

## Section 10

### DEFAULT HANDLING OF CCP SETTLED TRADES

***Section 10 shall be applicable in respect of CCP Settled Trades, except Market Contracts executed on the Buy-in Board of the CSE.***

#### 10.1 Defaults in Settlement of Trades

##### 10.1.1 Default of Payment in a respect of a Trade

- (a) In the event a Clearing Member fails to make available on a particular Settlement Date, sufficient funds for the full settlement of the buy Trades of the Clearing Member to be settled on such Settlement Date, the Clearing House shall:
  - (i) utilize the collateral provided by such Clearing Member to settle all such Trades in full by making payment to the selling Clearing Members who have met their obligations with regard to the delivery of Securities under such Trades; and
  - (ii) ***if the collateral provided by the Clearing Member is not sufficient to settle all Trades in full, utilize the assets of the Contributory Guarantee Fund (which includes monies that may be called upon under bank guarantees provided to the Contributory Guarantee Fund by Clearing Members) to meet the shortfall.***

***A Clearing Member who fails to make sufficient funds available for the full settlement of the buy Trades on a particular Settlement Date, and whose Market Collateral furnished to the Clearing House is insufficient to satisfy the settlement obligations in full, may obtain funding from the Settlement Guarantee Fund established by the SEC and the CSE which is referred to in Rule 10.3 below to meet outstanding settlement obligations.***

- (b) In the event the buying Clearing Member has identified the defaulted Trade with regard to which there is an insufficiency of funds referred to in Rule 10.1.1 (a) above by 09.30 hours on the Settlement Date, the Securities relating to such Trade shall, by arrangement with the CDS, be transferred on the Settlement Date to a suspense account opened and maintained in the name of the Clearing House with the CDS.
- (c) ***In the event the Clearing House utilizes any assets of the Contributory Guarantee Fund in terms of Rule 10.1.1 (a) above to meet any shortfall in funds for the full settlement of the buy Trades of any Clearing Member, the Clearing Member shall be liable to (aa) return to the Contributory Guarantee Fund the entire value of the assets of the Contributory Guarantee Fund which were utilized in terms of Rule 10.1.1 (a) above, and (bb) reimburse to the Clearing House, any expenses incurred by the Clearing House in the settlement of Trades of the defaulting Clearing Member including in meeting any shortfall of funds for the settlement of such Trades , within such period notified in writing by the Clearing House.***

***The Clearing House shall also, without prejudice to the obligations of the Clearing Member in terms of this Rule 10.1.1(c), be entitled to sell all or part of the Securities relating to the defaulted Trade on the CSE which are transferred to the suspense account referred to in Rule 10.1.1(b) and utilize the proceeds of such sale to:***

- (i) meet any further shortfall in funds required for the full settlement of the buy Trades of the Clearing Member referred to in Rule 10.1.1(a) remaining after the steps taken by the Clearing House and/or the Clearing Member in terms of Rule 10.1.1(a) above;***
  - (ii) return to the Contributory Guarantee Fund the entire value of the assets of the the Contributory Guarantee Fund utilized in terms of Rule 10.1.1(a) above; and***
  - (iii) reimburse to the Clearing House, any expenses incurred by the Clearing House in the settlement of Trades of the defaulting Clearing Member including in meeting any shortfall of funds for the settlement of such Trades.***
- (d) Any proceeds of sale of Securities referred to in Rule 10.1.1(c) above, remaining with the Clearing House after the utilization of such proceeds for the purposes referred to in items (i), (ii) and (iii) of Rule 10.1.1(c) above, may be utilized by the Clearing House to ensure the due settlement by the defaulting Clearing Member of (i) any other sums payable by such Clearing Member to the Clearing House, or (ii) sums payable by such Clearing Member to the CDS, CSE and SEC, including penalties, fees, commissions, charges and/or dues payable by such Clearing Member as applicable. Any Securities remaining in the suspense account after a sale referred to in Rule 10.1.1(c) above shall, by arrangement with the CDS, be transferred to the defaulting buyer's Client Account in the CDS on such date determined by the Clearing House at its absolute discretion.***
- (e) Notwithstanding any provision to the contrary contained in these Rules, in the event, the defaulted buy Trade that has resulted in the insufficiency of funds referred to in Rule 10.1.1(a) above is not identified by 9.30 hours on the Settlement Date, the Securities relating to all buy Trades of the buying Clearing Member of the defaulted buy Trade, to be settled on such Settlement Date shall not be transferred to the Client Accounts of the buyers under such Trades on the Settlement Date but shall, by arrangement with the CDS, instead be transferred to a suspense account opened and maintained in the name of the Clearing House with the CDS. Such Securities shall remain in the said suspense account until the defaulted buy Trade is identified by the Clearing House. Once the defaulted buy Trade is identified (the Securities relating to which shall be dealt with in the manner set forth in Rules 10.1.1(c) and 10.1.1(d) above), the Securities relating to the buy Trades that are not in default shall, by arrangement with the CDS, be transferred to the relevant Client Accounts within [two (2)] Market Days from the identification of the defaulted buy Trade.***

### 10.1.2 Default of Delivery of Securities

- (a) If the number of Securities held in the Cleared Balance of the Client Account of the seller maintained in the CDS through the seller's Depository Participant is insufficient to settle a Trade in full on the Settlement Date, such Trade shall be settled to the extent possible by the delivery of the entirety of the Securities held in such Client Account to the buyer's Client Account. The delivery shall take place by the debiting of such Securities from the seller's Client Account in the CDS and the crediting of the Securities to the buyer's Client Account upon the settlement of funds in respect of the Securities available in the seller's Client Account for delivery to the buyer's Client Account as aforesaid.
- (b) Where the selling Clearing Member has failed to deliver all or part of the Securities required for settlement of a Trade on the Settlement Date resulting in a shortfall in the required number of Securities in the seller's Client Account to fully settle the Trade (even where such shortfall was due to the unavailability of Securities for purchase on the Buy-In Board and/or any other reason), the buyer shall be entitled to receive compensation in the form of cash for the shortfall in the Securities required for the full settlement of the Trade. Such compensation shall be computed based on a formula to be determined by the Clearing House and notified to the Clearing Members from time to time. The compensation that the buyer is entitled to receive for a shortfall in Securities shall be included by the Clearing House on a revised Settlement Schedule to be issued to the selling Clearing Member at 15.00 hours on T+1 and shall be paid by such selling Clearing Member to the settlement bank by 9:30 hours on the Settlement Date to facilitate payment thereof by the Clearing House to the buying Clearing Member by 10.30 hours on the Settlement Date.
- (c) Where the selling Clearing Member has failed to deliver all or part of the Securities required for settlement of a Trade on the Settlement Date and there is a shortfall in the required number of Securities in the seller's Client Account to fully settle the Trade on the Settlement Date, the buyer shall, in addition to and over and above the compensation referred to in Rule 10.1.2(b), also be entitled to be compensated for entitlements accruing to those Securities in shortfall arising from any corporate actions relating to such Securities that the buyer, as the recipient of such Securities would have become entitled to and/or received but for the delivery failure.

The method of computation of compensation payable in respect of each such corporate action shall be determined by the Clearing House and notified to the Clearing Members from time to time and published on the website of the Clearing House. Such compensation shall be made available by the selling Clearing Member to the settlement bank on the applicable date as communicated to the Clearing Members by the Clearing **House to facilitate payment thereof by the Clearing House to the buying Clearing Member on the same day.**

- (d) The compensation payable in terms of this Rule 10.1.2 as computed in terms of the formula determined by the Clearing House shall be deemed to be a genuine pre-estimate of the losses and damages of the buyer arising from the failure to deliver the relevant Securities.
- (e) The payment of the compensation referred to in this Rule 10.1.2 in full to the buying Clearing Member shall be a full and complete discharge of (i) the obligations of the seller, and (ii) the obligations of the Clearing House, in respect of a Trade referred to in this Rule 10.1.2.

- (f) Upon receipt of the compensation in terms of this Rule 10.1.2, the buyer's Clearing Member shall ensure that the compensation payable to the buyer is credited to the bank account of the buyer (i) on the Settlement Date, in the case of compensation referred in Rule 10.1.2(b) and (ii) on the applicable date/s as determined and communicated to the Clearing Members by the Clearing House, in the case of compensation referred to in Rule 10.1.2(c).

## **10.2 Liabilities of a Clearing Member in respect of defaulted Trades**

### **10.2.1 Default of fund settlement**

If a Clearing Member defaults in settlements of funds in respect of any Trade on a particular Settlement Date in terms of Rule 9.1.1 for any reason whatsoever, including any failure by the buyer/s to make sufficient Cleared Funds available to the Clearing Member, ***the Clearing House shall initiate the following action against such Clearing Member, regardless of whether such Trades have been settled in full by the Clearing House by following the procedure set out in Rule 10.1.1 above:***

#### ***(i) Imposition of fines***

***The Clearing House shall impose fines as set out below:***

<b><i>Instance of Non-Compliance</i></b>	<b><i>Fine (Rs.)</i></b>
<b><i>On the first (1<sup>st</sup>) Occurrence</i></b>	<b><i>The Clearing House shall charge a fine of Rupees Five Million (Rs.5,000,000/-).</i></b>
<b><i>On the second (2<sup>nd</sup>) Occurrence within one (1) year from the date of the first (1<sup>st</sup>) occurrence</i></b>	<b><i>The Clearing House shall charge a fine of Rupees Seven Million Five Hundred Thousand (Rs. 7,500,000/-).</i></b>
<b><i>On the third (3<sup>rd</sup>) Occurrence within one (1) year from the date of the first (1<sup>st</sup>) Occurrence</i></b>	<b><i>The Clearing House shall charge a fine of Rupees Ten Million (Rs. 10,000,000/-);</i></b>

***(ii) In addition to the imposition of fines in terms of Rule 10.2.1 (i),*** the Clearing House shall take the following action against the Clearing Member in enforcement of the provisions of these Rules:

- (a) The Clearing Member shall be prohibited from clearing and settling any Trades on behalf of its Client/s and on its own account, for a period of five (05) Market Days. The Clearing House shall notify the CSE and the CDS of such prohibition, with immediate notice to the market.

Provided however, the Clearing House shall clear or settle Trades for sale of Securities of the Clearing Member subject to such Market Contracts

being carried out with a Cleared Balance on its Client/s account/s and its own account.

- (b) The Clearing House shall publish a notice in all three (03) languages in national newspapers stating the non-compliance with the applicable Rules and the enforcement action taken by the Clearing House in respect of the Clearing Member concerned.
- (c) If such Clearing Member meets its outstanding payment obligations by the expiry of the fifth (5<sup>th</sup>) Market Day period referred to in Rule 10.2.1(ii) (a), the prohibition on the Clearing Member referred to in Rule 10.2.1(ii)(a) will be lifted immediately upon payment.
- (d) If such Clearing Member fails to meet its outstanding settlement obligations by the expiry of the fifth (05<sup>th</sup>) Market Day period referred to in Rule 10.2.1(ii)(a), the Clearing House shall initiate disciplinary action against the Clearing Member in terms of Section 4 of these Rules.
- (e) The Clearing House shall publish a notice in all three (03) languages in national newspapers notifying the public of the enforcement action taken in respect of the Stockbroker/Stock Dealer Clearing Member concerned.
- (f) Notwithstanding the enforcement action referred to herein, the Clearing Member shall continue to honour its outstanding obligations with regard to fund settlement under the defaulted Trades and all other outstanding Trades.
- (g) The Clearing House shall notify the CSE, the CDS and the SEC regarding the disciplinary action initiated against the Clearing Member in terms of Section 4 of these Rules and publish a notice in its website and cause the publication of a notice on the websites of the CSE and the CDS stating the noncompliance with the applicable Rule and the fact that disciplinary action is initiated against the Clearing Member.

#### **10.2.2 Defaults in delivery of Securities**

If a Clearing Member fails to ensure that the required number of Securities are made available in the seller/s Client Account with the CDS in terms of Rule 9.4.2 above for the full settlement of a sell Trade on the Settlement Date, the Clearing House shall initiate the following action against such Clearing Member, regardless of whether the Clearing Member has complied with its obligations under Rules 10.1.2(b) and 10.1.2(c) with regard to payment of compensation to the buyer:

(i) Imposition of fines:

***The Clearing House shall impose fines as set out below:***

<b><i>Instance of Non-Compliance</i></b>	<b><i>Fine (Rs.)</i></b>
<b><i>On the first (1<sup>st</sup>) Occurrence</i></b>	<b><i>The Clearing House shall charge a fine of Rupees One Million Five Hundred Thousand (Rs.1,500,000/-) .</i></b>
<b><i>On the second (2<sup>nd</sup>) Occurrence within one (1) year from the date of the first (1<sup>st</sup>) occurrence</i></b>	<b><i>The Clearing House shall charge a fine of Rupees Two Million (Rs. 2,000,000/-).</i></b>
<b><i>On the third (3<sup>rd</sup>) Occurrence within one (1) year from the date of the first (1<sup>st</sup>) Occurrence</i></b>	<b><i>The Clearing House shall charge a fine of Rupees Three Million (Rs. 3,000,000/-);</i></b>

(ii) Other Enforcement Action

In addition to the fines stipulated in Rule 10.2.2 (i), if a Clearing Member fails to ensure that the required number of Securities are made available in the seller's Client Account with the CDS in terms of Rule 9.4.2 above for the full settlement of a sell Trade on the Settlement Date on four (4) separate occasions within any period of one (1) year, or five (5) separate occasions within any period of two (2) years, the Clearing House shall;

- (a) prohibit such Clearing Member from carrying out any clearing and settlement functions through the Clearing House on behalf of its Clients and on its own account, for a period of three (3) Market Days and notify the CDS thereof; and
- (b) publish in its website and cause the publication of a notice on the websites of the CSE and the CDS stating the non-compliance with the applicable Rules and the enforcement action taken by the Clearing House against the Clearing Member.

### **10.3 Utilization of the Settlement Guarantee Fund**

- (i) In the event of a default by a Clearing Member of its payment obligations under these Rules and the Market Collateral furnished by such Clearing Member to the Clearing House is insufficient to satisfy the settlement obligations of the Clearing Member, such Clearing Member may obtain funding from the Settlement Guarantee Fund established by the SEC and the CSE to meet outstanding settlement obligations, subject to the conditions stipulated by the Settlement Guarantee Fund.

- (ii) If a Clearing Member obtains funding from the Settlement Guarantee Fund referred to in this Rule 10.3, the Clearing Member shall replenish the said Fund within the time period to be determined by the Clearing House in consultation with the SEC.
- (iii) For the avoidance of doubt, any refusal or rejection by the Settlement Guarantee Fund to provide funding to the Clearing Member pursuant to a request being made therefor by the Clearing Member, for any reason whatsoever, shall not relieve the Clearing Member from its outstanding settlement obligations in any manner whatsoever.