

CIRCULAR

SEBI/HO/MIRSD/DPIEA/CIR/P/2020/186

September 28, 2020

To,
All Recognised Stock Exchanges
All Recognised Clearing Corporations

Madam/Sir,

Subject: Recovery of assets of defaulter member and recovery of funds from debit balance clients of defaulter member for meeting the obligations of clients / Stock Exchange / Clearing Corporation

1. SEBI vide circular SEBI/HO/MIRSD/DOP/CIR/P/2018/153 dated December 17, 2018 had specified Early Warning Mechanism to prevent diversion of client's securities and consequential action(s) to be initiated by the Stock Exchanges ("SEs"), Clearing Corporations ("CCs") and Depositories were also specified in the said Circular.
2. Further, SEBI vide circular SEBI/HO/MIRSD/DPIEA/CIR/P/2020/115 dated July 01, 2020 ("SOP Circular") had specified Standard Operating Procedure in the cases of Trading Member ("TM") / Clearing Member ("CM") leading to default. SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 and the SOP Circular have inter alia specified that all SE/CC shall initiate the process to settle debit balance client accounts by selling their securities if such clients fail to clear their debit balance after giving notice period for 5 days.
3. As per Section 2(j) of the Securities Contracts (Regulation) Act, 1956 ("SCRA") a stock exchange is an entity which is established for the purposes of assisting, regulating or controlling the business of buying, selling or dealing in securities. A Stock Exchange is recognised by SEBI in terms of Section 4 of SCRA. In terms of

provisions of SCRA, a recognised stock exchange acts as a first level regulator in the securities market, in so far as trading on its platform by its members. In terms of Section 9 of SCRA, a recognised stock exchange has been empowered to frame bye laws for the regulation and control of contracts in securities entered into by its members. Sub-section (2) of Section 9, lays down a list of matters relating to different aspects of contract in securities, for which Stock Exchanges can make bye laws. These bye laws inter alia provide for admission of members, listing of securities, declaring a member defaulter, resolution of disputes between member and client through arbitration and annulment of trade, etc. These provisions also apply to a Clearing Corporation in terms of Section 8A of SCRA.

4. In the case of default by TM/CM, it has been noted that in certain cases there is shortfall of funds/securities with defaulter member to meet the obligation of clients / SE / CC. The bye-laws of SE/CC provide for the procedure for declaring a member as defaulter when, amongst other reasons, the member is not able to fulfil its obligations and also provide for initiation of proceedings in a court of law whenever a member is declared as a defaulter and there is a shortfall of funds/securities with the defaulter member.
5. The SE/CC are advised to initiate suitable actions for liquidating the assets (movable and immovable) of defaulter member including that of debit balance clients (to the extent of debit balance), within six months of declaration of defaulter, for recovery of the assets not in possession of the SE/CC, before appropriate court of law.
6. Stock Exchanges and Clearing Corporations are further advised to:
 - a) draw attention of the provisions of this circular to the notice of their members and participants, as the case may be, and disseminate the same on their websites;
 - b) make amendments to their bye-laws, rules, regulations wherever necessary;
 - c) communicate to SEBI, the status of the implementation of the provisions of this circular in their monthly development report.
7. This circular is being issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 read with Section 10 of

the Securities Contracts (Regulation) Act, 1956 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Yours faithfully,

Rachna Anand
General Manager
Market Intermediaries Regulations and Supervision Department