Default

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DEFAULT

1. Sharing of Information in case of Declaration of Member as Defaulter in case of Multiple Membership

i. [Whenever a member of any segment is declared defaulter, the concerned Stock Exchange/ Clearing Corporation shall immediately declare it a defaulter in all its segments. It shall also immediately inform all other Stock Exchanges/Clearing Corporations the details of the defaulter member such as name of the member, the names of the proprietors/ partners/ promoters/ dominant shareholders, as applicable.

ii. Immediately on receipt of the information about default of a member, the other Stock Exchange / Clearing Corporation shall declare the said member defaulter on all its segments.

iii. The Stock Exchanges / Clearing Corporations shall take appropriate action against the associates of defaulter member. For this purpose, the term 'associate' shall include a person:

a. who, directly or indirectly, by itself, or in combination with other persons, exercises control over the member, whether individual, body corporate or firm or holds substantial share of not less than 15% in the capital of such entities;
or
b. in respect of whom the member, individual or body corporate or firm, directly or indirectly, by itself or in combination with other persons, exercises control;
or
c. whose director or partner is also a director or partner of the member, body corporate or the firm, as the case may be

Explanation: The expression "control" shall have the same meaning as defined under clause (e) of Regulation 2 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.][1]

2. Issuance of Show Cause Notice (SCN)

[The following actions shall be taken by Initiating Stock Exchange (ISE) / SEs / CCs as given below:

a. Issuance of SCN for declaration of TM as a defaulter and the list of members to whom the notice is issued shall be placed on the website of the SE and on such other place, as the relevant authority may deem fit.
b. Stock Exchange shall intimate the clients about the issuance of the notice/SCN to declare the Trading Member as defaulter including through email/SMS within three (3) trading days of the issuance of SCN.] [2]

[1] Exchange Circular no. MCX/ IG&ARB /327/2016 dated September 29, 2016 / SEBI Circular no. SEBI /HO /CDMRD /DMP/ CIR/P/2016/102 dated September 27, 2016

[2] Exchange Circular no. MCX/ISD/471/2020 dated July 02, 2020 / SEBI Circular no. SEBI/ HO/ MIRSD/DPIEA/ CIR/P/2020/115 dated July 01, 2020

3. Disclosure by Commodity Derivatives Exchanges on their Websites

[The Exchanges which are suspending/expelling/declaring defaulter their members for irregularities/violation of regulatory measures and other various reasons, shall disclose following information on their website-

a. The details of member (Name, Address, Names of Promoters /Owners/ Partners/ Directors of Company, Registration No. etc.)

b. The details of disciplinary action taken by the Exchange.][3]

4. Manner of filing/inviting claims from the Investors/Clients

i. [In accordance with its bye-laws, rules or regulations, the Exchange shall publish a notice inviting the legitimate claimants to file claims against the defaulter member within a specified period of time called as the specified period.

ii. The specified period shall be a minimum period of 90 days.

iii. Exchanges shall publish the notice in all the editions of at least one English national daily with wide circulation and in at least one regional language daily with wide circulation at the place(s) where the concerned Exchange Member(s) is/are situated.

iv. The notice calling for claims shall be displayed on the website of the Exchange for the entire specified period.

v. The notice shall contain the specified period, the maximum compensation limit for a single claim of an investor/client and all other relevant information.][4]

5. Eligibility of Claims

i. [The claims received against the defaulter member during the specified period shall be eligible for being considered for compensation from the IPF.] **[5]**

ii. [If any eligible claim arises within three years from the date of expiry of the specified period, such claim,

a) shall be considered eligible for compensation from IPF/CPF in case where the defaulter member's funds are inadequate. In such cases, IPF/CPF Trust shall satisfy itself that such claim could not have been filed during the specified period for reasons beyond the control of the claimant.

[3] Exchange Circular no. MCX/T&S/305/2016 dated September 28, 2016 / SEBI Circular no. SEBI /HO/CDMRD/DMP/2016/101 dated September 27, 2016

[4] Exchange Circular no. MCX/IPF/303/2016 dated September 28, 2016 / SEBI Circular no. SEBI/HO/CDMRD/DEICE/CIR/P/2016/94 dated September 26, 2016

[5] Refer foot note 4 as above.

b) shall not be considered eligible for compensation from IPF/CPF in case where the surplus funds of the defaulter member is returned to the defaulter member. The same shall be borne by the exchanges after scrutinizing and satisfying itself that such claim could not have been filed during the specified period for reasons beyond the control of the claimant.

5 Provided that any claim received after three years from the date of expiry of the specified period may be dealt with as a civil dispute.

6 The investor claim arising out of a default of a broker/member of exchange shall be eligible for compensation from IPF.] [6]

6. Determination of legitimate claims

i. [The Stock Exchanges shall ensure that once a member has been declared defaulter, the claim (s) shall be placed before the Member Core Settlement Guarantee Fund Committee (MCSGFC) for sanction and ratification. MCSGFC's advice w.r.t. legitimate claims shall be sent to the IPF Trust for disbursement of the amount immediately.

ii. In case the claim amount is more than the coverage limit under IPF or the amount sanctioned and ratified by the MCSGFC is less than the claim amount then the investor will be at liberty to prefer for arbitration outside the exchange mechanism / any other legal forum outside the exchange mechanism for claim of the balance amount.][7]

iii. [In the event of default by the member, all transactions executed on the exchange platform shall be eligible for settlement from IPF subject to the appropriate norms laid down by the Member and Core Settlement Guarantee Fund Committee. The IPF of the exchange shall be utilized for the clients of SEBI registered members. However, the said amount shall not be more than the maximum limit as prescribed at all time.][8]

7. Disbursement of claims from the IPF

i. [The compensation shall be disbursed to the investor from the IPF in case there is a shortage of defaulter broker's assets after its realization.

ii. The Exchange shall ensure that the amount realized from the assets of the defaulter member is returned to the defaulter member after satisfying the claims of the exchanges and SEBI in accordance with the bye-laws of the exchange.

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[6] Exchange Circular no. MCX/IPF/179/2017 dated June 14, 2017 / SEBI Circular no. CIR/CDMRD/DEICE/CIR/P/2017/53 dated June 13, 2017.

[7] Exchange Circular no. MCX/IPF/679/2021dated October 25, 2021 / SEBI Circular no. SEBI/HO/CDMRD/DoC/P/CIR/2021/651 dated October 22, 2021

[8] Exchange Circular no. MCX/IPF/179/2017dated June 14, 2017 / SEBI Circular no. CIR /CDMRD /DEICE/CIR/P/ 2017/53 dated June 13, 2017

Provided that in case of a member broker having membership on multiple exchanges, amount realized from the assets of the defaulter member shall be returned to the said member only after satisfying eligible claims of the concerned exchange, SEBI, and other exchanges as the case may be.

Provided further that in cases where any litigations are pending against the defaulter member, the residual amount, if any, may be retained by the exchange until such litigations are concluded.] [9]

8. Recovery of assets of defaulter member and recovery of funds from debit balance clients of defaulter member for meeting the obligations of clients /Stock Exchange (SE)/Clearing Corporation (CC)

i. [In the case of default by TM/CM, it has been noted that in certain cases there is shortfall of funds/securities with defaulter member to meet the obligation of clients / SE / CC. The bye-laws of SE/CC provide for the procedure for declaring a member as defaulter when, amongst other reasons, the member is not able to fulfil its obligations and also provide for initiation of proceedings in a court of law whenever a member is declared as a defaulter and there is a shortfall of funds/securities with the defaulter member.

ii. The SE / CC are advised to initiate suitable actions for liquidating the assets (movable and immovable) of defaulter member including that of debit balance clients (to the extent of debit balance), within six months of declaration of defaulter, for recovery of the assets not in possession of the SE / CC, before appropriate court of law.][10]

9. Processing of investor claims, review of claim and timeline for declaration of defaulter on disablement of TM on account of trigger of Standard Operating Procedure (SOP) as per SEBI Circular no. SEBI/HO/MIRSD/DPIEA/CIR/P/2020/115 dated July 01, 2020

i. [A detailed Standard Operating Procedure (SOP) has been prepared, indicating the process and timelines for processing of investor claims from IPF, review of claims and timeline for declaration of defaulter.

ii. The Exchange is advised to disseminate its policy on processing investor claims from IPF on its website. Further, the Exchange is advised to frame FAQ's on their policy on processing investor claims for easy understanding of the investors.

Standard Operating Procedure (SOP) for Handling of Claims of Investors in the Cases of Default by Trading Members:

[9] Refer foot note 8 above

[10] Exchange Circular no. MCX/ISD/715/2020 dated September 29, 2020 / SEBI Circular no. SEBI/ HO/MIRSD/DPIEA/CIR/P/2020/186 dated September 28, 2020

Sl. No.	Action	Process to be followed	Timeline
1	Disablement of the Trading Member (TM)	Disablement of the TM on account of trigger of SOP as per SEBI circular dated July 01, 2020	T day
2	Pre-filled forms to be sent to clients providing information regarding balances with the TM	➢ The Exchange will provide the client his/ her funds and securities balances as available with the Exchange (uploaded by the TM with the exchange/ as per client ledger etc.) and Trades data for 90 days prior to disablement. ➢ The prefilled form would also include the details available with the exchange such as PAN, address etc. ➢ However, the balances to be provided to the client would be provisional as they would be without verification about its correctness/ completeness. ➢ The exchange may give adequate caveats regarding the balances shared with the clients and may also mention that the claims would be processed as per the SEBI Circular and Regulations and Rules, Regulations, Byelaws of the exchange.	T+30 days
3	Claim lodgment Clients to fill the claim form and provide the supporting documents	➢ The client would be required to fill claim forms either online or offline, making necessary changes in the claim form and providing additional details ➢ Supporting documents such as relevant bank statements, demat statements, client ledger etc. needs to be provided along with the claim form. ➢ The Client would provide the bank details for disbursal of the amount at this stage itself in case the claim is admitted ➢ Exchange may seek further documents on case to case basis	Within 30 days of receipt of pre-filled form However, client can lodge claims till the end of 3 years from the date of the public notice provided.

Sl. No.	Action	Process to be followed	Timeline
4.	Processing of claims and auditing of claims	➢ The claims which are lodged in physical form are to be entered in the exchange system for processing. ➢ The claims received in physical form as well as online are to be scrutinized to ensure that the claims are supported by relevant documents such as proof of payment, demat account statement, ledger account statement etc. ➢ In case of any additional documents are required from the client, the same is to be intimated to the client immediately. ➢ The claims which are complete in all respect are to be processed by verifying the details / documents provided by constituents with the Exchange's records viz. trades executed, unique client codes, ledger supported by bank and demat statements etc. and arrive at admissibility or otherwise of the claims. ➢ After processing of the claims by the exchange, the claims would be routed to the auditors to assess the veracity and genuineness of the claims including admissibility of the claim.	Within 60 days of receipt of the claim form from the clients.
5	Declaration of TM as defaulter	➢ The exchange would follow the process for declaring the TM as defaulter.	Within 90 days from date of disablement (on account of triggering of SOP) (T+90 days)
6	Public Notice regarding declaration of defaulter	➢ Exchange will issue a public notice in newspapers i.e. in national daily having wide circulation and in the regional language newspaper at the place where the registered Office of the Member is situated.	Within 3 working days from the date of declaration of defaulter

Sl. No.	Action	Process to be followed	Timeline
		➢ The notice would also contain a reminder to submit all supporting documents.	
7	Approval of the claim by IPF Trust on the basis of recommendation of MCSGFC and Intimation to the clients regarding admissibility of the claim and disbursal of the eligible amount	➢ After processing and auditing of the claims, after declaration of the TM as defaulter, the claims would be placed before the Member and Core Settlement Guarantee Fund Committee (MCSGFC) for approval ➢ In case the assets of the defaulter and / or expelled member are insufficient to meet the admitted amount, the MCSGFC would recommend payment of investor claims to the Trustees of the Investor Protection Fund Trust (IPFT) for payment out of the Investor Protection Fund (IPF). ➢ The IPFT to approve the payment of the eligible claim amount to the investor from the IPF. ➢ The exchange would communicate the decision on claims to the clients post approval by the IPFT. (The exchange would do away with the present practice of obtaining indemnity undertaking from the clients)	Within 15 days of declaration of default

Process for Review of the claim

Sl No.	Action	Process to be followed	Timeline
1	Request for review of the claim from the client (first review)	➢ In case the client is not satisfied with the processing of his claim, he/ she can file a review with the Member and Core Settlement Guarantee Fund Committee (MCSGFC) (first review).	Within 90 days of receipt of intimation from the exchange regarding admissibility of the claim
		➢ The MCSGFC will review the claim and intimate it's decision to the client.	Within 60 days of receipt of review application

Sl No.	Action	Process to be followed	Timeline
2	Request for review of the claim from the client (second review)	➢ In case the client is still not satisfied with the review by the MCSGFC (first review), he/ she can file a review with the committee of Public Interest Directors (PIDs).	Within 90 days of receipt of intimation from the MCSGFC on the first review
		➢ The committee of PIDs would review the claim and intimate it's decision to the client.	Within 60 days of receipt of the review application

iii. The Exchange is advised to give adequate notice to the investors before implementing any amendment in the policy on processing of claims.

iv. Further, in case of any amendment in the policy on processing of investor claims, the same should not be applicable to the trading member who have been disabled/suspended/declared defaulter by the Exchange prior to the effective date of implementation of policy.][11]

10. Dissemination of information on action taken against Trading Members on the website of the Stock Exchange

i. [Wherever powers are conferred upon Market Infrastructure Institutions (MIIs) i.e. Stock Exchange to take actions in case of default /non-compliance by market intermediaries, the data of such actions/non-compliance should be made available in public domain by the respective MIIs.

ii. A link may be provided in the SEBI website leading to the Stock Exchanges as detailed in point above.][12]

11. Publishing of Orders passed against TM on the website of the SE

[Wherever powers are conferred upon MIIs to take action in case if default/non-compliance by market intermediaries, a copy of final enforcement order pertaining to such action/non-compliance should be made available in public domain by the respective MIIs.][13]

[11] SEBI letter no. SEBI/HO/CDMRD/DIA/ON/P/2020/23132/1 dated December 31, 2020
[12] SEBI letter no. SEBI/HO/MIRSD/DPIEA/OW/2021/10188/1 dated May 11, 2021
[13] SEBI letter no. SEBI/HO/MIRSD/DPIEA/OW/2022/20651/6 dated May 13, 2022

12. SEBI CIRCULAR REFERENCES

Sr. No	Date	SEBI Circular / Letter No.	Title
1	September 26, 2016	SEBI/HO/CDMRD/DEICE /CIR/P/2016/94	Investor Protection Fund (IPF) and its related matters
2	September 27, 2016	SEBI /HO/CDMRD /DMP/2016/101	Disclosure by Commodity Derivatives Exchanges on their Websites
3	September 27, 2016	SEBI Circular no. SEBI /HO /CDMRD /DMP/ CIR/P/2016/102	Sharing of Information in case of Declaration of Member as Defaulter in case of Multiple Membership
4	June 13, 2017	CIR/ CDMRD /DEICE /CIR/P/2017/53	Comprehensive guidelines for Investor Protection Fund, Investor Service Fund and its related matters at National Commodity Derivatives Exchanges
5	July 01, 2020	SEBI/ HO/ MIRSD/DPIEA/ CIR/P/2020/115	Standard Operating Procedure in the case of Trading Member / Clearing Member leading to Default
6	September 28, 2020	SEBI/ HO/ MIRSD /DPIEA /CIR /P/2020/186	Recovery of assets of defaulter member and recovery of funds from debit balance clients of defaulter member for meeting the obligations of clients /Stock Exchange /Clearing Corporation
7	December 31, 2020	SEBI/ HO/ CDMRD /DIA /ON/P/2020/23132/1	Issues pertaining to Investor Protection Fund (IPF)
8	October 22, 2021	SEBI/HO/CDMRD/DoC/P/ CIR/2021/651	Amendment to SEBI Circular pertaining to Investor Protection Fund (IPF) / Investor Service Fund (ISF) and its related matters
9	May 11, 2021	SEBI /HO/ MIRSD/ DPIEA/ OW/2021/10188/1	Dissemination of information on action taken against Trading Members / Depository Participants on the website of Stock Exchanges / Depositories
10	May 13, 2022	SEBI/ HO/ MIRSD /DPIEA /OW /2022/20651/6	Publishing of Orders passed against Trading Members / Depository Participants on the website of Stock Exchanges / Depositories