



CIR/MRD/DSA/33/2012

December 13, 2012

To

**The Managing Director/Executive Director  
of all Stock Exchanges and Clearing Corporations.**

**Sub: Procedural norms on Recognitions, Ownership and Governance for  
Stock Exchanges and Clearing Corporations.**

Dear Sir / Madam,

The Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 (henceforth referred to as 'SECC Regulations') were notified on June 20, 2012. In terms of the powers under regulation 51 of the SECC Regulations, the Board hereby issues the following instructions for the effective implementation of the SECC Regulations. This circular shall be read in conjunction with the Securities Contracts (Regulation) Act, 1956 (SCRA), Securities Contracts (Regulation) Rules, 1957 (SCRR), SECC Regulations and other applicable laws.

## **PART - A**

### **RECOGNITION**

#### **1. Stages Application for seeking recognition as a Stock Exchange/ Clearing Corporation:-**

1.1 An applicant seeking recognition as a stock exchange/ clearing corporation shall substantiate its capability to fulfill all the requirements laid down under SCRA, SCRR and regulation 7 of the SECC Regulations at the time of making the application.

1.2 Further, for the purpose of grant of in-principle approval under regulation 7(5) of the SECC Regulations, the Board may take into account the factors which it may deem fit in the interest of the securities market. For this purpose, the Board may consider the information and documents including but not limited to the following:-

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- Business feasibility plan for the next five years,
- Net worth certificate/ financial books and bank account details,
- Detailed write-up on each of its functions,



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- Details of authorised officials along with specimen signatures of the authorised signatories,
- Proposed organisational structure,
- Necessary undertakings,
- Manpower planning,
- Background and necessary information (as specified herein) to establish that its shareholders/promoters are fit and proper persons, Information regarding its Office set-up, Appointment of Managing Director after following due process

1.3 Before grant of final approval, in addition to the above, the applicant should satisfy the Board with regard to compliance of the following :

- a) Appointment of heads of key departments such as legal, listing, member registration, trading and surveillance in case of a stock exchange, and
- b) Appointment of heads of key departments such as risk, legal, clearing and settlement, in case of a clearing corporation.
- c) Satisfactory compliance with observations of SEBI during inquiry/ inspection by SEBI.
- d) Any other requirement as SEBI may deem necessary for disposal of the application .

1.4 After grant of recognition, the stock exchange can commence trading operations with a minimum of 50 trading members and the clearing corporation can commence clearing and settlement operations with a minimum of 25 clearing members.

2. **Bye-laws of a Clearing Corporation:-** A clearing corporation shall in terms of applicable provisions of section 9 of the SCRA and regulation 4 of SECC Regulations make bye-laws, providing *inter alia* for the following:-

- a) the timings for pay-in and pay-out of funds and securities;
- b) rules for clearing and settlement;
- c) risk management mechanism;
- d) process of netting, novation and guarantee for settlement of trades;
- e) norms for contribution into and utilisation of the Fund in terms of regulation 39 of SECC Regulations ;
- f) rights and obligations of the clearing members *vis-a-vis* the clearing corporation, other clearing members, the trading members and clients of such trading members;
- g) criteria for admission and regulation of clearing members;
- h) default handling mechanism;
- i) Committees as mentioned in para 7 of this circular.
- j) any other matter as may be specified by SEBI.



**PART -B**

**3. ACTION PLAN FOR ACHIEVING NETWORTH:-**

- 3(a) A recognised stock exchange having a networth of less than Rs.100 crore, as on the date of commencement of the SECC Regulations, shall, submit its plan duly approved by its shareholders to SEBI for achieving the networth in terms of regulation 14 of SECC Regulations, within 90 days from the date of this circular.
- 3.(b). A clearing corporation which has made application for recognition in terms of second proviso of regulation 3 of the SECC Regulations and has a networth of less than Rs. 300 crore shall submit its plan duly approved by its shareholders to SEBI, for achieving the networth in terms of regulation 14 of the SECC Regulations, within 90 days from the date of this circular.

**PART -B**

**OWNERSHIP**

**4. Application for grant of approval for shareholding beyond 2% or 5%:-**

- 4.1 A shareholder seeking SEBI's approval for holding more than 2% or 5% of paid up equity share capital of a stock exchange or clearing corporation shall submit the following particulars:-
- Name
  - Address
  - Details of employment/ business, if any:
  - SEBI registration number,if any.
  - Details of registration with other statutory authorities,.
  - Declaration regarding the fulfillment of requirements of regulation 20 of SECC Regulations.
  - Details of action /penalties taken/imposed against/upon him/it by any statutory authority in India or abroad.
  - Details of activities that may, in the opinion of the shareholder, lead to his/its disqualification.
  - Association with trading members/clearing members of stock exchanges/clearing corporations.
  - Cases pending before any Court, Tribunal or any other statutory authority in India or abroad, if any.
  - Previous approvals from SEBI as fit and proper, if any.
- 4.2 The stock exchange/clearing corporation may also lay down any fit and proper criteria without diluting and limiting the principles and criteria laid down in regulation 20 of SECC Regulations.



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- 4.3 The stock exchange/clearing corporation application shall ensure that all their shareholder are fit and proper persons.
- 4.4 The application for approval under clause 4.1 shall be submitted to SEBI through the stock exchange/clearing corporation concerned. The stock exchange/clearing corporation shall verify the declarations/ undertakings given by the shareholders and forward the application which is, in its opinion, fit for approval alongwith its recommendation for SEBI's approval.

**5. Monitoring of shareholding limits:-**

- 5.1 The stock exchange/clearing corporation shall put in place a monitoring mechanism to ensure compliance with the shareholding restrictions prescribed in SECC Regulations at all times. stock exchange/clearing corporation shall:-
- a) Disseminate on its website, the number of shares available in the non-public, FII and FDI category. The information shall also be disseminated by the stock exchange on which the shares may be listed.
  - b) Check the shareholding data on a periodic basis to ensure that the shareholding restrictions specified under Chapter IV of the SECC Regulations are complied with at all times.
  - c) Upon breach of shareholding limits, they shall intimate the same to SEBI within 7 days.

**PART-C**

**GOVERNANCE**

**6. Procedure for appointment:-**

- 6.1 All directors while seeking approval shall submit to the stock exchange/clearing corporation the following details:-
- a) Name
  - b) Address
  - c) Educational qualification
  - d) Details of employment/ Occupation, past and present
  - e) Details of other directorships
  - f) DIN No.
  - g) Declaration regarding the fulfillment of requirements specified under regulation 20 of SECC Regulations.



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- h) Declaration confirming compliance of Regulation 23(7) read with Regulation 2(1)(b) of SECC Regulations, in respect of non association with trading member or clearing member.
- i) Details of regulatory action taken against by any statutory authority in India .
- j) Details of activities that may in the opinion of the director, lead to his disqualification.
- k) Association with trading members/clearing members of stock exchanges/clearing corporations.
- l) Disclosure of the names of his dependents associated with the securities market as member, sub-broker, authorized person or holding any SEBI registration.
- m) An undertaking that he shall abide by the code of conduct and code of ethics prescribed in Part A and Part B of Schedule II to SECC Regulations.
- n) In the case of public interest directors, consent letters for acting as a public interest director.
- o) Pending / completed criminal cases pending before any authority in India or abroad, if any.

6.1.1 The stock exchange/ clearing corporation shall forward the above details to SEBI while recommending their names alongwith the minutes of the governing board meeting where their name/s was approved, copy of the shareholder's resolution (wherever applicable), a confirmation by the stock exchange/ clearing corporation that they are fit and proper persons in terms of their fit and proper criteria and are not associated with any trading member or clearing member in terms of regulation 23(7) read with regulation 2(1)(b) of SECC Regulations.

### 6.2 **Managing Director / Executive Director:-**

6.2.1 The stock exchange/ clearing corporation shall constitute a Committee for the selection of the CEO /Managing Director / Executive Director, as the case may be. The managing director shall be selected through open advertisement in all editions of atleast one national daily from amongst persons qualified in the fields of capital market/ finance/ management and possessing sufficient experience. In case of re-appointment, or extension the stock exchange/ clearing corporation shall apply to SEBI two months before the last working day of such Managing Director.

6.2.2 In case a vacancy of managing director arises due to unforeseen reasons, the stock exchange/ clearing corporation shall forward the new names to SEBI within 60 days from the date of submission of resignation or such vacation of office.



**6.3 Public Interest Directors:-**

- 6.3.1 The names of public interest directors shall be forwarded to SEBI after the approval of the Board of the stock exchange/clearing corporation. The shareholders approval shall not be necessary. A minimum of two names shall be submitted to SEBI for each vacancy of public interest directors.
- 6.3.2 The stock exchange/ clearing corporation shall ensure that public interest directors are selected from diverse field of work. While deciding to propose a particular person as a public interest director, the stock exchange/ clearing corporation shall also take into account the following factors:
- a) Qualification in the area of law, finance, accounting, economics, management, administration or any other area relevant to the financial markets.
  - b) Atleast one person may be inducted having experience and background in finance / accounts who may preferably be inducted in the audit committee.
  - c) Persons currently holding positions of trust and responsibility in reputed organisations or person who have retired from such positions.
  - d) Persons who are likely to have interested positions in commercial contracts and financial affairs of stock exchanges, may be excluded. Also, persons who are regular traders/ speculators in the market or are director in the board of the promoter entity of the Stock Exchange or Clearing Corporation, shall be excluded.
- 6.3.3 Chairperson of the stock exchange/ clearing corporation shall be appointed with the prior approval of SEBI.
- 6.3.4 Public interest directors shall not be simultaneously on the board of any other stock exchange/ clearing corporation or their subsidiary.
- 6.3.5 Public interest directors shall peruse the relevant laws, code of conduct, code of ethics, etc and submit an undertaking to the stock exchange/clearing corporation that they are aware of their role, responsibilities and obligations. The stock exchange/clearing corporation shall also provide at least seven days of training to every public interest director each year.



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- 6.3.6 In case of extension of the term of the public interest director or appointment of a new public interest director, the stock exchange/ clearing corporation shall apply to SEBI two months before the expiry of the term. In addition to the other requirements prescribed herein, the application for extension of term of the public interest director shall be accompanied with, his attendance details on meetings of various mandatory committees and on the governing board of the stock exchange / clearing corporation, reasons for waiver of the cooling off period.
- 6.3.7 The public interest director shall not be subject to retirement by rotation.
- 6.3.8 The existing public interest director shall continue holding the post, till a new public interest director is appointed in his place.
- 6.3.9 In case of existing public interest directors, who are in their second term, they may complete their term.
- 6.4 Share Holder Directors**
- 6.4.1 The names of persons to be appointed as share holder directors shall first be approved by the governing board of the stock exchange/ clearing corporation, followed by shareholders approval before submitting the same to SEBI for approval.
- 6.4.2 The manner of election, appointment, tenure, resignation, vacation, etc. of shareholder directors shall be governed by the Companies Act, 1956 save as otherwise specifically provided under the SECC Regulations or in accordance with the Securities Contracts (Regulation) Act, 1956, circulars issued thereunder.
- 6.5 Selection of trading members/clearing members on the Advisory Committee to the governing board:-** Prior to appointment to the advisory committee, the governing board of the stock exchange/ clearing corporation shall satisfy itself that the trading members/ clearing members are fit and proper persons in terms of regulation 20 of the SECC Regulations. The governing board shall frame the eligibility norms, term of office, cooling off period etc., of members of the advisory committee in consultation with the trading members/clearing members of the stock exchange/ clearing corporation.
- 6.6 Appointment of Compliance Officer:-** The stock exchange/ clearing corporation shall appoint a compliance officer in terms of regulation 32 of SECC Regulations within 30 days from the date of this circular.



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6.7 **Appointment of key management personnel:-** The stock exchange/clearing corporation shall ensure that all key management personnel employed by them are fit and proper.

6.8 **General conditions on appointment of directors:-**

6.8.1 The stock exchange/ clearing corporation shall complete the appointment process within 30 days from SEBI's nomination/approval for directors and submit a compliance report within one week from the date of appointment.

6.8.2 In case any other official of the stock exchange/ clearing corporation is appointed on the governing board in addition to the Managing Director, the same shall be subject to the approval of shareholders and SEBI, in that order.

**7. Statutory Committees:**

7.1 In order to ensure effective oversight of the functioning of stock exchanges, SEBI, from time to time, through various circulars has mandated the formation of various committees by stock exchanges. A list of all such mandatory committees along with their new composition and function is placed under **Annexure A** to this circular. The list of mandatory committees for clearing corporations is placed under **Annexure B** to this circular.

7.2 The stock exchanges and clearing corporations shall form the respective committees in accordance with the composition prescribed therein and accordingly no approval from SEBI is required. The existing stock exchange / clearing house of a stock exchange and person who clears and settles trades of a recognized stock exchange shall submit a confirmation within three months from the date of this circular. The stock exchange and clearing corporation shall submit a confirmation within three months from the date of their recognition. The confirmation shall be submitted within three months with regard to the formation and composition of such committees. Any other conditions pertaining to the committees prescribed under the earlier circulars shall continue to apply. In addition to the above lists, the committees that are mandated for listed companies shall apply *mutatis mutandis* to stock exchanges and clearing corporations.

7.3 The stock exchanges/ clearing corporations shall lay down the policy for the frequency of meetings, quorum, etc., for the statutory committees. The meeting shall be conducted with atleast one public interest director being present except in the case of oversight committees wherein minimum 50% of the public interest directors need to be present. In the case of public interest directors committee, all public interest directors shall be present.



- 7.4. Independent external persons appointed to committees: The independent external persons shall be from amongst the persons of integrity, having a sound reputation and not having any conflicts of interests. They shall be specialists in the field of work assigned to the committee. The stock exchange/ clearing corporation shall frame the guidelines for appointment, tenure, code of conduct, etc., of independent external persons. Extension of the tenure may be granted at the expiry of the tenure pursuant to a review of the contribution, record of attendance at meetings, etc.
- 7.5. SEBI vide circular dated May 31, 2000 had mandated appointment of a governing council / executive committee for the Derivative Exchange/Segment of the stock exchanges. In light of the governance norms and the oversight committees prescribed under the SECC Regulations, the requirement of governing council is not mandatory.
- 7.6 The present functioning of the defaults committee shall continue, however, the same shall constitute of a majority of public interest directors.
- 7.7 The stock exchange and clearing corporation shall submit details about the above mentioned committees by way of Monthly development report/Quarterly development report.

#### 8. Norms for compensation policy:-

- 8.1 Regulation 27 of the SECC Regulations mandates that the compensation policy for key management personnel of stock exchange/ clearing corporation shall be in accordance with the norms specified by SEBI. The compensation norms, in this regard, shall be as follows:-
- The variable pay component will not exceed one-third of total pay.
  - 50% of the variable pay will be paid on a deferred basis after three years.
  - ESOPs and other equity linked instruments in the stock exchange/ clearing corporation will not form part of the compensation for the key management personnel.
  - The compensation policy will have malus<sup>1</sup> and clawback arrangements<sup>2</sup>.

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<sup>1</sup> A malus arrangement permits the stock exchange/clearing corporation to prevent vesting of all or part of the amount of a deferred remuneration.

<sup>2</sup> A clawback is a contractual agreement between the employee and the stock exchange/clearing corporation in which the employee agrees to return previously paid or vested remuneration to the stock exchange/clearing corporation under certain circumstances.



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- 8.2 Apart from the above, the compensation policy of the stock exchange/ clearing corporation shall take into consideration the following:
- financial condition / health of the stock exchange/ clearing corporation,
  - average levels of compensation payable to employees in similar ranks,
  - should not contain any provisions regarding incentives to take excessive risks over the short term,
  - revenues, net profit of the stock exchange/ clearing corporation,
  - comparable to the industry standards,
  - role and responsibilities of the key management personnel,
  - periodic review
- 8.3 The stock exchange shall confirm to SEBI within three months from the date of this circular that the compensation for the key management personnel is in accordance with the norms specified above.
- 8.4 Further, at the time of seeking approval of SEBI for the appointment of the managing director, the stock exchange/ clearing corporation shall seek approval for the compensation of the managing director from SEBI. The compensation of the Managing Director of a stock exchange already appointed with the approval of SEBI shall be in accordance with the compensation policy as mentioned above. The same shall be submitted to SEBI for approval within three months from the date of this circular.
- 8.5 The requirement of disclosures under Regulation 27(5) of the SECC Regulations shall be with effect from the financial year 2012-13.

**9. Regulatory departments:-**

- 9.1 Regulation 28 of the SECC Regulations mandate segregation of regulatory departments from other departments. For this purpose, an indicative list of regulatory departments is given below. The governing board of the stock exchange/ clearing corporation may specify any other department having a regulatory function in addition to the list given below as a regulatory department.
- 9.2 Departments handling the following functions shall be considered as regulatory departments in a Stock Exchange:-
- a) surveillance,
  - b) listing,
  - c) member registration,
  - d) compliance,
  - e) inspection,
  - f) enforcement,



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- g) arbitration,
- h) default,
- i) investor protection,
- j) investor services,

9.3 Departments handling the following functions shall be considered as regulatory departments in a Clearing Corporation:-

- a) Risk management,
- b) member registration,
- c) compliance,
- d) inspection,
- e) enforcement,
- f) default,
- g) investor protection,
- h) investor services,

9.4 The stock exchange /Clearing Corporation shall ensure that the regulatory departments viz., surveillance, inspection, risk management, default, investor protection, investor services etc, are sufficiently staffed with adequate number of persons having professional and relevant experience at all times.

## PART- D

### MISCELLANEOUS

**10. Procedure for submitting amendments to Articles/Rules/Bye-laws/Regulations, etc, for SEBI's approval:-** The amendments to the Memorandum, Articles of Association, Rules, bye-laws, Regulations (as may be applicable) etc., of the stock exchange/clearing corporation, in terms of SCRA, SCRR, other applicable provisions in this regard, shall be submitted to SEBI for approval, subsequent to the following. The proposed amendment/s shall first be approved by the governing board of the stock exchange/clearing corporation, followed by shareholders approval (wherever applicable), then published in the Gazette of India (wherever applicable) and the respective State and then shall be submitted to SEBI for approval. The proposal shall be accompanied by the minutes of the governing board, the shareholder's resolution and public criticism. However, in case the amendments are pursuant to Regulations, circular etc, issued by SEBI, the same shall not be subject to shareholder's approval.

**11. Internal manual for conflict resolution:** The stock exchange/clearing corporation shall have an internal manual covering the management of conflicts between commercial and regulatory functions of the stock exchange/clearing corporation. The stock exchange/ clearing corporation shall put in place a policy for comprehensive training and awareness of its employees on the various



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conflicts of interests involved in the functioning of its regulatory departments. Further, the entire conflict management framework shall periodically be reviewed and be strengthened based on the observations of such review.

**12. Report to SEBI:-** The public interest directors shall identify important issues which may involve conflict of interest for the stock exchange/ clearing corporation, may have significant impact on the functioning of SE/CC, may not be in the interest of market. The same shall be reported to SEBI.

**13. Disclosure of Transactions:** In terms of the code of conduct / code of ethics under SECC Regulations, every director, their family, firms / corporate entities in which the Directors hold twenty percent or more beneficial interest or hold controlling interest, shall disclose all transactions / dealings in securities to the stock exchange/clearing corporation. The details including time period for the disclosure in this regard shall be prescribed by the stock exchange/clearing corporation, however the time period for disclosure shall not be later than fifteen days of the transaction / dealing.

## **14. Clarifications regarding implementation of SECC Regulations:-**

14.1 In respect of regulation 23(7) following is clarified

- a) no trading member or clearing member, or their associates and agents, irrespective of the stock exchange/ clearing corporation of which they are members, shall be on the governing board of any recognised stock exchange or recognised clearing corporation.  
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- b) a person who is a director in an entity, that itself is a trading member or clearing member or has associate(s) as trading members or clearing members in terms of regulation 2(1)(b), he/she will deemed to be trading member or clearing member.
- c) However, a person who is an independent director on the board of a Bank or Financial Institution, which is in public sector or which either has no identifiable ultimate promoter or the ultimate promoter is in Public Sector or such Banks or Financial Institutions has well diversified shareholding, and it / its associate is a Clearing Member and / or Trading Member, the applicant will not be deemed to be Clearing Member and / or Trading Member or their associate for the purpose of Regulation 23(7). However, the appointment shall be subject to fulfilment of other requirements and satisfaction of SEBI.
- d) Further, a person who is an independent director on the board of the Public Limited Company whose other independent director(s) are also independent director in an entity, which is trading or clearing member,



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the person will not be deemed to be associate of trading member or clearing member subject to that Public Limited Company does not have any other association with trading member or clearing member.

- e) Recognised Stock Exchange and recognised clearing corporation, shall monitor and ensure the compliance of the Regulation 23(7) on continuous basis, to ensure that directors appointed, on their governing board, will not get associated with Trading Member or Clearing Member after approval and appointment,

14.2 For the purpose of Regulation 27(6) , it is clarified that in terms of the said Regulation, the tenure refers to the period of posting as key management personnel in a regulatory department, which shall be for a fixed period.

14.4 For the purpose of regulation 35, the Governing Board of a recognised stock exchange or a recognised clearing corporation shall confirm compliance of that regulation in writing on half yearly basis.

15. The recognized stock exchanges/ clearing corporations are advised to:-

- i. make necessary amendments to the relevant rules/ bye-laws/ regulations for the implementation of the above decision immediately;
- ii. bring the provisions of this circular to the notice of the members of the stock exchange/ clearing corporation and also to disseminate the same through their website; and
- iii. communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly / Quarterly Development Reports to SEBI.

16. This circular is issued in exercise of the powers conferred under regulation 51 of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 read with section 8 and 10 of Securities Contracts (Regulation) Act, 1956 read with Section 11 (1) of the Securities and Exchange Board of India Act, 1992 with a view to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and shall come into effect immediately.

17. This circular is also available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in).

Yours faithfully,

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