs from its TMs in terms of NCL/CMPL/48236	Warning	2nd time-Rs.25,000/-
24	Non collection of crsyallised obligation in cash from clients on T+1 day	Warning	2nd time-Rs.1,00,000/- 3rd time - 50% escalation
25	Incorrect allocation of client collateral done on Tday (verified during inspection)	As per Violation 3 of NCL/CMPL/50662 dated Dec 17, 2021	As per Violation 3 of NCL/CMPL/50662 dated Dec 17, 2021
26	Failure to open and use the designated bank account "Name of the CM-TM prop Account" to receive or pay proprietary funds from TMs	Rs. 50,000/- and a direction to open the designated bank account immediately	2nd time - 50% escalation and submission of Internal Auditors report certifying that the designated bank account has been opened and used as prescribed by the SEBI circular
27	Any Incorrect data reporting by CM towards SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/84 related to Upstreaming of clients funds by TMs/CMs to CCs	As per NCL/CMPL/58148 dated August 30, 2023 as updated from time to time.	As per NCL/CMPL/58148 dated August 30, 2023 as updated from time to time.
28	Any other violation / non compliance / non adherence to the Rules, Bye laws, Regulation of NCL, circular issued by SEBI/NCL, non-compliance with directives/advisory issued by NCL	Monetary penalty upto Rs. 25 Lakh and submission of Compliance Officer certifying that necessary corrective measures are taken as directed by NCL  Depending upon gravity of violation, the Relevant Authority may also impose any other regulatory measures like No onboarding of new Trading Member/CP up to three months and /or Member can be suspended/expelled / declared defaulter in accordance with the provisions governing suspension/declaration of default/expulsion	50% escalation and submission of Internal Auditors certifying that necessary corrective measures are taken as directed by NCL  Depending upon gravity of violation, the Relevant Authority may also impose any other regulatory measures like No onboarding of new Trading Member/CP up to three months and /or Member can be suspended/expelled / declared defaulter in accordance with the provisions governing suspension/declaration of default/expulsion



Sr. No.	Violations	Penalty/disciplinary action for first time Violation	Penalty/disciplinary action in case of Repeat violation/contravention
29	<p>Discrepancy in computation of net worth</p> <p>a) If discrepancy in net worth leads to shortfall</p> <p>b) If discrepancy in net worth does not lead to shortfall</p>	<p>a) Provisions of NSE/COMP/47735 dated March 24, 2021 plus warning</p> <p><b><u>If discrepancy in net worth does not lead to shortfall</u></b></p> <p>b) Warning plus CA certificate with revised net worth plus certification from compliance officer to comply with the prescribed norms for calculation.</p>	<p>a) Provisions of NSE/COMP/47735 dated March 24, 2021 plus penalty of Rs.1 lakh for first time and Rs.2 lakh for 2<sup>nd</sup> time.</p> <p><b><u>If discrepancy in net worth does not lead to shortfall</u></b></p> <p>b) 2<sup>nd</sup> time – Penalty of Rs.1 lakh</p> <p>3<sup>rd</sup> time- Penalty of Rs.2 lakh</p>

## List of Procedural non compliances

Sr. No.	Violations	Penalty/disciplinary action for first time Violation	Penalty/disciplinary action in case of Repeat violation/contravention
1.	Daily Margin statement not sent to affiliated Trading Member & Custodial Participants or Delay in issue of Daily margin statement or Daily margin statement issued with material discrepancies	a) Upto 2% of number of instances- Warning b) In excess of 2% and upto 5% of no. of instances - Rs 15,000/- c) In excess of 5% and upto 10% of no. of instances - Rs 45,000/- d) In excess of 10% of no. of instances - Rs 75,000/-	Minimum Rs.25,000 shall be levied 2nd time - 50% escalation 3rd time - 100% escalation
2.	Non reporting/Incorrect reporting of weekly collateral reports/bank balances/bank account	a) Upto 2% of number of instances-Warning b) In excess of 2% and upto 5% of no. of instances - Rs 15,000/- c) In excess of 5% and upto 10% of no. of instances - Rs 45,000/- d) In excess of 10% of no. of instances - Rs 75,000/-	Minimum Rs.25,000 shall be levied 2nd time - 50% escalation 3rd time - 100% escalation
3.	Non-payment of statutory dues/duties/fees etc. (related to clearing & settlement related activities)	Warning	2nd time –Rs. 10,000/- 3rd time – Rs.20,000/-
4.	Delayed / non-payment of dividend	Non-payment of dividend – 2 times the amount of dividend not paid.  Delay in payment of dividend: ➤ Up to Rs. 1 lakh- Warning ➤ In excess of Rs. 1 lakh and up to Rs. 5 lakhs- 1% of the amount involved ➤ Above Rs. 5 lakhs- 2% of the amount involved	2nd time - 50% escalation 3rd time - 100% escalation  For delay in payment of dividend:-upto Rs.1 lakh- 0.5% of the amount involved
5.	Demat accounts like client beneficiary accounts, client collateral accounts, client unpaid securities account etc. related operations:-  Delayed closure/opening of prescribed demat account	Delay = Warning  Non closure/opening = Rs. 50,000/- per account (where Members are unable to provide reasonable explanation).	Delay= Penalty Rs.1,00,000/-  2nd time - 50% escalation 3rd time - 100% escalation

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	Non closure/non opening of prescribed demat account  Transfer of securities in non-prescribed demat account  Incorrect reporting of Demat Accounts	Member to be disabled in case account is not closed within one month of levy of penalty  Transfer of securities in non-prescribed demat account= 0.25% of the value of securities transferred  Incorrect reporting = Warning	
6.	Member has not maintained a daily reconciliation clearly indicating the reason for fund transfer between client bank and own bank account	Rs. 25,000/-	2nd time - 50% escalation 3rd time - 100% escalation
7.	Material discrepancies in the CM-CP/CM-TM agreement /inclusion of contravening clauses/omission of material clauses	Rs. 25,000/-	2nd time - 50% escalation 3rd time - 100% escalation
8.	Failure to hold valid NISM Series VII- SORM certificates during the inspection period	Rs. 1,500/- per user	Rs.25,000/-
9.	Failure to hold valid NISM Series IIIA certificates by the Compliance officer during the inspection period	Rs.2,500/- plus direction to submit the certificate within 45 days	Rs.25,000/-