
NATIONAL COMMODITY & DERIVATIVES EXCHANGE LIMITED

Circular to all the members of the Exchange

Circular No. : NCDEX/COMPLIANCE-109/2023

Date : October 16, 2023

Subject : Amendment to the Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) /Obligations of Securities Market Intermediaries under the Prevention of Money-laundering Act, 2002 and Rules framed there under

The Securities and Exchange Board of India has issued a circular on “Amendment to the Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) /Obligations of Securities Market Intermediaries under the Prevention of Money-laundering Act, 2002 and Rules framed there under”

A copy of the circular no. SEBI/HO/MIRSD/SEC-FATF/P/CIR/2023/0170 dated October 13, 2023 is attached as Annexure for information.

Members are hereby advised to take note of the contents of the above referred circular and ensure compliance with the same.

For and on behalf of

National Commodity & Derivatives Exchange Limited

Smita Chaudhary

Sr. Vice President - Compliance

For further information/ clarifications, please contact:

1. Customer Service Group on toll free number: 1800 266 2339
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CIRCULAR**SEBI/HO/MIRSD/SEC-FATF/P/CIR/2023/0170****October 13, 2023****To,**

- 1. All Intermediaries registered with the Securities and Exchange Board of India under Section 12 of the Securities and Exchange Board of India Act, 1992**
- 2. Stock Exchanges**

Dear Sir/Madam,

Subject: Amendment to the Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) /Obligations of Securities Market Intermediaries under the Prevention of Money-laundering Act, 2002 and Rules framed there under

1. Please refer to the Master Circular reference number SEBI/HO/MIRSD/MIRSD-SEC-5/P/CIR/2023/022 dated February 03, 2023 and amendments thereto dated June 16, 2023 on the captioned subject issued by the Securities and Exchange Board of India (SEBI).
2. The Government of India has notified Prevention of Money-laundering (Maintenance of Records) (Second Amendment) Rules, 2023, which is published in the Official Gazette on September 4, 2023 ([Notification G.S.R. 652\(E\)](#)). The said amendments came into force on the date of its publication i.e. with effect from September 4, 2023.
3. In view of the afore-referred amendments to the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 and to further enhance the effectiveness of the AML/CFT framework, certain provisions of the aforesaid Master Circular shall stand modified as mentioned below: -

- 3.1. In Paragraph 6, the following paragraph shall be inserted at the end, namely:-

If the host country does not permit the proper implementation of AML/CFT measures consistent with the home country requirements, financial groups shall be required to apply appropriate additional measures to manage the ML/TF risks, and inform SEBI.

- 3.2. After paragraph 7A and before paragraph 8, the following paragraph “7B” shall be inserted, namely: -

7B. Financial groups shall be required to implement group wide programmes for dealing with ML/TF, which shall be applicable, and appropriate to, all branches and majority owned subsidiaries of the financial group as under:

- a. policies and procedures for sharing information required for the purposes of CDD and ML/TF risk management;
- b. the provision, at group level compliance, audit, and/or AML/CFT functions, of customer, account, and transaction information from branches and subsidiaries when necessary for AML/CFT purposes. This shall include information and analysis of transactions or activities which appear unusual (if such analysis was done);

similar provisions for receipt of such information by branches and subsidiaries from these group level functions when relevant and appropriate to risk management; and

- c. adequate safeguards on the confidentiality and use of information exchanged, including safeguards to prevent tipping-off.

- 3.3. In Paragraph 11, after sub-paragraph (ii), the following proviso shall be inserted, namely:-

Provided that in case of a Trust, the reporting entity shall ensure that trustees disclose their status at the time of commencement of an account based relationship.

3.4. In Paragraph 11, sub-paragraph (iii) shall be substituted with the following, namely:-

Identifying beneficial ownership and control, i.e. determine which individual(s) ultimately own(s) or control(s) the client and/or the person on whose behalf a transaction is being conducted. The beneficial owner shall be determined as under-

- a) **where the client is a company**, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

Explanation:- For the purpose of this sub-clause:-

- i. "Controlling ownership interest" means ownership of or entitlement to more than ten per cent of shares or capital or profits of the company;
- ii. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

- b) **where the client is a partnership firm**, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of/ entitlement to more than ten percent of capital or profits of the partnership or who exercises control through other means.

Explanation:- For the purpose of this clause:-

"Control" shall include the right to control the management or policy decision;

- c) **where the client is an unincorporated association or body of individuals**, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen per cent.

of the property or capital or profits of such association or body of individuals;

- d) where no natural person is identified under (a) or (b) or (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
- e) **Where the client is a trust**, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with ten per cent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership; and
- f) where the client or the owner of the controlling interest is an entity listed on a stock exchange in India, or it is an entity resident in jurisdictions notified by the Central Government and listed on stock exchanges in such jurisdictions notified by the Central Government, or it is a subsidiary of such listed entities, it is not necessary to identify and verify the identity of any shareholder or beneficial owner of such entities.
- g) **Applicability for foreign investors:** Registered intermediaries dealing with foreign investors' may be guided by SEBI Master Circular SEBI/HO/AFD-2/CIR/P/2022/175 dated December 19,2022 and amendments thereto, if any, for the purpose of identification of beneficial ownership of the client;
- h) The Stock Exchanges and Depositories shall monitor the compliance of the aforementioned provision on identification of beneficial ownership through half yearly internal audits. In case of mutual funds, compliance of the same shall be monitored by the Boards of the Asset Management Companies and the Trustees and in case of other registered intermediaries, by their Board of Directors.

3.5. In paragraph 11, sub-paragraph (viii) shall be substituted with the following, namely:-

Registered intermediaries shall periodically update all documents, data or information of all clients and beneficial owners collected under the CDD process such that the information or data collected under client due diligence is kept up-to-date and relevant, particularly for high risk clients.

- 3.6. After paragraph 11 and before paragraph 12, the following paragraph shall be inserted, namely:-

“11A. No transaction or account-based relationship shall be undertaken without following the CDD procedure.”

- 3.7. In paragraph 12, in sub-paragraph (iii), clause (e) shall be substituted with the following, namely:-

Politically Exposed Persons” (PEPs). PEP shall have the same meaning as given in clause (db) of sub-rule (1) of rule 2 of the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005. The additional norms applicable to PEP as contained in the subsequent paragraph 14 of the master circular shall also be applied to the accounts of the family members or close relatives / associates of PEPs;

- 3.8. In paragraph 12, in sub-paragraph (iii), clause (f), the following paragraph shall be inserted at the end, namely:-

The intermediary shall specifically apply EDD measures, proportionate to the risks, to business relationships and transactions with natural and legal persons (including financial institutions) from countries for which this is called for by the FATF.

- 3.9. After paragraph 41 and before paragraph 42, the following paragraphs shall be inserted, namely: -

41A. Where the registered entity does not have records of the identity of its existing clients, it shall obtain the records forthwith, failing which the registered intermediary shall close the account of the clients after giving due notice to the client.

Explanation: For this purpose, the expression “records of the identity of clients” shall include updated records of the identification date, account files and business correspondence and result of any analysis undertaken under

rules 3 and 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005.

- 3.10. In paragraph 60, the following paragraph shall be inserted at the end, namely:-

Confidentiality requirement does not inhibit information sharing among entities in the group.

- 3.11. Paragraph 61 shall be substituted with the following, namely: -

Appointment of a Principal Officer: To ensure that the registered intermediaries properly discharge their legal obligations to report suspicious transactions to the authorities, the Principal Officer would act as a central reference point in facilitating onward reporting of suspicious transactions and for playing an active role in the identification and assessment of potentially suspicious transactions and shall have access to and be able to report to senior management at the next reporting level or the Board of Directors. Names, designation and addresses (including email addresses) of 'Principal Officer' including any changes therein shall also be intimated to the Office of the Director-FIU-IND. In terms of Rule 2 (f) of the PML Rules, the definition of a Principal Officer reads as under:

Principal Officer means an officer designated by a registered intermediary; Provided that such officer shall be an officer at the management level.

4. This circular is being issued with the approval of the Competent Authority
5. This Circular is available at www.sebi.gov.in under the link "Legal ➡️ Circulars".

Yours faithfully,

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