

**EXTRACT OF AGENDA OF THE 210th MEETING OF THE BOARD OF DIRECTORS OF NATIONAL STOCK EXCHANGE OF INDIA LIMITED TO BE HELD ON THURSDAY, DECEMBER 19, 2024, FROM 10.00 AM AT THE GROUND FLOOR, CONFERENCE ROOM, 'A' WING, EXCHANGE PLAZA, BANDRA-KURLA COMPLEX, BANDRA (EAST), MUMBAI 400 051.**

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**To consider and approve the Proposal to incorporate residual penalty clause for violations where specific penalties are not prescribed**

The Exchange derives its powers to inspect and penalize trading members from Exchange Rules under Chapter IV and Bye laws under Chapter III which are as under:

Chapter IV of Rules (Disciplinary Proceedings, Penalties, Suspension, and Expulsion):  
“(1) **Disciplinary Jurisdiction** : The relevant authority may expel or suspend and/or fine under censure and/or warn and/or withdraw any of the membership rights of a trading member if it be guilty of contravention, non-compliance, disobedience, disregard or evasion of any of the Bye Laws, Rules and Regulations of the Exchange or of any resolutions, orders, notices, directions or decisions or rulings of the Exchange or the relevant authority or of any other Committee or officer of the Exchange authorized in that behalf or of any conduct, proceeding or method of business which the relevant authority in its absolute discretion deems dishonorable, disgraceful or unbecoming a trading member of the Exchange or inconsistent with just and equitable principles of trade or detrimental to the interests, good name or welfare of the Exchange or prejudicial or subversive to its objects and purposes.

**(2) Penalty for Misconduct, Unbusinesslike Conduct and Unprofessional Conduct:**  
In particular and without in any way limiting or prejudicing the generality of the provisions in Rule (1) above, a trading member shall be liable to expulsion or suspension or withdrawal of all or any of its membership rights and/or to payment of a fine and/or to be censured, reprimanded or warned for any misconduct, unbusinesslike conduct or unprofessional conduct in the sense of the provision in that behalf contained herein.”

Chapter III of Bye laws (Regulations)

- (1) *The Board or relevant authority may prescribe Regulations from time to time for the functioning and operations of the Exchange and to regulate the functioning and operations of the trading members of the Exchange.*
- (2) *Without prejudice to the generality of (1) above, the Board or relevant authority may prescribe regulations from time to time, inter alia, with respect to:*
  - (h) *supervision of the market and promulgation of such Business Rules and Codes of Conduct as it may deem fit;*
  - (i) *maintenance of records and books of accounts by trading members as it may*

*deem fit and records as required under the Securities Contracts (Regulation) Act and Rules and SEBI Act;*

*(j) inspection and audit of records and books of accounts*

*(k) prescription, from time to time, and administration of penalties, fines and other consequences, including suspension/ expulsion for defaults or violation of any requirements of the Bye Laws and Regulations and the Rules and Codes of Conduct and criteria for readmission, if any, promulgated thereunder*

Regarding penalties and violations, the Exchange maintains a list of violations and corresponding penalties and publishes the same by way of circulars. These circulars are periodically amended as and when the penalty structure is modified.

Exchange Circular NSE/INSP/53530 dated September 02, 2022 ('Exchange Circular') and other circulars issued by the Exchange prescribing penalties issued from time to time, provide a penalty structure for listed violations. Listed violations include breach of provisions of various circulars issued by the Exchange, delayed mandatory submissions and other non-compliances. Although the Exchange Circulars provide a comprehensive list of violations with corresponding penalties, it is observed that there are certain instances where specific penalty is not prescribed under the Exchange circular/SEBI circular or in the policy framed by Member Committee or any other applicable law, for violations/ non-compliances committed by the trading member(s).

Since specific penalties are not prescribed for such violations, consequent penalizing actions by Exchanges may be susceptible to challenge on the grounds of proportionality and the stakeholders are being penalized without them knowing the penalty in advance.

Schedule I of the Exchange Circular provides that *any penalty not specified in the aforementioned sections will be as per the specific circular issued by the Exchange in this regard*. However, the Exchange Circular does not provide an upper limit specifying to what extent a trading member may be penalized in case of a violation for which penalty is not prescribed.

Section 15HB of the Securities and Exchange Board of India Act, 1992 ('SEBI Act'), prescribes a lower and an upper limit for imposition of penalties for *contravention where no separate penalty has been provided*. Below is an extract of the provision for reference:

"Whoever fails to comply with any provision of this Act, the rules or the regulations made, or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees."

Further, Article 20(1) of the Constitution of India also mandates that *no person can be subjected to a penalty greater than what may be inflicted under the law in force at the time of the commission of the offence*. Although this Article of the Constitution is applicable to criminal offences, the importance of prescription of penalties before penalizing an alleged wrong-doer can be inferred from the provision.

Since, currently, there is no provision in Exchange Byelaws, Rules or Regulations or any circular that prescribes a range or limit on residuary penalties, it is proposed that a narration similar to Section 15HB of the SEBI Act may be incorporated in the Exchange's Regulations (CM & F&O) as a separate Chapter basis the following broad criteria:

The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the contravention.

1. The amount of loss caused to an investor or group of investors as a result of the contravention
2. The repetitive nature of the contravention
3. The cost incurred by the Exchange, if any, due to the violation committed by the Trading Member
4. Impact due to lack of Risk Management systems and processes at the Trading Member

#### Proposed draft of the Regulations

"Trading Members who fail to comply with the Rules, Bye Laws, and Regulations of the Exchange or of any resolutions, orders, notices, directions or decisions or rulings issued/ passed by the Exchange or the relevant authority thereunder for which no separate penalty has been provided, shall be liable to a penal action which may extend from giving 'Warning' to monetary penalty not exceeding Rs. 1 Crore, where the extent of violation is not quantifiable. However, in case the extent of violation is quantifiable the penal action shall be basis the following broad criteria:

1. *The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the contravention.*
2. *The amount of loss caused to an investor or group of investors as a result of the contravention*
3. *The repetitive nature of the contravention*
4. *The cost incurred by the Exchange, if any, due to the violation committed by the Trading Member*
5. *Impact due to lack of Risk Management systems and processes at the Trading Member"*

The Board may kindly consider and approve the same.