# NSE Clearing Limited

**Circular**

| DEPARTMENT: COMPLIANCE | |
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| Download Ref No: NCL/CMPL/58148 | Date: August 30, 2023 |
| Circular Ref. No: 34/2023 | |

To All Members,

**Sub: Penalty Structure related to provisions of Upstreaming of clients' funds by Stock Brokers (SBs) / Clearing Members (CMs) to Clearing Corporations (CCs) and Bank Guarantees (BGs) created out of clients' funds**

This is with reference to NCL circulars NCL/CMPL/57037 dated June 9, 2023, NCL/CMPL/57374 dated June 30, 2023, NCL/CMPL/57962 dated August 14, 2023 and NCL/CMPL/58134 dated August 30, 2023 on Upstreaming of clients' funds by Stock-Brokers (SBs) / Clearing Members (CMs) to Clearing Corporations (CCs) and NCL/CMPL/56488 dated April 25, 2023 on Bank Guarantees (BGs) created out of clients' funds.

In this regard, NCL has formulated a penalty structure for any non-compliance of the provisions of the aforementioned circulars. The penalty structure is enclosed as Annexure A which shall be applicable w.e.f. September 01, 2023.

All members are advised to take note of the above and strictly comply.

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

Amit Mahesh Pujara
Head-Compliance


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# NSE Clearing Limited

**Annexure A**

**(A) Client's funds/liquid overnight funds/FDR made out of clients' funds are not upstreamed/pledged/lien marked by member or creation of BG out of clients' funds:**

<table>
<tr><th>Details of contravention</th><th>Disciplinary Action/Charges</th><th>Repeat violation</th></tr>
<tr>
<td>
<ul>
<li>Clients' funds received before cut-off are not upstreamed to Clearing Corporation and lying with member in any of its bank account*</li>
<li>Unit of Mutual fund overnight schemes/ FDR made out of clients' funds are not pledged/ lien marked as case may be to Clearing Corporation*</li>
<li>Non-compliance with respect to tenure of FDR made out of clients' funds*</li>
<li>Non-compliance with respect to debit freeze of funds received after upstreaming cut off time</li>
<li>Transfer of funds to client from other than DSCNB account</li>
<li>Receipt of funds from client in other than USCNB account</li>
<li>Non permissible transfer of funds between USCNB, DSCNB and any other bank account of member</li>
</ul>
</td>
<td>
<table>
<tr><th>Value of Violation</th><th>Penalty</th></tr>
<tr><td>Up to 5 Lakh</td><td>Rs.5000</td></tr>
<tr><td>> 5 to 10 Lakhs</td><td>Rs.10000</td></tr>
<tr><td>> 10 to 50 Lakhs</td><td>Rs. 15000</td></tr>
<tr><td>> 50 Lakhs to 1 Crore</td><td>Rs. 25000</td></tr>
<tr><td>> 1 Crore to 2 Crore</td><td>Rs. 50000</td></tr>
<tr><td>> 2 Crore to 5 Crore</td><td>Rs. 1 Lakh</td></tr>
<tr><td>> 5 Crore to 10 Crore</td><td>Rs. 2 lakhs</td></tr>
<tr><td>> 10 Crore</td><td>Rs. 5 lakhs</td></tr>
</table>
</td>
<td>2nd time in the same month - 50% escalation<br><br>3rd time in the same month - 100% escalation. In addition to penalty, the relevant authority may decide to disable / suspend the clearing rights of the member in all segments for 1 day in case of 3rd time repeat violation on case-to-case basis and based on the gravity of the violation.</td>
</tr>
</table>

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| • BG created out of clients' funds on or after May 01,2023 or Existing BG created out of clients' funds is not wound down by September 30,2023* | | |

* Along with penalty, direction to take corrective actions and report the same within 7 days shall be issued.

**(B) Funds received after upstreaming cut off time and lying in bank account are not for legitimate purpose**

<table>
<tr><th>Details of contravention</th><th>Disciplinary Action/Charges</th><th>Repeat violation</th></tr>
<tr><td rowspan="2">Funds received after upstreaming cut off time and lying-in bank account are not for legitimate purpose</td><td>Penalty shall be as under<br><table><tr><th>Violation observed during the period from the effective date of circular i.e. September 01,2023</th><th>Penalty per day (Rs.)</th></tr><tr><td>First 30 days</td><td>5000</td></tr><tr><td>Next 31-60 days</td><td>10000</td></tr><tr><td>Next 61-90 days</td><td>15000</td></tr><tr><td>Next 91-120 days</td><td>20000</td></tr></table></td><td>-</td></tr>
<tr><td>Rs. 50000 per day if violation is observed after 120 days from the effective date of circular</td><td>2nd time in the same month- 50% escalation<br><br>3rd time in the same month - 100% escalation. In addition to penalty, the relevant authority may decide to disable / suspend the clearing rights of the member in all segments for 1 day in case</td></tr>
</table>

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| | | |
|---|---|---|
| | | of 3rd time repeat violation on case-to-case basis and based on the gravity of the violation. |

Penalty prescribed in point number (B) mentioned above shall be applicable if value of such funds (i.e received after upstreaming cut off time and lying-in bank account are not for legitimate purpose) exceeds below mentioned threshold:

| **Value of Total Creditors ( i.e. client payables)** | **Thresholds** |
|---|---|
| Member with total creditors value up to 100 crores | Higher of 1% of total creditors and 10 Lakhs |
| Member with total creditors value more than 100 crores up to 500 crores | 1 crore plus 0.5% of incremental value of creditors above 100 crores |
| Member with total creditors value more than 500 crores | 3 crores plus 0.25% of incremental value of creditors above 500 crores |