

CIRCULAR

SEBI/HO/MRD/TPD-1/P/CIR/2024/124

September 20, 2024

To

All Stock Exchanges
All Clearing Corporations
All Depositories

Dear Sir/ Madam,

Subject: Ease of Doing Business in the context of Standard Operating Procedure for payment of “Financial Disincentives” by Market Infrastructure Institutions (MIIs) as a result of Technical Glitch

1. Para 9.3 of Chapter 2 of SEBI Master Circular for Stock Exchanges and Clearing Corporations dated October 16, 2023, and Para 4.70 of SEBI Master Circular for Depositories dated October 06, 2023, have specified the Standard Operating Procedure (SOP) for handling of technical glitches by Market Infrastructure Institutions (MIIs) and payment of “Financial Disincentives” thereof. The said SOP, *inter-alia*, has provision for automatic trigger of financial disincentive on the MII and individuals i.e. Managing Director (MD) and Chief Technology Officer (CTO) of the MII if predefined criteria in handling of technical glitches are not adhered to.
2. In this regard, SEBI received recommendations/ references to review imposition of Financial Disincentive on individuals from various fora like Committee on “Strengthening Governance of Market Infrastructure Institutions”, Working Group on Ease of Doing Business (EoDB) and Technical Advisory Committee (TAC) of SEBI. Separately, MIIs had also jointly represented that such disincentives on individuals may be reviewed for Ease of Doing Business of MIIs.

3. Pursuant to deliberations, it was noted that operations of MIs are increasingly becoming system driven, with them operating constellation of IT systems (both software and hardware) having dependency on various vendors/ service providers. Further, the test for ascertaining any individual responsibility for a technical glitch would entail ascertaining if there have been any act of omission/commission, including if an MD/CTO did or did not ensure adequate oversight/resources/checks and balances to prevent such glitch reasonably and by definition such a test would require application of mind and assessment. Accordingly, in line with discussions with TAC and other fora mentioned above, it has been decided to restrict imposition of existing financial disincentives to MIs only. Further, SEBI shall provide an opportunity to the concerned MI to make its submission in respect of glitch which shall be considered by SEBI before imposing any financial disincentive as per the instant framework.
4. Accordingly, it has been decided to modify para 9.3 of Chapter 2 of SEBI Master Circular for Stock Exchanges and Clearing Corporations dated October 16, 2023, and Para 4.70 of SEBI Master Circular for Depositories dated October 06, 2023, as follows.
 - 4.1. Para 9.3.4 of aforesaid Master Circular for Stock Exchanges and Clearing Corporations dated October 16, 2023, and Para 4.70.4 of SEBI Master Circular for Depositories dated October 06, 2023, are modified as below:

Considering the criticality of smooth functioning of systems of MIs (as any disruption adversely impacts all classes of investors / market participants as well as the credibility of the securities market), specifying a pre-defined threshold for downtime of systems of MIs becomes desirable. For any downtime or unavailability of services, beyond such pre-defined time, there is a need to ensure that “Financial Disincentive” is paid by the MIs. This will encourage MIs to constantly monitor the performance and efficiency of their systems and upgrade/ enhance their systems etc. to avoid any possibility of technical glitches/ disruption/ disaster and restart their operations expeditiously in the event of glitch/ disruption/ disaster.

4.2. “*Financial disincentive on Managing Director (MD) and Chief Technology Officer (CTO) of MII Separately*” as mentioned in Clauses 3,4,5 of Annexure XII to the Master Circular for Stock Exchanges and Clearing Corporations dated October 16, 2023, and Clauses 3,4,5 mentioned under sub-para 4.70.5.B of the SEBI Master Circular for Depositories dated October 06, 2023, stand deleted.

4.3. The words “*MD and CTO*” in Clause 7 of Annexure XII of the Master Circular for Stock Exchanges and Clearing Corporations dated October 16, 2023, and Clause 7 mentioned under para 4.70.5.B of the SEBI Master Circular for Depositories dated October 06, 2023, stand deleted.

4.4. Clauses 8 and 9 of Annexure XII of the said Master Circular for Stock Exchanges and Clearing Corporations dated October 16, 2023, and Clauses 8 and 9 mentioned under para 4.70.5.B of the SEBI Master Circular for Depositories dated October 06, 2023, have been modified as below:

8. *Further, the MII shall submit a compliance report within 90 days of occurrence of disaster/ business disruption to SEBI providing details of payment of “financial disincentives” including computation of “financial disincentives” as per the SOP and the date when the amount was credited to the aforementioned funds.*

9. *MIIs shall disclose on their websites (and in their respective annual reports), the details of financial disincentive paid by them on account of technical glitches. Further, listed MIIs shall make appropriate disclosures required in terms of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 regarding any financial disincentive imposed by SEBI on account of technical glitch.*

4.5. Further, the following text has been inserted post Clause 2.2 of Annexure XI of the aforesaid Master Circular for Stock Exchanges and Clearing Corporations and Clause 2.2 of para 4.70.5.A of the SEBI Master Circular for Depositories:

2.3 SEBI on identification of the Technical Glitch resulting into Financial Disincentive to the MIIs, or upon receipt of the information of any such instance shall provide an opportunity to the concerned MIIs to make their submissions in respect of the facts of the case.

2.4 MIIs shall carry out internal examination pertaining to occurrence of technical glitches to ascertain individual accountability and take appropriate action including suitable recording and reckoning in the performance appraisal of those individuals. SEBI would retain the right to initiate enforcement action against the individuals at the MII, if there is sufficient ground to do so.

5. This amendment shall come into effect from the date of this circular.
6. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
7. This circular is available on SEBI website at www.sebi.gov.in under the categories “Legal Framework” and “Circulars”.

Yours faithfully,

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