



OTC FX FUTURES MARKET INFRACTIONS & PENALTIES GUIDE

August 2018

1. Introduction

The table below provides a non-exhaustive list of the infractions with respect to the transactions conducted by Dealing Member (Banks) (“DMBs”) in the OTC FX Futures market as well as their attendant penalties. In its capacity as a self-regulatory organisation, FMDQ OTC Securities Exchange (“FMDQ” or the “OTC Exchange”) is authorised to prescribe regulation to govern the activities on its platform and outline penalties for non-compliance with the regulation. Such penalties may include the following, *inter alia*:

- (i) Warning letters
- (ii) Public censure
- (iii) Fines
- (iv) Suspension from the OTC FX Futures market
- (v) Expulsion from the OTC FX Futures market
- (vi) Non-consideration for the FMDQ GOLD Awards
- (vii) Report to the regulatory and enforcement authorities

There are a number of factors which the OTC Exchange takes into account when considering what disciplinary action to take in relation to an infraction. These are set out below:

- The severity, size and nature of the infraction
- How the infraction came to light
- The actual or potential market impact of the infraction, any other repercussions
- The extent to which the infraction was deliberate, negligent or reckless
- The general compliance history of the Member and specific history regarding the infraction in question
- The responsiveness and conduct of the Member in relation to the matter under investigation

FMDQ may at its discretion vary the penalties structure outlined below to adapt to the circumstances of any particular case, taking the severity of the infraction or other factors outlined above into consideration.

This document shall be read in conjunction with the OTC FX Futures Market Operational Standards (the “Standards”), OTC FX Futures Market Framework (the “Framework”), Market Bulletins (“MBs”) and such other regulation as may be prescribed by the OTC Exchange from time to time. In line with market dynamics and best practices, this Infractions & Penalties Guide may be reviewed from time to time.

2. Infractions & Penalties

S/N	Infraction	Reference	Penalty
Part A: Eligibility for Access to OTC FX Futures Market			
1.	Execution of OTC FX Futures contract with a Client that has no eligible underlying transaction (“EUT”)	Section 1.1 & 2.2 - Standards	<i>i. First time:</i> Notice of Infraction to the Chief Compliance Officer and Treasurer with MD/CEO in copy <i>ii. Second time:</i> Fine of ₦500,000.00 (five hundred thousand Naira) and ₦50,000.00 (fifty thousand Naira) for each business day the infraction subsists <i>iii. Third time:</i> Fine of ₦1,000,000.00 (one million Naira) and ₦100,000.00 (one
2.	Execution of OTC FX Futures contract with a Client on the basis of expired documents or matured underlying transactions	MB-13	
3.	Execution of OTC FX Futures contracts with foreign portfolio investors (“FPIs”) and foreign direct investors (“FDIs”) exceeding the foreign currency amount imported into Nigeria ¹	MB-16	

¹ Applicable to OTC FX Futures contracts executed after Wednesday, October 26, 2016

S/N	Infraction	Reference	Penalty
4.	Purchase of OTC FX Futures contracts to hedge Settlement Amount gained by FPIs and FDIs ¹	MB-16	<p>hundred thousand Naira) for each business day the infraction subsists</p> <p>iv. Fourth time: Suspension from the OTC FX Futures market for three (3) months or such other period as may be prescribed by the OTC Exchange</p> <p>v. Subsequent offences may lead to expulsion of the defaulting DMB from the OTC FX Futures market</p> <p><i>Notwithstanding the above-outlined penalties, where non-compliance of any of these infractions is established, the DMB shall be required to:</i></p> <p>i. Forfeit any Settlement Amount gained on the OTC FX Futures contract; or</p> <p>ii. Where the contract is at a loss, have the Settlement Amount debited from its CBN operating account</p>
5.	Purchase of OTC FX Futures contract to hedge returns earned on foreign portfolio investments ¹	MB-16	
6.	The purchase or sale of an OTC FX Futures contract previously sold to a Client falling outside of the exceptions outlined in section 6 of the Standards	Section 1.12 - Standards	
7.	Purchase of an OTC FX Futures contract which matures less than one (1) month after the maturity of the forward contract used to access the OTC FX Futures market	MB-20	
8.	Execution of multiple OTC FX Futures contracts exceeding the full value of the underlying transaction	Section 1.18	
Part B: Settlement			
9.	With respect to settlement, application of Spot FX or FX Forwards purchased: i. For one (1) month OTC FX Futures contracts, before ten (10) business days to maturity ii. For OTC FX Futures contracts longer than one (1) month, before twenty (20) business days to maturity	Section 1.13 - Standards MB-18A	<p>i. First time: Notice of Infraction to the Chief Dealer with Chief Compliance Officer in copy</p> <p>ii. Second time: Notice of Infraction to the Chief Compliance Officer and Treasurer with MD/CEO in copy</p> <p>iii. Third time: Fine of ₦500,000.00 (five hundred thousand Naira) and ₦50,000.00 (fifty thousand Naira) for each business day the infraction subsists</p> <p>iv. Fourth time: Fine of ₦1,000,000.00 (one million Naira) and ₦100,000.00 (one hundred thousand Naira) for each business day the infraction subsists</p> <p>vi. Fifth time: Suspension from the OTC FX Futures market for three (3) months or such other period as may be prescribed by the OTC Exchange</p> <p>v. Subsequent offences may lead to expulsion of the defaulting DMB from the OTC FX Futures market</p> <p><i>Notwithstanding the above-outlined penalties, where non-compliance of any of these infractions is established, the DMB shall be required to:</i></p> <p>i. Forfeit any Settlement Amount gained on the OTC FX Futures contract; or</p>
10.	Application of FX Forwards purchased with tenors exceeding one (1) month for the settlement of outstanding FX obligations on attendant OTC FX Futures contracts	MB-18A	
11.	Use of rolled over one (1) month FX Forward for the settlement of outstanding FX obligation on attendant OTC FX Futures contracts	MB-18A	

S/N	Infraction	Reference	Penalty
			<p>ii. Where the contract is at a loss, have the Settlement Amount debited from its CBN operating account</p>
12.	Failure by the Futures DMB to transfer the Settlement Amount to the Client as at when due	Section 4.2 (ii) & 9.4 (ii) - Standards	<p>i. First time: Fine of ₦500,000.00 (five hundred thousand Naira) and ₦50,000.00 (fifty thousand Naira) for each business day the infraction subsists</p> <p>ii. Second time: Fine of ₦1,000,000.00 (one million Naira) and ₦100,000.00 (one hundred thousand Naira) for each business day the infraction subsists</p> <p>vii. Third time: Suspension from the OTC FX Futures market for three (3) months or such other period as may be prescribed by the OTC Exchange</p> <p>iii. Subsequent offences may lead to expulsion of the defaulting DMB from the OTC FX Futures market</p> <p><i>Notwithstanding the above-outlined penalties, where non-compliance of this infraction is established, the DMB shall be required to pay a Default Charge at double the daily O/N NIBOR (i.e. daily O/N NIBOR x 2) from the date the default is established (i.e. two (2) business days after the agreed settlement date) and for every subsequent day the transaction remains unsettled to the Client</i></p>
13.	With respect to Naira-based remittance EUTs, failure by the Futures DMB to report the externalisation of the Settlement Amount by the Client on FFTRS or such other FMDQ-advised media	MB-25	<p>i. First time: Notice of Infraction to the Chief Dealer with Chief Compliance Officer, in copy</p> <p>ii. Second time: Notice of Infraction to the Chief Compliance Officer and Treasurer with MD/CEO in copy</p>
14.	Failure by the Futures DMB to update the FFTRS or such other FMDQ-advised medium with all the requisite information, and complete documentation required for the application of the Spot FX transaction for the purpose of fulfilling the Client's obligation under the eligible underlying transaction (including but not limited to information obtained from the Spot FX DMB, where the Futures DMB is different from the Spot FX DMB).	Section 4.2 (i) - Standards	<p>iii. Third time: Fine of ₦250,000.00 (two hundred and fifty thousand Naira) and ₦25,000.00 (twenty-five thousand Naira) subsequently for each business day the infraction subsists</p> <p>iv. Fourth time: Fine of ₦500,000.00 (five hundred thousand Naira) and ₦50,000.00 (fifty thousand Naira) subsequently for each business day the infraction subsists</p>
15.	Failure by the Trade DMB to update the FX utilisation date on the FFTRS or such other FMDQ-advised medium within five (5) business days of the execution of the Spot FX transaction	Section 4.6 - Standards	<p>viii. Fifth time: Suspension from the OTC FX Futures market for three (3) months or such other period as may be prescribed by the OTC Exchange</p>
16.	Failure by the Trade DMB to update the FFTRS or such other FMDQ-advised media of the	Section 4.7 - Standards	

S/N	Infraction	Reference	Penalty
	cancellation or partial utilisation of an LC in the manner provided in section 4.7 of the Standards		
17.	Failure to provide all relevant information (including the status of the relevant Spot FX transactions) on the FFTRS or such other FMDQ-advised media <i>Applicable to EUTs that are not exempt from the requirement to provide evidence of Spot FX</i>	Section 1.3 - Standards	
18.	Failure to provide the report on the utilisation of the attendant Spot FX transactions on the FFTRS or such other FMDQ-advised medium	Section 1.3 - Standards	
19.	Failure by Trade DMB to provide evidence of CCI validity at maturity for exempt EUTs	Section 6.1 (i) - Standards	
20.	Failure to update the FFTRS with date of the release of Clients Settlement Amounts upon validation of CCIs for exempt transactions	Section 6.1 (i) - Standards	
Part C: Margining			
21.	Failure to update the FFTRS or such other FMDQ-advised medium with details of the immediate release of Clients' margins on maturity of their OTC FX Futures contracts	Section 4.2 (iii) - Standards	<i>i. First time:</i> Fine of ₦500,000.00 (five hundred thousand Naira) and ₦50,000.00 (fifty thousand Naira) subsequently for each business day the infraction subsists <i>ii. Second time:</i> Fine of ₦1,000,000.00 (one million Naira) and ₦100,000.00 (one hundred thousand Naira) subsequently for each business day the infraction subsists <i>iii. Third time:</i> Suspension from the OTC FX Futures market for for three (3) months or such other period as may be prescribed by the OTC Exchange <i>iv. Subsequent offences may lead to expulsion of the defaulting DMB from the market</i>
22.	Failure to clearly delineate Client's Collateral Margins by the domiciliation of the applicable margins into "Clients' Collateral Margin Accounts"	MB-14	
23.	Failure to clearly delineate margin liabilities due to the Clients in accounts labelled "Clients' Margin Accounts"	MB-14	
24.	Failure to effect release of Clients' margins on the date of maturity of their OTC FX Futures contracts	MB-18A	

S/N	Infraction	Reference	Penalty
			Notwithstanding the above-outlined penalties, where non-compliance of any of these infractions is established, the DMB shall be required to pay a Default Charge at double the daily O/N NIBOR (i.e. daily O/N NIBOR x 2) from the date the default is established (i.e. two (2) business days after the agreed settlement date) and for every subsequent day the transaction remains unsettled to the Client
25.	Failure to accurately report the value of the margin requirement stipulated for Client's OTC FX Futures contract(s) on the FFTRS or such other FMDQ-advised media	Section 5.3 - Standards MB-14	<p>i. First time: Fine of ₦500,000.00 (five hundred thousand Naira), and ₦50,000.00 (fifty thousand Naira) subsequently for each business day that the infraction subsists</p> <p>ii. Second time: Fine of ₦1,000,000.00 (one million Naira), and ₦100,000.00 (one hundred thousand Naira) subsequently for each business day that the infraction subsists</p> <p>iii. Third time: Suspension from the OTC FX Futures market for for three (3) months or such other period as may be prescribed by the OTC Exchange</p> <p>iv. Subsequent offences may lead to expulsion of the defaulting DMB from the OTC FX Futures market</p>
Part D: Reporting			
26.	Failure to voice report/update transactions not executed on the System to the FMDQ Futures Trading & Reporting System ("FFTRS") or other FMDQ-advised media by 3:00 PM on the day the transaction is executed	Section 9.2 (ii) - Standards	<p>i. First time: Notice of Infraction to the Chief Dealer with Chief Compliance Officer in copy</p> <p>ii. Second time: Notice of Infraction to the Chief Compliance Officer and Treasurer with MD/CEO in copy</p> <p>iii. Third time: Fine of ₦250,000.00 (two hundred and fifty thousand Naira) and ₦25,000.00 (twenty-five thousand Naira) subsequently for each business day that the infraction subsists</p> <p>iv. Fourth time: Fine of ₦500,000.00 (five hundred thousand Naira), and ₦50,000.00 (fifty thousand Naira) subsequently for each business day that the infraction subsists</p> <p>v. Subsequent offence(s) that fall within the same month may attract public censure and suspension from the OTC FX Futures market for a time to be determined by the OTC Exchange</p>
27.	Failure to submit periodic trade and/or market activity data/reports by the stipulated days and times in the FMDQ-advised medium	Section 9.3 - Standards	
28.	Submission of incomplete or inaccurate trade data	Section 9.2 (iii) - Standards	
29.	Late submission of relevant reports as outlined in the Standards	Section 9.2 (vi) - Standards	
30.	Failure to notify FMDQ in writing of any defaults or acts by Clients with respect to their obligations and conduct under the OTC FX Futures contracts or the provisions of the FMDQ Standards and CBN Guidelines	Section 9.2 (vii) - Standards	
31.	Failure by a DMB to notify FMDQ in writing of any event that is likely to affect its ability to engage in trading activities in OTC FX Futures	Section 11.1(ii)- Standards	

APPENDIX I: GENERAL GUIDELINES

S/N	Guideline
1.	All infractions shall be reported in the periodic reports provided by FMDQ to the relevant regulatory authorities: <ul style="list-style-type: none"> i. Securities and Exchange Commission (SEC) ii. Central Bank of Nigeria (CBN), <i>inter alia</i>
2.	Where two (2) or more infractions meet the specified thresholds for a fine, the culpable party shall be fined for each infraction.
3.	Notwithstanding Guideline 2 above, where an infraction gives rise to another infraction within the same infraction category, and with respect to the same OTC FX Futures transaction, the infractions shall be considered as one.
4.	Infractions shall be captured in the FMDQ Dealing Members' Compliance Ranking Report published on the FMDQ website or such other FMDQ-advised media.
5.	Appeals against penalties shall be conducted in accordance with the FMDQ Appeal Process for Penalties on Trading Infractions (Click here to view).
6.	Where suspicion is raised via complaints, anonymous tips, inspections, FMDQ and CBN examinations, etc., which may put the integrity of the release of any Settlement Amount into question, an investigation shall be carried out by FMDQ.
7.	Where the investigation reveals evidence of Futures Market Fraud, unethical conduct, suspicious transactions and market manipulations, the erring DMB(s) shall be penalised in line with FMDQ's disciplinary process, and the findings may be transmitted to relevant authorities, where applicable.
8.	Penalties imposed in accordance with this Guide do not constitute a waiver of other disciplinary actions which FMDQ may deem fit to take from time to time. Such disciplinary actions will be conducted in accordance with the FMDQ Disciplinary Process (Click here to view).
9.	Fines shall be invoiced monthly and shall be clearly delineated from Transaction Fees.

APPENDIX II: PERIODIC REPORTING OBLIGATIONS

S/N	Obligation	Timeline	Reporting Medium*
1.	Submission of Weekly Trade Data Report	5:00 PM on the first business day of the week following the reporting period	FMDQ Weekly Data Portal
2.	Submission of quarterly operational and risk management report	Within ten (10) business days after the end of each quarter for which the report is prepared	FMDQ-advised reporting template
3.	<i>Such other reporting obligation as may be stipulated by FMDQ from time to time</i>		

**Non-exhaustive; as FMDQ may advise the appropriate reporting medium from time to time*