

CIRCULAR

SEBI/HO/MIRSD/ MIRSD-PoD-2/P/CIR/2022/163

November 28, 2022

To,

All Recognized Stock Exchanges and Clearing Corporations

All Registered Depositories

All Registered Stock Brokers and Clearing Members through Stock Exchanges and Clearing Corporations

All Registered Depository Participants through Depositories

All Registered Investment Advisers

All Registered Research Analysts

All Registered Registrars to an Issue and Share Transfer Agents (RTA)

All Registered KYC (Know Your Client) Registration Agencies (KRA)

Sir / Madam,

Sub: Procedure for seeking prior approval for change in control

1. Securities and Exchange Board of India ('SEBI') vide circular no. CIR/MIRSD/14/2011 dated August 02, 2011 had specified the procedure for seeking prior approval for change in control of certain intermediaries including stock brokers, depository participants and RTAs.
2. Regulation 9(c) of SEBI (Stock Brokers) Regulation, 1992 and Regulation 9(c) read with Regulation 10B of SEBI (Stock Brokers) Regulation, 1992, provide respectively that stock broker and clearing member shall obtain prior approval of SEBI in case of change in control. Similarly, Regulation 36(1)(d) of SEBI (Depositories and Participants) Regulations, 2018, Regulation 15(11) of SEBI (Investment Advisers) Regulation, 2013, Regulation 24(3) of SEBI (Research Analysts) Regulations, 2014,

Regulation 9A(1)(a) of SEBI (Registrar to an Issue and Share Transfer Agents) Regulation, 1993 and Regulation 7(5) of SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011 provide that depository participant, investment adviser, research analyst or research entity, registrar to an issue and share transfer agent and KRA respectively shall obtain prior approval of SEBI in case of change in control.

3. To streamline the process of providing approval to the proposed change in control of stock broker/clearing member, depository participant, investment adviser, research analyst or research entity, registrar to an issue and share transfer agent and KRA (hereinafter referred as intermediary or applicant), it has been decided as under:

- i. The Intermediary shall make an online application to SEBI for prior approval through the SEBI Intermediary Portal (**'SI Portal'**) (<https://siportal.sebi.gov.in>).
- ii. The online application in SI portal shall be accompanied by the following information/declaration/undertaking about itself, the acquirer(s)/the person(s) who shall have the control and the directors/partners of the acquirer(s)/ the person(s) who shall have the control:
 - a. Current and proposed shareholding pattern of the applicant
 - b. Whether any application was made in the past to SEBI seeking registration in any capacity but was not granted? If yes, details thereof.
 - c. Whether any action has been initiated / taken under Securities Contracts (Regulation) Act, 1956 (SCRA)/Securities and Exchange Board of India Act, 1992 (SEBI Act) or rules and regulations made thereunder? If yes, the status thereof along with the corrective action taken to avoid such violations in the future. The acquirer/ the person who shall have the control shall also confirm that it shall honour all past liabilities / obligations of the applicant, if any.

- d. Whether any investor complaint is pending? If yes, steps taken and confirmation that the acquirer/ the person who shall have the control shall resolve the same.
 - e. Details of litigation(s), if any.
 - f. Confirmation that all the fees due to SEBI have been paid.
 - g. Declaration cum undertaking of the applicant and the acquirer/ the person who shall have the control (in a format enclosed at Annexure A), duly stamped and signed by their authorized signatories that:
 - i. there will not be any change in the Board of Directors of incumbent, till the time prior approval is granted;
 - ii. pursuant to grant of prior approval by SEBI, the incumbent shall inform all the existing investors/ clients about the proposed change prior to effecting the same, in order to enable them to take informed decision regarding their continuance or otherwise with the new management; and
 - iii. the 'fit and proper person' criteria as specified in Schedule II of SEBI (Intermediaries) Regulations, 2008 are complied with.
 - h. In case the incumbent is a registered stock broker, clearing member, depository participant, in addition to the above, it shall obtain approval /NOC from all the stock exchanges/clearing corporations/depositories, where the incumbent is a member/depository participant and submit self-attested copy of the same to SEBI.
 - iii. The prior approval granted by SEBI shall be valid for a period of six months from the date of such approval within which the applicant shall file application for fresh registration pursuant to change in control.
4. To streamline the process of providing approval to the proposed change in control of an intermediary in matters which involve scheme(s) of arrangement which needs

sanction of the National Company Law Tribunal (“NCLT”) in terms of the provisions of the Companies Act, 2013, the following has been decided:

- i. The application seeking approval for the proposed change in control of the intermediary shall be filed with SEBI prior to filing the application with NCLT.
 - ii. Upon being satisfied with compliance of the applicable regulatory requirements, an in-principle approval will be granted by SEBI;
 - iii. The validity of such in-principle approval shall be three months from the date issuance, within which the relevant application shall be made to NCLT.
 - iv. Within 15 days from the date of order of NCLT, the intermediary shall submit an online application in terms of paragraph 3 of this circular along with the following documents to SEBI for final approval:
 - a. Copy of the NCLT Order approving the scheme;
 - b. Copy of the approved scheme;
 - c. Statement explaining modifications, if any, in the approved scheme *vis-à-vis* the draft scheme and the reasons for the same; and
 - d. Details of compliance with the conditions/ observations, if any, mentioned in the in-principle approval provided by SEBI.
5. While the above mentioned intermediaries are advised to ensure compliance with the provisions of this circular, Stock Exchanges/Clearing Corporations and Depositories are directed to:
- i. bring the provisions of this circular to the notice of their members/participants and also disseminate the same on their websites.
 - ii. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above directions.

- iii. communicate to SEBI, the status of the implementation of the provisions of this circular in their monthly development reports.
6. With respect to stock brokers/clearing members, depository participants and RTAs, this circular shall supersede the circular no. CIR/MIRSD/14/2011 dated August 02, 2011 with effect from the date of applicability of this circular.
7. The provisions of this circular shall be applicable with effect from December 01, 2022.
8. This circular is issued in exercise of powers conferred under section 11(1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities market and to promote the development of, and to regulate the securities market.
9. This circular is available on the SEBI website at www.sebi.gov.in under the category "Legal →Circulars".

Yours faithfully,

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Encl.: As above

Declaration-Cum-Undertaking

We M/s. (Name of the intermediary/the acquirer/person who shall have the control), hereby declare and undertake the following with respect to the application for prior approval for change in control of (name of the intermediary along with the SEBI registration no.):

1. The applicant/intermediary (Name) and its principal officer, the directors or managing partners, the compliance officer and the key management persons and the promoters or persons holding controlling interest or persons exercising control over the applicant, directly or indirectly (*in case of an unlisted applicant or intermediary, any person holding twenty percent or more voting rights, irrespective of whether they hold controlling interest or exercise control, shall be required to fulfill the 'fit and proper person' criteria*) are fit and proper person in terms of Schedule II of SEBI (Intermediaries) Regulations, 2008.
2. We bear integrity, honesty, ethical behaviour, reputation, fairness and character.
3. We do not incur following disqualifications mentioned in Clause 3(b) of Schedule II of SEBI (Intermediaries) Regulations, 2008 i.e.
 - (i) No criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against us by the Board and which is pending.
 - (ii) No charge sheet has been filed against us by any enforcement agency in matters concerning economic offences and is pending.
 - (iii) No order of restraint, prohibition or debarment has been passed against us by the Board or any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets and such order is in force.
 - (iv) No recovery proceedings have been initiated by the Board against us and are pending.
 - (v) No order of conviction has been passed against us by a court for any offence involving moral turpitude.
 - (vi) No winding up proceedings have been initiated or an order for winding up has been passed against us.
 - (vii) We have not been declared insolvent.

- (viii) We have not been found to be of unsound mind by a court of competent jurisdiction and no such finding is in force.
- (ix) We have not been categorized as a wilful defaulter.
- (x) We have not been declared a fugitive economic offender.
4. We have not been declared as not 'fit and proper person' by an order of the Board.
 5. No notice to show cause has been issued for proceedings under SEBI(Intermediaries) Regulations, 2008 or under section 11(4) or section 11B of the SEBI Act during last one year against us.
 6. It is hereby declared that we and each of our promoters, directors, principal officer, compliance officer and key managerial persons are not associated with vanishing companies.
 7. We hereby undertake that there will not be any change in the Board of Directors of incumbent, till the time prior approval is granted.
 8. We hereby undertake that pursuant to grant of prior approval by SEBI, the incumbent shall inform all the existing investors/ clients about the proposed change prior to effecting the same, in order to enable them to take informed decision regarding their continuance or otherwise with the new management.

The said information is true to our knowledge.

(stamped and signed by the Authorised Signatories)