

2014

Recent SEBI / Exchange / FMC/ Depository Circulars applicable to stock brokers / Commodity brokers / Depository Participants

Seminar on Audit & Compliance applicable to Stock Broker & Depository Participants

Western India Regional Council (J. S. Lodha Auditorium, ICAI Bhawan, Cuffe
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1. Stock Broking:

1.1. Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT):

CIR/MIRSD/1/2014 dated March 12, 2014: Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) Obligations of Securities Market Intermediaries under the Prevention of Money laundering Act, 2002 and Rules framed there under

This circular casts additional responsibility in various areas over and above the stipulated guidelines of Master Circular on AML/CFT (CIR/ISD/AML/3/2010 dated December 31, 2010)

Content of Master Circular	Recent Circular
<p><u>“Risk Based Approach:</u> It is generally recognized that certain clients may be of a <u>higher or lower risk category</u> depending on the circumstances such as the client’s background, type of business relationship or transaction etc. As such, the registered intermediaries shall apply each of the clients due diligence measures on a risk sensitive basis. The basic principle enshrined in this approach is that the registered intermediaries shall adopt an <u>enhanced client due diligence process for higher risk categories of clients.</u> Conversely, a simplified client due diligence process may be adopted for lower risk categories of clients. In line with the risk-based approach, the type and amount of identification information and documents that registered intermediaries shall obtain necessarily depend on the risk category of a particular client. Further, <u>low risk provisions shall not apply when there are suspicions of ML/FT or when other factors give rise to a belief that the customer does not in fact pose a low risk.</u></p>	<p>“Risk Assessment: Registered intermediaries shall carry out risk assessment to identify, assess and take effective measures to mitigate its money laundering and terrorist financing risk with respect to its <u>clients, countries or geographical areas, nature and volume of transactions, payment methods used by clients, etc.</u> The risk assessment shall also take into account any country specific information that is circulated by the Government of India and SEBI from time to time, as well as, the updated list of individuals and entities who are subjected to sanction measures as required under the various United Nations' Security Council Resolutions (these can be accessed at <u>http://www.un.org/sc/committees/1267/agsanctionslist.shtml</u> and <u>http://www.un.org/sc/committees/1988/list.shtml</u>). The risk assessment carried out shall consider all the relevant risk factors before determining the level of overall risk and the appropriate level and type of mitigation to be applied. The <u>assessment shall be documented, updated regularly and made available to competent authorities</u> and self-regulating bodies, as and when required.</p>
<p>Client identification procedure: The <u>KYC policy shall clearly spell out the client identification procedure</u> to be carried out at different stages i.e. while establishing the intermediary – client relationship, while carrying out transactions for the client or when the intermediary has doubts regarding the veracity or the adequacy of previously obtained client identification data.</p> <p>Irrespective of the amount of investment made by clients, <u>no minimum threshold or exemption is available to registered intermediaries (brokers, depository participants, AMCs etc.)</u></p>	<p>Reliance on third party for carrying out Client Due Diligence (CDD): Registered intermediaries <u>may rely on a third party for the purpose of (a) identification and verification of the identity of a client and (b) determination of whether the client is acting on behalf of a beneficial owner, identification of the beneficial owner and verification of the identity of the beneficial owner.</u> Such third party shall be regulated, supervised or monitored for, and have measures in place for compliance with CDD and record-keeping requirements in line with the obligations under</p>

Content of Master Circular	Recent Circular
<p><u>from obtaining the minimum information/documents from clients as stipulated in the PML Rules/SEBI Circulars (as amended from time to time) regarding the verification of the records of the identity of clients.</u> Further no exemption from carrying out CDD exists in respect of any category of clients. In other words, there shall be no minimum investment threshold/ category-wise exemption available for carrying out CDD measures by registered intermediaries. This shall be strictly implemented by all intermediaries and non-compliance shall attract appropriate sanctions.</p>	<p>the PML Act. Further, it is clarified that the <u>registered intermediary shall be ultimately responsible</u> for CDD and undertaking enhanced due diligence measures, as applicable.</p>
<p><u>Record keeping requirements:</u> Ten years</p>	<p><u>Amend mended requirement:</u> Five years</p>
<p><u>Designation of an officer for reporting of suspicious transactions:</u> Appointment of Principal Officer.</p>	<p><u>Appointment of a Designated Director:</u> In addition to the existing requirement of designation of a Principal Officer, the registered <u>intermediaries shall also designate a person as a 'Designated Director.</u> Designated Director means a person designated by the reporting entity <u>to ensure overall compliance with the obligations.</u> FIU-IND can take appropriate action, including levying <u>monetary penalty, on the Designated Director</u> for failure of the intermediary to comply with any of its AML/CFT obligations. Registered intermediaries shall <u>communicate</u> the details of the Designated Director, such as, name, designation and address <u>to the Office of the Director, FIU-IND.</u></p>

1.2. Safeguards to avoid trading disruption in case of failure of software vendor:

CIR/MRD/DP/07/2014 February 11, 2014

Stock exchanges may advise the stock brokers to take the following measures:

1. Explore the possibility of establishing a 'software escrow arrangement' with their existing software vendors.
2. In case of large stock brokers, consider reducing dependence on a single software vendor for trading and risk management systems, by engaging more than one software vendor.
3. Consider including the following in their contracts with the software vendors:
 - a. access to documents related to design and development specifications in the event software vendor fails to provide continuous and timely services to the stock broker;
 - b. development of expertise at the end of the stock broker through appropriate training with regard to software usage and maintenance;
 - c. appropriate penalty clauses for cases of disruptions to the trading system of the stock broker on account of (a) software vendor failing to provide continuous and

- timely services to the stock broker or (b) glitches to the software provided by the software vendor;
- d. obligation on the part of the software vendor to cooperate in case of audit of software including forensic audit, if required.

1.3. Testing of software used in or related to Trading and Risk Management:

CIR/MRD/DP/ 06 /2014 February 07, 2014

1. Speedy approval by Exchanges for testing related to:
 - a. fixes to bugs in the software,
 - b. changes undertaken to the stock brokers' software / systems pursuant to a change to any stock exchange's trading system,
 - c. software purchased from a software vendor that has already been tested in the mock environment by certain number of stock brokers, stock exchanges.
 - d. suitably schedule the requirements of mock testing, certification of test reports by system auditor(s) and the software approval process, so as to facilitate a speedy approval and a smooth transition of the stock brokers to the new / upgraded software.
 - e. changes / updates to stock broker's trading software that intend to modify the '**look and feel**' and do not affect the risk management system of the stock broker or the connectivity of the trading software with stock exchange's trading system, it is clarified that mock testing and consequent **system audit may not be insisted upon by the stock exchanges.**
 - f. stock exchanges are advised to put in place suitable mechanism to prevent any unauthorized change to the approved software.

1.4. Know Your Client Requirements:

CIR/MIRSD/ 13 /2013 December 26, 2013

Part I contains the basic KYC details of the investor used by all SEBI registered intermediaries and Part II captures additional information specific to the area of activity of the intermediary. KRA is based on Part I.

It has now been decided in consultation with various market participants to shift certain information in Section C of Part I to Part II of the AOF (for both individuals and non-individuals). Revised Part I of AOF is enclosed. Part II shall be modified by the intermediary accordingly.

C. OTHER DETAILS

1. Gross Annual Income Details (please specify): Income Range per annum: Below Rs 1 Lac / 1-5 Lac /5-10 Lac / 10-25 Lac / >25 Lacs or

Net-worth as on (date)..... (-----) (Net worth should not be older than 1 year)

2. Occupation (please tick any one and give brief details): Private Sector/ Public Sector/ Government Service/Business/ Professional/ Agriculturist/ Retired/ Housewife/ Student/ Others _____

3. Please tick, if applicable: Politically Exposed Person (PEP)/ Related to a Politically Exposed Person (PEP)

4. Any other information:

1.5. Stock Broker System Audit Framework:

CIR/MRD/DMS/ 34 /2013 dated November 6, 2013

Issuance of standardised terms of reference and fixing periodicity of Systems Audit for various categories of Brokers.

1.6. Disclosure of Investor Complaints on websites of Stock Exchanges:

In order to bring more transparency in the disclosure of complaint redressal status of the stock brokers on the website of stock exchange, in consultation with the stock exchanges and the associations of stock brokers, it has been decided to modify the format by including following information:

- a. Number of active clients of each stock broker. **“Active client”** means the client who has traded at least once in the last year.
- b. Percentage of **number of complaints received as against number of active clients** of the stock broker (to be calculated by dividing the number of complaints received against stock broker with number of active clients).
- c. Percentage of **complaints resolved as against complaints received** by the stock broker (to be calculated by dividing number of total complaints redressed with number of complaints received against stock broker).
- d. The stock exchanges shall also disclose separately in a prominent manner **(i) total number of complaints received against all the stock brokers of the Exchange, number of their active clients and its percentage and (ii) overall market redressal rate by dividing total number of complaints redressed with total number of complaints received against all stock brokers of the Exchange.**

1.7. Investor Grievance Redressal Mechanism:

CIR/MRD/ICC/30/2013 dated 26.09.2013

The circular aims to **shorten the time taken for the proceedings** as well as to give **monetary relief to the investors, during the course of pendency of proceedings.**

1. All complaints to be resolved in **15 days.** Correspondence through **email** with broker and clients.
2. If matter is not resolved through conciliation then **IGRC shall be allowed 15 days** to amicably resolve the complaint.
3. IGRC to **conclude on admissibility of claim** apart from attempting resolution of complaint.
4. **In case claim is admissible** to the investor, Stock Exchanges shall **block** the admissible claim value from the **deposit of the Member.**
5. **Member to file arbitration within 7 days** if he does not agree. Else money is released in favour of the client.

6. In case, the Member opts for arbitration and the claim value admissible to the investor is not more than Rs. 10 lac, the following shall be undertaken by the Stock Exchange:
 - i. 50% of the admissible claim value or Rs. 0.75 lac, whichever is less, shall be released to the investor from IPF of the Stock Exchange.
 - ii. In case the arbitration award is in favour of the investor and the Member opts for appellate arbitration then a positive difference of, 50% of the amount mentioned in the arbitration award or Rs. 1.5 lac, whichever is less and the amount already released to the investor at clause (i) above, shall be released to the investor from IPF of the Stock Exchange.
 - iii. In case the appellate arbitration award is in favour of the investor and the Member opts for making an application under section 34 of the Arbitration and Conciliation Act, 1996 to set aside the appellate arbitration award, then a positive difference of 75% of the amount determined in the appellate arbitration award or Rs. 2 lac, whichever is less and the amount already released to the investor at clause (i) and (ii) above, shall be released to the investor from IPF of the Stock Exchange.
 - iv. Before release of the said amounts from the IPF to the investor, the Stock Exchange shall obtain appropriate undertaking/ indemnity from the investor against the release of the amount from IPF, to ensure return of the amount so released to the investor, in case the proceedings are decided against the investor.
 - v. If it is observed that there is an attempt by investor/client either individually or through collusion with Member(s) or with any other stakeholders, to misuse the provision of this Circular, then without prejudice to the powers of the Board to take action, appropriate action in this regard shall be taken against any such person, by the Stock Exchange, including disqualification of the person so involved from henceforth accessing the benefits of this Circular.
 - vi. In case the complaint is decided in favour of the investor after conclusion of the proceedings, then amount released to the investor shall be returned to IPF from the blocked amount of the Member by the Stock Exchange and the rest shall be paid to the investor.
 - vii. Total amount released to the investor through the facility of monetary relief from IPF in terms of this Circular shall not exceed Rs. 5 lac in one financial year.
 - viii. Stock Exchanges may devise a detailed procedure with regard to release of funds from IPF and recovery thereof and necessary formats of documentation.
 - ix. In case the investor loses at any stage of the proceedings and decides not to pursue further, then the investor shall refund the amount released from IPF, back to the IPF. In case the investor fails to make good the amount released out of IPF then investor (based on PAN of the investor) shall not be allowed to trade on any of the Stock Exchanges till such time the investor refunds the amount to IPF. Further, the securities lying in the demat account(s) of the investor shall be frozen till such time as the investor refunds the amount to the IPF.
 - x. The Stock Exchanges may also resort to displaying the names of such investors on their websites if considered necessary.
2. Member to convey to Exchange about intentions of challenging the Arbitration Award u/s 34 within 7 days, failing which the amount will be released to the client.
3. To address complaints regarding 'unauthorised trades' Stock Exchanges are advised to direct the Members to put in place the following:
 - i. In case the Member has made margin calls to the client and the client has failed to comply with these margin calls, then the contract note issued by Member for

transactions owing to non-compliance of such margin calls would bear a remark specifying the same.

- ii. The Member shall maintain a verifiable record of having made such margin calls and that the clients have not complied with the same.

1.8. Arbitration Mechanism in Stock Exchanges:

CIR/MRD/ICC/29/2013 dated 26.09.2013

Content of CIR/MRD/DSA/29/2010 dated August 31,2010	Recent Circular
A party filing an appeal before the appellate panel shall pay a fee not exceeding Rs. 30,000, as may be prescribed by the stock exchange, in addition to statutory dues (stamp duty, service tax, etc) along with the appeal.	A party filing an appeal before the appellate panel shall pay a fee not exceeding Rs. 30,000, as may be prescribed by the stock exchange, in addition to statutory dues (stamp duty, service tax, etc) along with the appeal. In case the party filing the appeal is a client having claim/counterclaim of upto Rs. 10 lakh, then the party shall pay a fee not exceeding Rs. 10,000/-.

1.9. Format of Common Contract Note:

CONTRACT NOTE CUM BILL

NAME OF THE MEMBER, LOGO OF THE MEMBER					
SEBI REGISTRATION NO. ADDRESS, TELEPHONE NO, FAX NO AND WEBSITE					
NAME OF COMPLIANCE OFFICER HIS/ HER EMAIL & TELEPHONE NO., EMAIL ID FOR INVESTOR COMPLAINT					
DEALING OFFICES ADDRESS, TELEPHONE NO, FAX NO					
CONTRACT NOTE NO.				Name Of Exchange & Segment	Name Of Exchange & Segment
TRADE DATE		SETTLEMENT NO.			
Name of the Client Address of the Client PAN of Client UCC of Client Trading Back office code*		SETTLEMENT DATE	GIVE EXCHANGE-WISE / SEGMENTWISE SETTLEMENT NO. & DATES		
	Name Of Exchange & Segment	Name Of Exchange & Segment	Name Of Exchange & Segment	Name Of Exchange & Segment	
*Trading/ Back Office Code (If Different from UCC)					

Sir/ Madam,
I / We have this day done by your order and on your account the following transactions:

Order No.	Order Time	Trade No.	Trade Time	Security/ Contract description	Buy (B)/ Sell (S)	Quantity	Gross Rate/ Trade Price Per unit (Rs)	Brokerage per Unit (Rs)	Net Rate per Unit (Rs)	Closing Rate per Unit(only for Derivatives) (Rs.)	Net Total (Before Levies) (Rs)	Remarks
Name Of Exchange & Segment												
Position Brought Forward in case of Derivatives (Where applicable)												
Trade 1												
Trade 2												
Trade N												
Name Of Exchange & Segment												
Position Brought Forward in case of Derivatives (Where applicable)												
Trade 1												
Trade 2												
Trade N												
Name Of Exchange & Segment												
Position Brought Forward in case of Derivatives (Where applicable)												
Trade 1												
Trade 2												
Trade N												

2. Commodities Broking:

2.1. Central KYC Registry:

FMC/4/2013/C/163 dated December 18, 2013

The Central Registry of securitisation, Asset reconstruction & Security Interest of India (CERSAI) has been assigned the function of Central KYC Registry.

2.2. Reduction in application charges for Internet Trading and Wireless Trading:

MCX/CTCL/48/2014 dated February 22, 2013

Fee is reduced from Rs. 1,00,000/- to Rs. 65,000/-.

2.3. PMS disallowed:

MCX/COMP/349/2013 dated October 15, 2013

Activity of Portfolio Management Services, Assured / Guaranteed returns etc. are disallowed.

2.4. Change in format of Contract Note on account of CTT:

MCX/COMP/227/2013 dated June 28, 2013

A column reflecting Commodities Transaction Tax has been included in the format of contract note.

2.5. Applicability of Commodities Transaction Tax:

MCX/COMP/222/2013 dated June 22, 2013

CTT @ 0.01% on seller

CTT is not applicable on:

1. Almond
2. Barley
3. Cardamom
4. Castor Seed
5. Channa/Gram
6. Copra
7. Coriander/Dhaniya
8. Cotton
9. Cotton seed Oilcake/Kapasias Khali
10. Guar Seed
11. Isabgul Seed
12. Jeera (Cumin Seed)
13. Kapas
14. Maize Feed
15. Pepper
16. Potato
17. Rape/Mustard Seed
18. Raw Jute
19. Red Chilli
20. Soya bean/seed

21. Soymeal
22. Turmeric
23. Wheat

3. Depository Participants:

3.1. Guidelines for inspection of Depository Participants (DPs) by Depositories:

Standardise the process of inspection across Depositories in the areas of:

1. Inspection Areas and Sample Size
2. Categorization / Risk Rating of DPs
3. Other requirements.

Copy of circular is attached as **Annexure 1**

3.2. Standardisation of DIS Issuance and Processing:

1. Depositories shall ensure that the DIS is standardized across all DPs in terms of:
 - a. Serial Numbering of Delivery Instruction Slips so as to enable system level checks by the depositories
 - b. Layout and size of DIS so as to facilitate scanning and easy retrievability of records
2. The DIS must bear a pre-printed serial number, DP ID, and a pre-printed/pre-stamped Beneficial Owner (BO) ID. The depositories shall prescribe a standard method of serial numbering and ensure that serial numbers issued by a DP are unique within the DP-ID.
3. DPs shall ensure that:
 - a. same DIS shall not be used for giving both market and off-market instructions.
 - b. a single DIS shall not be used for transactions with multiple execution dates.
4. At the time of execution of DIS, DPs shall enter the serial number of DIS in the depository system for validation. The depositories shall make provisions in their systems to facilitate the same.
5. In respect of all the transfer instructions on a DIS, Depositories shall validate the serial number of DIS and shall ensure that no instructions accompanied by a used DIS or unissued DIS are processed.
6. Scanning of DIS
 - 6.1. DPs shall scan every DIS executed during a day along with all Annexures/ Computer printouts, if any, by the end of the next working day in the manner specified by the depository.
 - 6.2. The depositories shall ensure that their DPs have adequate infrastructure, systems and processes to implement scanning, storage and transfer of the scanned DIS in the manner specified by the depositories.
 - 6.3. The depositories shall ensure that the systems set up by the DPs maintain proper records of all scanned DIS images including audit trails for changes made, if any and put in place adequate checks and procedures to prevent unauthorized changes to scanned DIS.
 - 6.4. Depositories shall utilize the archived scanned images for off-site inspection.
 - 6.5. Provisions of this circular shall not be applicable for the instructions received from the clients by the DPs electronically in a manner approved by the Depository.
 - 6.6. The provisions of this circular shall come into effect six months from the date of issue. Once a new DIS booklet is issued to a BO as per provisions of this circular, old DIS issued to such a BO shall not be accepted by the DP. All DIS issued prior to this circular shall be phased out within a period of 2 years from the date of this circular. The measures listed above under the head 'Monitoring of DIS' shall be made applicable to the DIS issued as per the provisions of this circular.