

# NATIONAL SECURITIES CLEARING CORPORATION LIMITED

## BYELAWS

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## **CHAPTER I : DEFINITIONS**

### **1. BOARD**

"Board" means Board of Directors of National Securities Clearing Corporation Limited.

### **2. CLEARING AND SETTLEMENT**

"Clearing and Settlement" means clearing or settlement or clearing and settlement of deals in such manner and subject to such conditions as may be specified by the Relevant Authority from time to time, unless the context indicates otherwise.

### **3. CLEARING BANK(S)**

Clearing Bank(s) is such bank(s) as the Clearing Corporation may appoint to act as a funds settling agency, for the collection of margin money for all deals cleared through the Clearing Corporation and any other funds movement between clearing members and the Clearing Corporation and between clearing members as may be directed by the Clearing Corporation from time to time.

### **4. CLEARING CORPORATION**

Clearing Corporation means National Securities Clearing Corporation Limited.

### **5. CLEARING MEMBER**

"Clearing Member" means a member of the Clearing Corporation and includes all categories of clearing members as may be admitted as such by the Clearing Corporation but does not denote the shareholders of the Clearing Corporation.

### **6. CLEARING SEGMENTS**

"Clearing Segments" means the different segments or divisions for clearing and settlement of deals as may be classified by the relevant authority from time to time.

### **6A Client /Constituent**

A Client/Constituent means a person, on whose instructions and on whose account the clearing member clears and settles deals. For this purpose, the term client shall include all registered constituents of trading members of Specified Exchange.

Explanation 1 :

The terms 'Constituent' and 'Client' are used interchangeably in these Byelaws, Rules & Regulations and shall have the same meaning assigned herein.

Explanation 2 :

For the purpose of Chapters IX, X & XI, the term 'Constituent' in relation to trades shall also include a trading member where such trades done on the Specified Exchange are cleared and settled on his behalf by a Clearing Member.

**7. DEAL**

"Deal" means, unless the context indicates otherwise, a deal which is admitted to be cleared and settled through the Clearing Corporation.

**8. DELIVERING MEMBER**

"Delivering Member" means a clearing member who has to or has delivered documents in fulfillment of contract to which these Rules, Bye Laws and Regulations apply unless the context indicates otherwise.

**9. RECEIVING MEMBER**

"Receiving Member" means a clearing member who has to receive or has received documents in fulfillment of contracts to which these Rules, Bye Laws and Regulations apply unless the context indicates otherwise.

**10. REGULATIONS**

"Regulations" means Regulations of the Clearing Corporation for the time being in force and includes business rules, code of conduct and such other procedures and regulations, circulars, directives and orders as issued by the relevant authority from time to time for the operations of the Clearing Corporation.

**11. RELEVANT AUTHORITY**

"Relevant Authority" means the Board or such other authority as specified by the Board from time to time as relevant for a specified purpose.

**12. RULES**

Unless the context indicates otherwise, "Rules" means the Rules of Clearing Corporation for the time being in force.

**13. SEBI**

"SEBI" means the Securities and Exchange Board of India.

**14. SECURITIES**

"Securities" shall have the meaning assigned to it in the Securities Contracts (Regulation) Act, 1956 and shall also include such other class of instruments or products, monetary or non-monetary, scrip-less or otherwise, as may be admitted to be cleared and settled through the Clearing Corporation.

**15. SETTLEMENT FUND**

Settlement Fund means a fund established and maintained in accordance with the relevant provisions of the Bye Laws.

**16. SPECIFIED EXCHANGE**

"Specified Exchange" or "specified exchange" means a recognised stock exchange under the Securities Contracts (Regulation) Act, 1956 dealings on which may be admitted to be cleared and settled by the Clearing Corporation subject to such terms and conditions as may be prescribed from time to time by the relevant authority.

**17. TRADING MEMBER**

"Trading Member" or "trading member" means any person admitted as a member in any Exchange in accordance with the Rules, Bye Laws and Regulations of that Exchange.

Note : The terms defined above shall mean the same when used in lower case in the Bye Laws, Rules and Regulations, unless the context indicates otherwise.

**CHAPTER II : CLEARING SEGMENTS**

The Clearing Corporation may establish more than one clearing segment as may be specified by the relevant authority from time to time. Deals which may be admitted to the different clearing segments for the purpose of clearing and settlement will be specified by the relevant authority from time to time.

**CHAPTER III : EXECUTIVE COMMITTEE**

1. Executive Committee(s) may be appointed by the Board for the purposes of managing the day to day affairs of the different segment(s) of the Clearing Corporation in such manner as laid down in the Rules.
2. The Executive Committee of each clearing segment shall have such responsibilities and powers as may be delegated to it by the Board.

**CHAPTER IV : REGULATIONS**

1. The Board may prescribe Regulations from time to time for the functioning and operations of the Clearing Corporation and to regulate the functioning and operations of the clearing members of the Clearing Corporation.
2. Without prejudice to the generality of the above, the Board may prescribe regulations from time to time, inter alia, with respect to :
  - (1) norms, procedures, terms and conditions for admission of Exchanges;
  - (2) norms, procedures, terms and conditions to be complied with for admission of deals for clearing and settlement by the Clearing Corporation;
  - (3) norms, procedures, terms and conditions for clearing and settlement of deals for different clearing segments and different securities and instruments;
  - (4) forms and conditions of deals to be entered into, and the time, mode and manner for performance of deals between clearing members inter se or between clearing members and their constituents;
  - (5) norms, procedures, terms and conditions for guaranteed settlement by the Clearing Corporation;
  - (6) prescription, from time to time, and administration of penalties, fines and other consequences, including suspension/expulsion of clearing members from the Clearing Corporation for defaults;
  - (7) norms, procedures, terms and conditions for imposition and administration of different types of margins and other charges and restrictions that may be imposed by the Clearing Corporation from time to time.
  - (8) determination from time to time, of fees, system usage charges, deposits, margins and other monies payable to the Clearing Corporation by clearing members and the scale of clearing and other charges that may be collected by clearing members;
  - (9) supervision of the clearing operations and promulgation of such Business Rules and Codes of Conduct as it may deem fit;
  - (10) inspection and audit of records and books of accounts;
  - (11) settlement of disputes, complaints, claims arising between clearing members inter-se as well as between clearing members and persons who are not clearing members relating to any deal in securities cleared and settled through the Clearing Corporation including settlement by arbitration;
  - (12) norms, procedures, terms and conditions for arbitration;
  - (13) administration, maintenance and investment of the corpus of the Fund(s) set up by the Clearing Corporation including Settlement Fund(s);

- (14) establishment, norms, terms and conditions, functioning and procedures of clearing house, clearing through depository or other arrangements including custodial services for clearing and settlement;
- (15) norms, procedures, terms and conditions in respect of, incidental to or consequential to closing out of deals;
- (16) dissemination of information and announcements;
- (17) any other matter as may be decided by the Board.

**CHAPTER V : CLEARING MEMBERS**

1. The relevant authority is empowered to admit clearing members in accordance with Rules and Regulations. The Clearing Member shall pay such fees, security deposits and other monies as may be specified by the Board or the relevant authority from time to time, on admission as Clearing Member and for continued admission. The fees, security deposits, other monies and any additional deposits paid, whether in the form of cash, bank guarantee, securities or otherwise, with the Clearing Corporation, by a Clearing Member from time to time, shall be subject to a first and paramount lien for any sum due to the Clearing Corporation and all other claims against the Clearing Member for due fulfillment of engagements, obligations and liabilities of Clearing Members arising out of or incidental to any dealings made subject to the Byelaws, Rules and Regulations of the Clearing Corporation. The Clearing Corporation shall be entitled to adjust or appropriate such fees, deposits and other monies for such dues and claims, to the exclusion of the other claims against the Clearing member, without any reference to the Clearing member. The proceeds arising out of invocation of the bank guarantees furnished by the Clearing Member in lieu of security deposits or additional deposits, on being invoked by the Clearing Corporation, shall not be reckoned as part of the Clearing Member's deposits for the purpose of enablement or exposure, etc., unless the Clearing Member complies with the conditions imposed by the Relevant Authority from time to time. The proceeds from invoking the bank guarantees shall be dealt with by the Clearing Corporation as it may deem fit.
2. Clearing member of any segment may clear and settle deals through the Clearing Corporation pertinent to that segment in such manner and mode and subject to such terms and conditions and procedures as may be prescribed for the clearing member.
3. Clearing members may clear and settle deals either on their own account or on behalf of their clients unless otherwise specified by the relevant authority and subject to such terms and conditions which the relevant authority may prescribe from time to time.

## **CHAPTER VI : CLEARING AND SETTLEMENT OF DEALS**

### **A. DEALS FOR CLEARING AND SETTLEMENT**

#### **1. CLEARING AND SETTLEMENT OF DEALS**

- (1) The Clearing Corporation shall clear and settle such deals as provided in the Bye Laws and Regulations and save as so provided, no other deals shall be cleared and settled.
- (2) Without prejudice to the generality of the above, the relevant authority may in its discretion and subject to such conditions as it may deem fit admit any other deals.

#### **2. ADMISSION OF DEALS**

- (1) Clearing and settlement shall be permitted on the Clearing Corporation in deals which are from time to time admitted on the clearing segments by the relevant authority in accordance with the provisions of the Bye Laws and Regulations.
- (2) The relevant authority may specify securities from time to time dealings in which may be admitted in accordance with the provisions of the Bye Laws and Regulations in that regard.
- (3) The relevant authority may specify stock exchanges from time to time dealings on which may be admitted for clearing and settlement by the Clearing Corporation in accordance with the provisions of the Bye Laws and Regulations of the Clearing Corporation.

#### **3. CONDITIONS AND REQUIREMENTS OF CLEARING AND SETTLEMENT**

The relevant authority may grant admission of deals dealt in the Exchange provided all the conditions and requirements prescribed in the Bye Laws and Regulations and such other conditions and requirements as the relevant authority may prescribe from time to time are complied with.

#### **4. REFUSAL OF ADMISSION OF DEALS**

The relevant authority may, in its discretion, approve admission of deals or defer, or reject admission of deals for clearing and settlement on the Clearing Corporation, subject to such terms as it deems fit.

#### **5. DEALS IN PROVISIONAL DOCUMENTS**

- (1) The relevant authority may, in its discretion, admit deals in Provisional Documents.

- (2) Provisional Documents for the purpose of these Bye Laws and Regulations denotes Coupons, Fractional Certificates, Letters of Renunciation, or transferable Letters of Allotment, Acceptance or Application or options or other rights or interests in securities, warrants issued or to be issued by an issuer or other similar documents in respect of an issuer whose securities are sought to be admitted to be cleared and settled through the Clearing Corporation.

## **6. SPECIFIC DEALS**

The relevant authority may permit in appropriate cases as it may at its discretion decide from time to time specific deals to be cleared and settled through the Clearing Corporation in case of securities which are not admitted or are for the time being prohibited or suspended.

## **7. SUSPENSION OF ADMISSION OF DEALS**

The relevant authority may suspend at any time the admission of deals including of any security of specified exchange on clearing segment for such period as it may determine and reinstate such deals subject to such conditions as it may deem fit.

## **8. WITHDRAWAL OF ADMISSION OF DEALS**

The relevant authority may where it deems necessary withdraw the admission to dealings of a specified exchange either for breach of or non-compliance with any of the conditions or requirements of admission of dealings or for any other reason whatsoever.

## **9. READMISSION OF DEALS**

The relevant authority in its discretion may readmit deals of a specified exchange which has been previously withdrawn.

## **B. CLEARING AND SETTLEMENT OF DEALS**

### **10. CLEARING AND SETTLEMENT**

Clearing and settlement of deals in each clearing segment may be on netted basis or gross basis or trade-for-trade basis or any other basis as may be specified by the relevant authority from time to time. Settlement shall be effected by clearing members giving and receiving delivery and paying and receiving funds as may be specified by the relevant authority from time to time in the Bye Laws and Regulations.

### **11. PRIVACY OF CONTRACT**

- (1) Except as provided herein, clearing members giving and receiving delivery as provided in the Bye Laws and Regulations shall be deemed, notwithstanding that no direct contract may exist between them, to have made a contract with each other as sellers and buyers. However the rights and liabilities of

delivering and receiving member in relation to their immediate contracting party shall not be deemed to be affected thereby except that the selling member (unless he be himself the delivering member) shall be released from all responsibility in regard to the title, ownership, genuineness, regularity and validity of the documents received by the receiving member and in regard to the loss and damages arising therefrom, which shall be dealt with in accordance with the provisions of Bye Laws and Regulations thereof.

- (2) In cases where the Clearing Corporation may specify either generally or specifically, clearing members giving and receiving delivery and paying and receiving funds as provided in the Bye Laws and Regulations shall be deemed, notwithstanding that no direct contract exists between them, to have made a contract with the Clearing Corporation as sellers and buyers and between themselves as delivering and receiving members; provided further however that in such event the rights and liabilities of delivering and receiving member with the Clearing Corporation shall not be deemed to be affected thereby except that the Clearing Corporation shall not be responsible in respect of the title, ownership, genuineness, regularity and validity of the documents delivered or received and in regard to the loss and damages arising therefrom, which shall be dealt with in accordance with the provisions of Bye Laws and Regulations thereof.

## **12. ARRANGEMENT FOR CLEARING AND SETTLEMENT**

- (1) Clearing and settlement of deals shall be effected by clearing members by adopting and using such arrangements, systems, agencies or procedures as may be prescribed or specified by the relevant authority from time to time. Without prejudice to the generality of the above, the relevant authority may prescribe or specify from time to time such custodial, depository and other services for adoption and use by clearing members and their constituents to facilitate smooth operation of the clearing and settlement arrangement or system.
- (2) The clearing and settlement function may be performed by the Clearing Corporation or it may take assistance of any agency identified by the relevant authority for the purpose.
- (3) Save as otherwise expressly provided in the Bye Laws and Regulations, when funds and securities are cleared and/or settled under a prescribed arrangement, the settlement responsibility shall rest wholly and solely upon the counter parties to the contract and/or the concerned clearing members as the case may be and the Clearing Corporation shall act as the common agent of the clearing members for receiving or giving delivery of securities and for receiving and paying funds, without incurring any liability or obligation as a principal.

### **13. OPERATIONAL PARAMETERS FOR CLEARING**

- (1) The relevant authority may determine and announce from time to time operational parameters regarding clearing of deals through the Clearing Corporation which the clearing members shall adhere to.
- (2) The operational parameters may, inter alia, include :
  - (a) clearing limits allowed which may include clearing limits with reference to networth and capital adequacy norms;
  - (b) clearing volumes and limits at which it will be incumbent for clearing members to intimate the Clearing Corporation;
  - (c) fixation of delivery lots for different settlement types;
  - (d) other matters which may affect smooth operation of clearing of deals keeping in view larger interest of the public;
  - (e) determining types of deals permitted for a clearing member and for a security;
  - (f) determining functional details of the clearing and settlement system including the system design, user infrastructure and system operation.

### **14. CLEARING HOURS**

- (1) The hours for clearing and settling of different segments of the Clearing Corporation shall be during such time as may be decided by the relevant authority from time to time. The relevant authority may, from time to time, specify clearing hours for different types of deals and different segments.
- (2) The relevant authority may declare a list of holidays in a calendar year. The relevant authority may from time to time alter or cancel any of the holidays fixed in accordance with these provisions. It may, for reasons to be recorded, suspend clearing and settlement operations on days other than or in addition to holidays.

### **15. DELIVERY OF SECURITIES**

- (1) Delivery and settlement of all securities, documents and papers and payment in respect of all deals shall be in such manner and such place(s) as may be prescribed by the relevant authority from time to time.
- (2) The relevant authority shall specify from time to time, the securities, documents and papers which, when delivered in prescribed manner, shall constitute good delivery. Where circumstances so warrant, the relevant authority may determine, for reasons to be recorded, whether or not a delivery constitutes a good delivery, and such findings shall be binding on parties concerned. Where the relevant authority determines that a delivery does not constitute a good delivery, the delivering party shall be required to substitute good delivery instead within such time as may be specified.

- (3) The norms and procedures for delivery with respect to market lot, odd lot, minimum lot, part delivery, delivery of partly paid securities etc., shall be as prescribed by the relevant authority from time to time.
- (4) The requirements and procedures for determining disputed deliveries or defective deliveries, and measures, procedures and system of resolving the dispute or defect in deliveries or of consequences of such deliveries or their resolution shall, subject to these Bye Laws, be as prescribed by the relevant authority from time to time.

## **16. CLOSING OUT**

- (1) A deal admitted for clearing and settlement may be closed out on failure of a clearing member to comply with any of the provisions relating to delivery, payment and settlement of deals or on any failure to fulfill the terms and conditions subject to which the deal has been made, or such other circumstances as the relevant authority may specify from time to time. The deal may be closed out by the Clearing Corporation in such manner, within such time frame and subject to such conditions and procedures as the relevant authority may prescribe from time to time.
- (2) Without prejudice to the generality of the foregoing, the relevant authority may close out deals, inter alia, by buying in or selling out against a clearing member as follows:-
  - (a) in case of the selling clearing members, on failure to complete delivery on the due date; and
  - (b) in case of the buying clearing members, on failure to pay the amount due on the due date,
  - (c) and any loss, damage or shortfall sustained or suffered as result of such closing out shall be payable by the clearing members who failed to give due delivery or to pay amount due.

## **16A. BORROWING OF SECURITIES**

Notwithstanding anything contained in Byelaw 16 hereinabove, in the event of failure of the Delivering Member to complete delivery of specified securities on the due date, the Clearing Corporation may borrow the securities specified by it on behalf of such Delivering Member in such manner, within such time frame and subject to such conditions and procedures as the relevant authority may prescribe from time to time, and deliver them to the Receiving Member(s) and / to complete the delivery. Such Delivering Member shall return the specified securities within the time stipulated by the relevant authority together with such fees and charges as may be prescribed by the relevant authority.

In the event of failure of the Delivering Member to return the securities borrowed by the Clearing Corporation on its behalf within the stipulated time, the Clearing Corporation shall buy the securities on behalf of the member in the manner and method prescribed by the relevant authority and may recover the amount thereof from such member together with such other fees and charges as may be prescribed by the relevant authority.

In the event the Clearing Corporation fails to buy-in the securities to be returned on behalf of such borrowing Delivering Member, the Clearing Corporation may effect close out in respect of the securities, to the extent that it could not be bought in, in the manner prescribed by the relevant authority and recover the amount of such close out and fees from such member.

#### **17. FAILURE TO MEET OBLIGATIONS**

In the event a clearing member fails to meet obligations to the Clearing Corporation arising out of clearing and settlement operations of admitted deals, the relevant authority may charge such interest, impose such penalties and fines and take such disciplinary action against the clearing member as it may determine from time to time. Any disciplinary action which the relevant authority takes pursuant to the above shall not affect the obligations of the clearing member to the Clearing Corporation or any remedy to which the Clearing Corporation may be entitled under applicable law.

## **CHAPTER VII : DEALINGS BY CLEARING MEMBERS**

### **1. JURISDICTION**

- (1) All deals admitted by the Clearing Corporation for clearing and settlement shall be deemed to have been entered into in the city of Mumbai unless provided otherwise expressly by the relevant authority.
- (2) The relevant authority may, from time to time, specify deals as subject to a particular jurisdiction, having regard to the type or nature of the deal, the exchange on which the deal was struck and other relevant factors.

### **2. RECORD FOR EVIDENCE**

The record of the Clearing Corporation as maintained by a central processing unit or a cluster of processing units or computer processing units, whether maintained in any other manner shall constitute the agreed and authentic record in relation to any deals cleared and settled through the Clearing Corporation. For the purposes of any disputes regarding clearing and settlement of deals the records as maintained by the Clearing Corporation shall constitute valid evidence in any dispute or claim between the constituents and the clearing member of the Clearing Corporation or between the clearing members of the Clearing Corporation inter-se or between the clearing members and the Clearing Corporation.

### **3. CLEARING MEMBER ONLY PARTIES TO DEALS**

The Clearing Corporation does not recognise as parties to deals any persons other than its own clearing members, and every clearing member is directly and wholly liable in accordance with whom such clearing member has any deal for due fulfillment of the deal or to the Clearing Corporation as may be specified by the relevant authority, whether such deal be for account of the clearing member effecting it or for account of a constituent.

### **4. ALL DEALS SUBJECT TO RULES, BYE LAWS AND REGULATIONS**

All deals shall be made subject to the Rules, Bye Laws and Regulations of the Clearing Corporation and this shall be a part of the terms and conditions of all such deals and the deals shall be subject to the exercise by the relevant authority of the powers with respect thereto vested in it by the Bye Laws, Rules and Regulations of the Clearing Corporation.

### **5. INVIOABILITY OF ADMITTED DEALS**

- (1) All the dealings in securities on the Clearing Corporation made subject to the Byelaws, Rules and Regulations of the Clearing Corporation shall be inviolable and shall be cleared and settled in accordance with the Byelaws, Rules and Regulations of the Clearing Corporation. However, the Clearing Corporation may by a notice annul the deal(s) on an application by a Clearing

Member in that behalf, if the relevant authority is satisfied after hearing the other party/parties to the deal(s) that the deal(s) is /are fit for annulment on account of fraud or wilful misrepresentation or material mistake in the trade.

- (2) Notwithstanding anything contained in clause (1) above, the Clearing Corporation may, to protect the interest of investors in securities and for proper regulation of the securities market, suo motu annul deal(s) at any time if the relevant authority is satisfied for reasons to be recorded in writing that such deal(s) is/ are vitiated by fraud, material mistake, misrepresentation or market or price manipulation and the like.
- (3) Any annulment made pursuant to clauses (1) and (2) above, shall be final and binding upon the parties to trade(s). In such an event, the Clearing Member shall be entitled to cancel the relevant deal(s) with its constituents.

#### **6. DEALS BY REPRESENTATIVE CLEARING MEMBERS**

A clearing member may authorise another clearing member to act as a representative for a specified period with the prior permission of the relevant authority.

#### **7. INDEMNITY**

The Clearing Corporation shall not be liable for any activity of the clearing member or any person acting in the name of the clearing member whether authorised or unauthorised including deals cleared and settled through the Clearing Corporation save and except as and to the extent provided in the Bye Laws and Regulations.

## **CHAPTER VIII : MARGINS**

### **1. MARGIN REQUIREMENTS**

- (1) The relevant authority may from time to time prescribe requirements of margins including collection of margins (including VaR margins) on an upfront basis for deals cleared and settled through the Clearing Corporation and the clearing member shall furnish such margin as a condition precedent from such date as may be specified by the Clearing Corporation.
- (2) Every Clearing Member has a continuing obligation to maintain margins at such levels and during such periods as may be stipulated by the Clearing Corporation from time to time.

### **2. FORM OF MARGIN**

The margins to be provided by a clearing member under the Bye Laws and Regulations shall be in cash. The relevant authority may at its discretion accept deposit receipts, guarantee of a bank(s) approved by the relevant authority or securities approved by it or such other mode as may be approved and subject to such terms and conditions as the relevant authority may impose from time to time. Any such substitute like deposit receipt, securities approved by it or any other mode duly approved shall be deemed to have been pledged and/or hypothecated as the case may be in favour of the Clearing Corporation.

### **3. QUANTUM OF MARGIN**

The clearing member depositing margins, in the form of securities by way of pledge or otherwise or in such other mode as may be prescribed by the relevant authority from time to time, shall always maintain the value thereof at not less than the quantum of margin required for the time being covered by them by providing further security to the satisfaction of the relevant authority which shall determine the said value and whose valuation shall conclusively fix the amount of any deficiency to be made up from time to time.

### **4. MARGIN TO BE HELD BY THE CLEARING CORPORATION**

The margins shall be held by the Clearing Corporation and when they are in the form of bank deposit receipts and securities such receipts and securities may be transferred to such persons or to the name of a custodian or such other entity approved by the Clearing Corporation. All margin deposits shall be held by the Clearing Corporation and/or by the approved persons and/or by the approved custodian solely for and on account of the Clearing Corporation without any right whatsoever on the part of the depositing clearing member or those in its right to call in question the exercise of such discretion.

### **5. LIEN ON MARGINS**

The monies paid by way of margin or bank deposit receipts or other securities or assets pledged or hypothecated by a clearing member in lieu of margin under the provisions of the Bye Laws and Regulations shall be subject to a first and paramount lien for all sums due to the Clearing Corporation. Margin shall be available in preference to all other claims against the clearing member for the due fulfillment of his obligations and liabilities arising out of or incidental to any deals made subject to the Bye Laws, Rules and Regulations of the clearing corporation or anything done in pursuance thereof.

#### **6. UTILISATION FOR FAILURE TO MEET OBLIGATIONS**

In the event a clearing member fails to meet obligations to the Clearing Corporation arising out of clearing and settlement operations of such deals as provided in the Bye Laws and Regulations, the relevant authority shall be entitled to utilise any amount paid by the said clearing member in the form of margin or any other payment retained by the Clearing Corporation for the purpose of clearing and settlement.

#### **7. EVASION OF MARGIN REQUIRMENTS FORBIDDEN**

A clearing member shall not directly or indirectly enter into any arrangement or adopt any procedure for the purpose of evading or assisting in the evasion of the margin requirements prescribed under the Bye Laws and Regulations.

#### **8. SUSPENSION ON FAILURE TO PAY MARGIN**

If a clearing member fails to pay margin as required in the Bye Laws and Regulations, the relevant authority may take such action as it may deem fit and specified from time to time including suspension.

#### **9. INTEREST, DIVIDEND AND CALLS**

- (1) The receiving member shall be entitled to receive all vouchers, coupons, dividends, cash bonus, bonus issues, rights and other privileges which may relate to securities bought cum voucher, cum coupons, cum dividends, cum cash bonus, cum bonus issues, cum rights, etc. The delivering member shall be entitled to receive all vouchers, coupons, dividends, cash bonus, bonus issues, rights and other privileges which may relate to securities sold ex voucher, ex coupons, ex dividends, ex cash bonus, ex bonus issues, ex rights, etc.
- (2) The manner, mode, information requirements, alterations, date and timing etc., of adjustment with respect to vouchers, coupons, dividends, cash bonus, bonus issues, rights and other privileges between the receiving and delivering member shall be as prescribed by the relevant authority from time to time. Save as otherwise provided in the Bye Laws and Regulations, the clearing members shall be responsible between themselves and to their constituents for effecting such adjustments.
- (3) In respect of a deal in securities which shall become or are exchangeable for new or other securities under a scheme of reconstruction or reorganisation, the

delivering member shall deliver to the receiving member, as the relevant authority directs, either the securities contracted for or the equivalent in securities and/or cash and/or other property receivable under such scheme of reconstruction or reorganisation.

**10. CLEARING FEES**

The relevant authority may prescribe from time to time fees, charges and recoveries to be levied on the clearing members in respect of clearing and settlement of deals.

## **CHAPTER IX : RIGHTS AND LIABILITIES OF CLEARING MEMBERS AND CONSTITUENTS**

### **1. MARGIN FROM CONSTITUENTS**

A clearing member shall have the right to demand from its constituent the margin he has to provide under the Rules, Bye Laws and Regulations in respect of the business done by him for such constituent. A clearing member shall also have the right to demand an initial margin in cash and securities from its constituent before undertaking to clear his obligations and to stipulate that the constituent shall pay a margin or furnish additional margin according to changes in market prices. The constituent shall when from time to time called upon to do so forthwith pay margins and furnish additional margins as required under the Rules, Bye Laws and Regulations in respect of his obligations and as agreed upon by him with the clearing member concerned.

### **2. CONSTITUENT IN DEFAULT**

- (1) A clearing member shall not transact business directly or indirectly for a constituent who to his knowledge is in default to another clearing member unless such constituent shall have made a satisfactory arrangement with the clearing member who is his creditor.
- (2) On the application of a creditor clearing member who refers or has referred to arbitration its claim against the defaulting constituent as provided in the Rules, Bye Laws and Regulations, the relevant authority shall issue orders against any clearing members restraining them from paying or delivering to the defaulting constituent any monies or securities up to an amount or value not exceeding the creditor member's claim payable or deliverable by him to the defaulting constituent in respect of deals subject to the Bye Laws, Rules and Regulations of the Clearing Corporation, which moneys and securities shall be deposited with the Clearing Corporation. The moneys and securities deposited shall be disposed of in terms of the award in arbitration and pending a decree shall be deposited with the concerned Court when filing the award unless the creditor clearing member and the defaulting constituent mutually agree otherwise.

### **3. CLOSING-OUT OF CONSTITUENT'S ACCOUNT**

Unless otherwise prescribed by the relevant authority from time, to time, when closing-out the account of a constituent a clearing member may assume or take over such deals to his own account as a principal at prices which are fair and justified by the condition of the market or he may close-out in the open market and any expense incurred or any loss arising therefrom shall be borne by the constituent.

#### **4. CLEARING MEMBER NOT LIABLE TO ATTEND TO REGISTRATION OF TRANSFER**

Unless otherwise prescribed by the relevant authority from time to time, a clearing member shall not be deemed to be under any obligation to attend to the transfer of securities and the registration thereof in the name of the constituent. If it attends to such work in the ordinary course or at the request or desire or by the consent of the constituent it shall be deemed to be the agent of the constituent in the matter and shall not be responsible for loss in transit or for the company's refusal to transfer or not be under any other liability or obligation other than that specifically imposed by the Rules, Bye Laws and Regulations. The stamp duty, the transfer fees and other charges payable to the company, the fee for attending to the registration of securities and all incidental expenses such as postage incurred by the clearing member shall be borne by the constituent.

#### **5. REGISTRATION OF SECURITIES WHEN IN THE NAME OF CLEARING MEMBER OR NOMINEE**

- (1) When the time available to the constituents of a clearing member is not sufficient for them to complete transfers and lodge the securities for registration before the closing of the transfer books and where the security is purchased cum interest, dividend, bonus or rights which the company may have announced or declared, the clearing member may register the securities in its or its nominee's name and recover the transfer fee, stamp duty and other charges from the buying constituent.
- (2) The clearing member shall give immediate intimation to the Clearing Corporation of the names of such constituents and details of the deals as may be specified by the relevant authority from time to time. The clearing member shall also give immediate intimation thereof to the buying constituent and shall stand indemnified for the consequences of any delay in delivery caused by such action.
- (3) The clearing member shall be obliged to re-transfer the security in the name of the original constituent as soon as it has become ex interest, dividend, bonus or rights.

#### **6. CLOSING-OUT BY CONSTITUENT ON FAILURE TO PERFORM A DEAL**

If a clearing member fails to complete the performance of a deal by delivery or payment in accordance with provisions of the Rules, Bye Laws and Regulations the constituent shall, after giving notice in writing to the clearing member, close out such deal through any other clearing member as soon as possible and any loss or damages sustained as a result of such closing out shall be immediately payable by the defaulting clearing member to the constituent. If the closing out be not effected as provided herein, the damages between the parties shall be determined on such basis as may be prescribed by the relevant authority from time to time and the

constituent and the clearing member shall forfeit all further rights of recourse against each other.

**7. COMPLAINT BY CONSTITUENT**

When a complaint has been lodged by a constituent with the relevant authority that any clearing member has failed to perform his dealings, the relevant authority shall investigate the complaint and if it is satisfied that the complaint is justified it may take such disciplinary action as it deems fit.

**8. RELATIONSHIP BETWEEN CLEARING MEMBER AND CONSTITUENT**

Without prejudice to any other law for the time being in force and subject to these Bye Laws, the mutual rights and obligations inter se between the clearing members and their constituents shall be such as may be prescribed by the relevant authority from time to time.

## CHAPTER X : ARBITRATION

1. All claims, disputes, differences arising between Clearing Members and Constituents or between Clearing Members inter se arising out of or related to deals admitted for clearing and settlement by the Clearing Corporation or with reference to anything done in respect thereto or in pursuance of such deals shall be referred to and decided by arbitration as provided in the Rules, Byelaws and Regulations of the National Stock Exchange of India Limited if the deal originated from it or in pursuance thereof.
2. All claims, disputes, differences arising between Clearing Members and Constituents or between Clearing Members inter se arising out of or related to deals admitted for clearing and settlement by the Clearing Corporation or with reference to anything done in respect thereto or in pursuance of such deals shall be referred to and decided by Arbitration as provided in the Rules, Byelaws and Regulations of the Clearing Corporation if the deal originated from any Exchange other than the National Stock Exchange of India Limited or in pursuance thereof. The provisions of these Byelaws providing for such Arbitration are as hereunder:
  - (1) Definitions
    - (a) 'arbitrator' shall mean a sole arbitrator or a panel of arbitrators.
    - (b) 'Act' shall mean the Arbitration and Conciliation Act, 1996 and includes any statutory modification, replacement or re-enactment thereof, for the time being in force.

### Reference to Arbitration

- (2) All claims, difference or disputes between the Clearing Members inter se and between Clearing Members and Constituents arising out of or in relation to dealings, contracts and transactions made subject to the Bye-Laws, Rules and Regulations of the Clearing Corporation or with reference to anything incidental thereto or in pursuance thereof or relating to their validity, construction, interpretation, fulfillment or the rights, obligations and liabilities of the parties thereto and including any question of whether such dealings, transactions and contracts have been entered into or not shall be submitted to arbitration in accordance with the provisions of these Byelaws and Regulations.

### Provisions of these Byelaws and Regulations deemed to form part of all dealings, contracts and transactions

- (3) In all dealings, contracts and transactions, which are made or deemed to be made subject to the Byelaws, Rules and Regulations of the Clearing Corporation, the provisions relating to arbitration as provided in these Byelaws and Regulations shall form and shall be deemed to form part of the dealings, contracts and transactions and the parties shall be deemed to have entered into an arbitration agreement in writing by which all claims, differences or disputes

of the nature referred to in Byelaw (2) above shall be submitted to arbitration as per the provisions of these Byelaws and Regulations.

Limitation period for reference of claims, differences or disputes for arbitration

- (4) All claims, differences or disputes referred to in Byelaw (2) above shall be submitted to arbitration within six months from the date on which the claim, difference or dispute arose or shall be deemed to have arisen. The time taken in conciliation proceedings, if any, initiated and conducted as per the provisions of the Act and the time taken by the Relevant Authority to administratively resolve the claim, differences or disputes shall be excluded for the purpose of determining the period of six months.

Power of the Relevant Authority to prescribe Regulations

- (5) (a) The Relevant Authority may, from time to time prescribe Regulations for the following:
- (i) The procedure to be followed by the parties in arbitral proceedings. In particular, and without prejudice to the generality of the foregoing power, such procedure may, inter alia, provide for the following :
    - (a) the forms to be used;
    - (b) the fees to be paid;
    - (c) the mode, manner and time period for submission of all pleadings by both the parties;
    - (d) matters relating to requests from the parties for amending or supplementing the pleadings; and
    - (e) the consequences upon failure to submit such pleadings by the parties.
  - (ii) The procedure to be followed by the arbitrator in conducting the arbitral proceedings. In particular, and without prejudice to the generality of the foregoing power, such procedure may, inter alia, provide for
    - (a) adjournment of hearings; and
    - (b) terms and conditions subject to which the arbitrator may appoint experts to report on specific issues and the procedure to be followed in arbitral proceedings upon such an appointment.
    - (c) passing interim orders/directions if deemed fit.
  - (iii) Different set of arbitration procedures for different claims, differences or disputes after taking into consideration such circumstances and facts as the Relevant Authority may deem fit, which circumstances and facts may include the value of the subject matter and the persons who are involved as parties to such claims, differences or disputes.

- (iv) Creation of seats of arbitration for different regions or prescribing geographical locations for conducting arbitrations and prescribing the courts which shall have jurisdiction for the purpose of the Act.
- (v) The claims, differences or disputes which may be referred to a sole arbitrator and the claims, differences or disputes which may be referred to a panel of arbitrators.
- (vi) The procedure for selection of persons eligible to act as arbitrators.
- (vii) The procedure for appointment of arbitrator.
- (viii) The terms, conditions and qualifications subject to which any arbitrator may be appointed.
- (ix) Determination of the number of arbitrators in the case of a panel of arbitrators.
- (x) The time period within which a substitute arbitrator has to be appointed in case the office of the arbitrator falls vacant for any reason whatsoever.
- (xi) The matters to be disclosed by any person who is approached in connection with his possible appointment as an arbitrator.
- (xii) The procedure to be adopted by the parties for challenging the appointment of an arbitrator.
- (xiii)(a) The claims, differences or disputes which, may be decided by the arbitrator without a hearing unless either party in writing requests the Relevant Authority for a hearing and the time period within which such a request shall be made.
- (b) The claims, differences or disputes which, may be decided by the arbitrator only by hearing the parties unless both the parties jointly waive the right to such hearing and the time period within which such a waiver shall be made.
- (xiv) The place of arbitration for each reference and the places where the arbitrator can meet for consultation, for hearing witnesses, experts, or the parties, or for inspection of documents, goods or other property.
- (xv) The making of the arbitral award including the manner in which a decision is to be taken in the case of panel of arbitrators and the form and contents of the arbitral award.

The term arbitral award shall also include an arbitral award on agreed terms. Prescriptions as to the contents of the arbitral award may include provisions for costs and where the arbitral award is for the payment of money, may include interest payable on principal sum due.

- (xvi) The amount of deposit or supplementary deposit, as the case may be, as an advance for the costs which it expects will be incurred in

respect of the claim, difference or dispute; provided where a counter-claim is submitted to the arbitrator, a separate amount of deposit for the counter-claim may also be prescribed.

- (xvii) The administrative assistance which the Clearing Corporation may render in order to facilitate the conduct of arbitral proceedings.
  - (xviii) All matters regarding the mode and the manner of service of notices and communications by the parties including communication addressed to arbitrator.
  - (xix) Any other matter which in the opinion of the Relevant Authority is required to be dealt with in the Regulations to facilitate arbitration.
- (5) (b) The Relevant Authority from time to time may amend, modify, alter, repeal, or add to the provisions of the Regulations.

#### Disclosure by persons to be appointed as arbitrators

- (6) Every person who is approached in connection with his possible appointment as an arbitrator, shall disclose to the Relevant Authority in writing any circumstances likely to give rise to justifiable doubts as to his independence and impartiality. If the person discloses any circumstances which in the opinion of the Relevant Authority are likely to give rise to justifiable doubts as to his independence and impartiality, then he shall not be appointed as an arbitrator.

#### Disclosure by persons appointed as arbitrators

- (7) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the Relevant Authority in writing any circumstances referred to in Byelaw (6) above which have come to his knowledge after his appointment as an arbitrator.

#### Termination of mandate of the arbitrator

- (8) The mandate of the arbitrator shall terminate if
- (a) the arbitrator withdraws from office for any reason; or
  - (b) in the opinion of the Relevant Authority, the arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay including failure to make the arbitral award within the time period prescribed by the Relevant Authority. Such a decision of the Relevant Authority shall be final and binding on the parties; or
  - (c) the mandate of the arbitrator is terminated by the Relevant Authority upon receipt of written request for the termination of the mandate of the arbitrator from both the parties to arbitration; or

- (d) the arbitrator discloses any circumstances referred to in Byelaws (6) and (7) which in the opinion of the Relevant Authority are likely to give rise to justifiable doubts as to his independence and impartiality; or
- (e) the arbitral proceedings are terminated as provided for herein.

#### Supplying of vacancy to the office of the arbitrator

- (9) At any time before the making of the arbitral award should the office of the arbitrator fall vacant for any reason whatsoever including any vacancy due to the illness or death of the arbitrator or termination of the mandate of the arbitrator by the Relevant Authority or otherwise, the vacancy shall be supplied by the Relevant Authority by following the same procedure as specified by it for appointment of the arbitrator.

#### Consideration of recorded proceedings and evidence

- (10) Unless otherwise agreed by parties, any arbitrator who has been appointed by the Relevant Authority to supply a vacancy to the office of the arbitrator, may repeat any hearings previously held.

#### Order or ruling of previous arbitrator not invalid

- (11) An order or ruling of the arbitrator made prior to the termination of his mandate shall not be invalid solely because his mandate has been terminated; provided that when the termination has been effected pursuant to Byelaw (8)(d), the order or ruling of the arbitrator made prior to termination of his mandate shall become invalid unless otherwise agreed upon by the parties.

#### Interim arbitral award and interim measures ordered by the arbitrator

- (12) The arbitrator may be empowered to make an interim arbitral award as well as to provide interim measures of protection. An arbitrator may require a party to provide appropriate security in connection with an interim measure.

#### Appearance in arbitral proceedings by counsel, attorney or advocate

- (13) In arbitral proceedings where both the parties are Clearing Members, the parties shall not be permitted to appear by counsel, attorney or advocate but where one of the parties is a Constituent, then the Constituent shall be permitted to appear by counsel, attorney or advocate. If the Constituent chooses to appear by counsel, attorney or advocate, then the Clearing Member shall be granted a similar privilege.

#### Arbitral award by arbitrator

- (14) The arbitrator shall make the arbitral award within one month from the date of entering upon the reference and the time to make the award may be extended from time to time by the Relevant Authority on an application by either of the parties or the arbitrator as the case may be.

For the purpose of this Byelaw the arbitrator shall be deemed to have entered upon a reference on the date on which the arbitrator has or is deemed to have applied his mind.

Arbitration proceedings subject to the provisions of the Act

- (15) The arbitration proceedings as provided for by the provisions of these Byelaws and Regulations shall be subject to the provisions of the Act to the extent not provided for in these Byelaws or the Regulations.

Construction of references

- (16) For the purposes of section 2(6) of the Act, in all claims, differences or disputes which are required to be submitted to arbitration as per the provisions of these Byelaws and the Regulations, wherever Part A of the Act leaves the parties free to determine a certain issue, the parties shall be deemed to have authorised the Relevant Authority to determine that issue.

Administrative assistance

- (17) For the purpose of section 6 of the Act, in all claims, differences or disputes which are required to be submitted to arbitration as per the provisions of these Byelaws and Regulations, the parties shall be deemed to have arranged for administrative assistance of the Relevant Authority in order to facilitate the conduct of the arbitral proceedings.

Jurisdiction

- (18) All parties to a reference to arbitration under these Byelaws and Regulations and the persons, if any, claiming under them, shall be deemed to have submitted to the exclusive jurisdiction of the courts in Mumbai or any other court as may be prescribed by the Relevant Authority for the purpose of giving effect to the provisions of the Act.
3. All claims, disputes, differences, arising between the Securities Lending Members and their Clients arising out of or related to transactions entered into under the Securities Lending for Settlement Shortages scheme of the Clearing Corporation or with reference to anything done in respect thereto or in pursuance of such transactions shall be referred to and decided in accordance with the arbitration procedure as prescribed by the relevant authority from time to time provided.

## CHAPTER XI : DEFAULT

### 1. DECLARATION OF DEFAULT

A clearing member may be declared a defaulter by direction/circular/notification of the relevant authority of the segment if:

- (1) he is unable to fulfill his clearing or settlement obligations; or
- (2) he admits or discloses his inability to fulfill or discharge his duties, obligations and liabilities; or
- (3) he fails or is unable to pay within the specified time the damages and the money difference due on a closing-out effected against him under the Rules, Bye Laws and Regulations; or
- (4) he fails to pay any sum due to the Clearing Corporation as the relevant authority may from time to time prescribe; or
- (5) he fails to pay or deliver all moneys, securities and other assets due to a clearing member who has been declared a defaulter within such time of declaration of default of such clearing member in such manner and to such person as the relevant authority may direct; or
- (6) he fails to abide by the arbitration award as laid down under the Rules, Bye Laws and Regulations; or
- (7) under any other circumstances as may be decided by the relevant authority from time to time.

**1A.** If he, being an individual and/ or Partnership firm, has been adjudicated as an insolvent or it, being a Company incorporated under the Companies Act, has been ordered to be wound up by a court of law in the petition filed by any of his creditors, as the case may be, he/ it shall ipso facto be declared a defaulter though he/ it may not have at the same time defaulted on any of his/ its obligations on the Clearing Corporation.

**1B.** If he, being an individual and/ or Partnership firm, / it, being a Company incorporated under the Companies Act, files a petition before a Court of law for adjudication of himself as an insolvent or for its winding up, as the case may be, he/ it shall ipso facto be declared a defaulter though he/ it may not have at the same time defaulted on any of his/ its obligations on the Clearing Corporation.

**1C.** Without prejudice to the foregoing provisions contained in Byelaw (1) of this chapter, where a clearing member, who is also a member/ trading member of any of the recognized Stock Exchanges, is declared a defaulter by such Stock Exchange, the said Clearing Member shall ipso facto stand declared a defaulter by the Relevant Authority.

**1D.** Notwithstanding anything contained in the Byelaws and Rules of Clearing Corporation, if a clearing member is an Associate of a member/trading member

declared a defaulter by any recognized stock exchange, the said clearing member shall render itself liable to be declared a defaulter by the Relevant Authority.

Explanation:

The expression 'Associate' for the purpose of the above Byelaw shall have the meaning as may be defined by SEBI from time to time.

## **2. CLEARING MEMBER'S DUTY TO INFORM**

A clearing member shall be bound to notify the Clearing Corporation immediately if there be a failure by any clearing member to discharge his liabilities in full.

## **3. COMPROMISE FORBIDDEN**

A clearing member shall not accept from any clearing member anything less than a full and bona fide money payment in settlement of a debt arising out of a deal cleared through the Clearing Corporation.

## **4. NOTICE OF DECLARATION OF DEFAULT**

On a clearing member being declared a defaulter, a notice shall be forthwith issued to all the clearing members of the Clearing Corporation.

## **5. NOTICE TO THE STOCK EXCHANGE**

On a clearing member being declared a defaulter, a notice shall be forthwith issued to the Exchange if the clearing member is also a trading member of that Exchange.

## **6. DEFAULTER'S BOOKS AND DOCUMENTS**

When a clearing member has been declared a defaulter the relevant authority shall take charge of all his books of accounts, documents, papers and vouchers to ascertain the state of his affairs and the defaulter shall hand over such books, documents, papers and vouchers to the relevant authority.

## **7. LIST OF DEBTORS AND CREDITORS**

The defaulter shall file with the relevant authority within such time of the declaration of his default as the relevant authority may direct, a written statement containing the complete list of his debtors and creditors and the sum owed by and to each.

## **8. DEFAULTER TO GIVE INFORMATION**

The defaulter shall submit to the relevant authority such statement of accounts, information and particulars of his affairs as the relevant authority may from time to time require and if so desired shall appear before the relevant authority at its meetings held in connection with his default.

**9. INQUIRY**

The relevant authority may conduct a strict inquiry into the accounts and dealings of the defaulter in the market and shall report anything improper, unbusinesslike or unbecoming a clearing member in connection therewith which may come to its knowledge.

**10. DEFAULTER'S ASSETS**

The relevant authority shall call in and realise the security deposits in any form, margin money, other amounts lying to the credit of and securities deposited by the defaulter and recover all moneys, securities and other assets due, payable or deliverable to the defaulter by any other Clearing Member in respect of any deal or dealing made subject to the Bye-laws, Rules and Regulations of the Clearing Corporation and such assets shall vest ipso facto, on declaration of any clearing member as a defaulter, in the Clearing Corporation for the benefit of and on account of the Clearing Corporation, National Stock Exchange of India Limited, Securities and Exchange Board of India, other clearing members, Constituents of the defaulter, approved banks and any other persons as may be approved by the relevant authority and other recognised stock exchanges / clearing corporation.

**11. PAYMENT TO RELEVANT AUTHORITY**

- (1) All monies, securities and other assets due, payable or deliverable to the defaulter must be paid or delivered to the relevant authority within such time of the declaration of default as the relevant authority may direct. A clearing member violating this provision may be declared a defaulter.
- (2) A clearing member who shall have received a difference on account or shall have received any consideration in any deal prior to the date fixed for settling such account or deal shall, in the event of the clearing member from whom he received such difference or consideration being declared a defaulter, refund the same to the relevant authority for the benefit and on account of the creditor members. Any clearing member who shall have paid or given such difference or consideration to any other clearing member prior to such settlement day shall again pay or give the same to the relevant authority for the benefit and on account of the creditor member in the event of the default of such other member.
- (3) A clearing member who receives from another clearing member during any clearing a claim note or credit note representing a sum other than difference due to him or due to his constituent which amount is to be received by him on behalf and for the account of that constituent shall refund such sum if such other clearing member be declared a defaulter within such number of days as prescribed by the relevant authority after the settling day. Such refunds shall be made to the relevant authority for the benefit and on account of the creditor members and it shall be applied in liquidation of the claims of such creditor members whose claims are admitted in accordance with the Rules, Bye Laws and Regulations.

**12. DISTRIBUTION**

The relevant authority shall at the risk and cost of the creditor members pay all assets received in the course of realisation into such bank and/or keep them with the Clearing Corporation in such names as the relevant authority may from time to time direct and shall distribute the same in accordance with the Rules, Bye Laws and Regulations.

**13. CLOSING -OUT**

- (1) Clearing members having open deals with the defaulter shall close out such deals after declaration of default. Such closing out shall be in such manner as may be prescribed by the relevant authority from time to time. Subject to the regulations in this regard prescribed by the relevant authority, when in the opinion of the relevant authority, circumstances so warrant, such closing out shall be deemed to have taken place in such manner as may be determined by the relevant authority.
- (2) Differences arising from the above adjustments of closing out shall be claimed from the defaulter or paid to the relevant authority for the benefit of creditor clearing members of the defaulter.

**14. CLAIMS AGAINST DEFAULTER**

Within such time of the declaration of default as the relevant authority may direct every clearing member carrying on business on the Clearing Corporation shall, as it may be required to do, either compare with the relevant authority his accounts with the defaulter duly adjusted and made up as provided in the Rules, Bye-Laws and Regulations or furnish a statement of such accounts with the defaulter in such form or forms as the relevant authority may prescribe or render a certificate that he has no such account.

**15. DELAY IN COMPARISON OR SUBMISSION OF ACCOUNTS**

Any clearing member failing to compare his accounts or send a statement or certificate relating to a defaulter within the time prescribed shall be called upon to compare his accounts or send such statement or certificate within such further time as may be specified.

**16. PENALTY FOR FAILURE TO COMPARE OR SUBMIT ACCOUNTS**

The relevant authority may take such action as it may deem fit including levying of fine and suspension on any clearing member who fails to compare his accounts or submit a statement of its account with the defaulter or a certificate that he has no such account within the prescribed time.

**17. MISLEADING STATEMENT**

The relevant authority may take such action as it may deem fit including levying of fine and suspension, if it is satisfied that any comparison statement or certificate relating to a defaulter sent by such clearing member was false or misleading.

**18. ACCOUNTS OF RELEVANT AUTHORITY**

The relevant authority shall keep a separate account in respect of all monies, securities and other assets payable to a defaulter which are received by it and shall defray therefrom all costs, charges and expenses incurred in or about the collection of such assets or in or about any proceedings it takes in connection with the default.

**19. APPLICATION OF ASSETS**

The relevant authority shall apply the net assets remaining in its hands after defraying all such costs, charges and expenses as are allowed under the Rules, Byelaws and Regulations to be incurred by the Clearing Corporation, in satisfying the claims in the order of priority provided hereunder

- (a) Dues to the Clearing Corporation, National Stock Exchange of India Limited, Securities and Exchange Board of India

The payment of such subscriptions, debts, fines, fees, charges and other moneys due to Clearing Corporation, National Stock Exchange of India Limited and Securities and Exchange Board of India, in the order in which their names appear herein.

- (b) Dues to other Clearing Members and to constituents of the defaulter

The payments as may be admitted by the relevant authority, as being due to other Clearing members and constituents of the defaulter for debts, liabilities, obligations and claims arising out of any contracts made by the defaulter subject to the Rules, Bye-laws and Regulations of the Clearing Corporation, provided that if the amount is insufficient then the amounts shall be distributed prorata amongst other clearing members and all the constituents of the defaulter. The other Clearing members shall in turn share the amount so received with their Constituents on pro rata basis.

- (c) Dues to the Approved Banks and claims of any other persons as approved by the Relevant Authority

After making payments under (b) above, the amounts remaining, if any, shall be utilised to meet the claims of the approved banks and of any other person as may be admitted by the Relevant Authority. The claims of the approved banks should have arisen by virtue of Clearing Corporation or National Stock Exchange of India Limited invoking any bank guarantee issued by the bank concerned to the Clearing Corporation or National Stock Exchange of India Limited as the case may be on behalf of the defaulter to fulfill his obligation of submitting bank guarantee,

guaranteeing discharge of obligations under the Byelaws, Rules and Regulations of Clearing Corporation / NSEIL. The claims of other persons should have arisen out of or incidental to the clearing and settlement of a deal on the Clearing Corporation or requirements laid down by the Clearing Corporation, provided that if the amount available be insufficient to pay all such claims in full, they shall be paid pro rata.

(d) Dues to any other recognized stock exchange/clearing corporation :

After meeting the claims under (c) above, the remaining amounts, if any, shall be disbursed to any other recognised stock exchange / clearing corporation for the purpose of meeting the obligations of the defaulter as a member of that exchange/clearing corporation. If the defaulter is a member of more than one recognised stock exchange/clearing corporation, then the remaining amounts shall be distributed amongst all such recognized stock exchanges / clearing corporations and if the remaining amount is insufficient to meet the claims of all such stock exchanges/clearing corporations, then the remaining amount shall be distributed pro rata among all such stock exchanges.

(e) Surplus

The surplus amounts, if any, remaining after meeting all the above claims, shall be paid to the Clearing Member and in case where the Clearing member has expired, the surplus amount shall be paid to his legal heirs / legal representatives.

## **20. CERTAIN CLAIMS NOT TO BE ENTERTAINED**

The relevant authority shall not entertain any claim against a defaulter –

- (1) which arises out of a contract in securities, dealings in which are not permitted or which are not made subject to Bye Laws, Rules and Regulations of the Clearing Corporation or in which the claimant has either not paid himself or colluded with the defaulter in evasion of margin payable on bargains in any security;
- (2) which arises out of a contract in respect of which comparison of accounts has not been made in the manner prescribed in the Rules, Bye Laws and Regulations or when there has been no comparison if a contract note in respect of such deals has not been rendered as provided in the Rules, Bye Laws and Regulations;
- (3) which arises from any arrangement for settlement of claims in lieu of bonafide money payment in full on the day when such claims become due;
- (4) which is in respect of a loan with or without security;
- (5) which is not filed with the relevant authority within such time of date of declaration of default as may be prescribed by the relevant authority.

**21. ASSIGNMENT OF CLAIMS ON DEFAULTER'S ESTATE**

A Clearing member being a creditor of a defaulter shall not sell, assign or pledge the claim on the estate of such defaulter without the consent of the relevant authority.

**22. PROCEEDINGS IN THE NAME OF OR AGAINST DEFAULTER**

The Relevant Authority shall be empowered to (a) initiate any proceedings in a court of law either in the name of the Clearing Corporation or in the name of the defaulter against any person for the purpose of recovering any amounts due to the defaulter (b) initiate any proceedings in a court of law either in the name of Clearing Corporation or in the name of the creditors (who have become creditors of the defaulter as a result of deals cleared and settled subject to Byelaws, Rules and Regulations of the Clearing Corporation) of the defaulter against the defaulter for the purpose of recovering any amounts due from the defaulter. The defaulter as well as the creditors of the defaulter shall be deemed to have appointed the Clearing Corporation as their constituted attorney for the purpose of taking such proceedings.

**23. PAYMENT OF RELEVANT AUTHORITY**

If any clearing member takes any proceedings in a court of law against a defaulter whether during the period of its default or subsequent to its re-admission to enforce any claim against the defaulter's estate arising out of any admitted deals in the market made subject to the Bye Laws, Rules and Regulations of the Clearing Corporation before it was declared a defaulter and obtains a decree and recovers any sum of money thereon, it shall pay such amount or any portion thereof as may be fixed by the relevant authority for the benefit and on account of the creditor members having claims against such defaulter.

## **CHAPTER XII : SETTLEMENT FUND**

### **1. CLEARING CORPORATION TO MAINTAIN SETTLEMENT FUND**

- (1) The Clearing Corporation shall maintain Settlement Fund(s) in respect of different clearing segment(s) for such purposes as may be prescribed by the relevant authority from time to time.
- (2) The relevant authority may prescribe from time to time the norms, procedures, terms and conditions governing each Settlement Fund which may inter-alia specify the amount of deposit or contribution to be made by each clearing member to the relevant fund, the terms, manner and mode of deposit or contributions, conditions of repayment of deposit or withdrawal of contribution from the fund, charges for utilisation, penalties and disciplinary actions for non-performance thereof.

### **2. CONTRIBUTION TOWARDS SETTLEMENT FUND**

- (1) Each clearing member shall be required to contribute to and provide a deposit as may be determined from time to time by the relevant authority to the relevant Settlement Fund which shall be held by the Clearing Corporation to be applied as provided in these Bye Laws and Regulations.
- (2) The relevant authority may specify the amount of contribution or deposit to be made by each clearing member and/or category of members which may include inter alia the minimum amount to be provided by each clearing member.
- (3) The relevant authority may also specify such additional contribution or deposit that shall have to be provided towards the Settlement Fund from time to time to form part of the Settlement Fund.

### **3. FORM OF CONTRIBUTION/DEPOSIT**

The relevant authority shall prescribe from time to time the form of contribution or deposit to the relevant Settlement Fund. The relevant authority in its discretion, may permit a clearing member to contribute or provide the deposit either in the form of cash, securities, bank guarantee or by such other method and subject to such terms and conditions as may be specified from time to time.

### **4. REPLACEMENT OF DEPOSIT**

By giving a suitable notice to the Clearing Corporation and subject to such conditions as may be specified by the relevant authority from time to time, a clearing member may withdraw qualifying securities from pledge, or may cause the Clearing Corporation to revoke an acceptable letter of credit or bank guarantee, which secured the clearing member's contribution or deposit towards the Settlement Fund, provided that the clearing member has, effective simultaneously with such

withdrawal or revocation, deposited cash with, or pledged qualifying securities to the Clearing Corporation or through such other mode as may be approved by the Clearing Corporation from time to time to satisfy his required contribution or deposit.

## **5. ADMINISTRATION AND UTILISATION OF THE SETTLEMENT FUND**

- (1) The Settlement Fund shall be utilised for such purposes as may be provided in the Bye Laws and Regulations and subject to such conditions as the relevant authority may prescribe from time to time which shall include :
  - (a) to defray the expenses of creation, maintenance and repayment of the Settlement Fund;
  - (b) investment in such approved securities and other avenues subject to such terms and conditions as may be decided by the relevant authority from time to time;
  - (c) the application of Settlement Fund to meet premia on insurance cover(s) which the relevant authority may take from time to time;
  - (d) the application of Settlement Fund to meet shortfalls and deficiencies arising out of the clearing and settlement of such deals as provided in the Bye Laws and Regulations;
  - (e) the application of the Settlement Fund to satisfy any loss or liability of the Clearing Corporation arising out of clearing and settlement operations of such deals as provided in the Bye Laws and Regulations;
  - (f) repayment of the balance after meeting all obligations under the Rules, Bye Laws and Regulations to the clearing member when he ceases to be a member pursuant to the provisions regarding the repayment of deposit;
  - (g) any other purpose as may be specified by the Board from time to time.
- (2) Save as otherwise expressly provided in the Bye Laws and Regulations, the Settlement Fund shall not be utilised for any other purpose.
- (3) The Clearing Corporation shall have full power and authority to pledge, re-pledge, hypothecate, transfer, create a security interest in, or assign any or all of the (i) settlement fund cash, (ii) securities or other instruments in which settlement fund cash is invested and (iii) qualifying securities pledged by a clearing member or letters of credit or any other instrument issued on behalf of a clearing member in favour of the Clearing Corporation towards deposit to the Settlement Fund.

## **6. UTILISATION FOR FAILURE TO MEET OBLIGATIONS**

In the event a clearing member fails to meet obligations to the Clearing Corporation arising out of clearing and settlement operations of such deals as provided in the Bye Laws and Regulations, the relevant authority may utilise the Settlement Fund and

other monies to the extent necessary to fulfill the obligation under such terms and conditions as the relevant authority may specify from time to time.

## 7. UTILISATION IN CASE OF DEFAULT

In the event a clearing member is declared a defaulter and the clearing member fails to meet the clearing and settlement obligations to the Clearing Corporation arising out of clearing and settlement operations of such deals as provided in the Bye Laws and Regulations, the relevant authority may utilise the Settlement Fund and other monies to the extent necessary to eliminate the obligation in the following order :

- (1) any amount that may be paid in the form of margin or any other payment of the defaulting member retained by the Clearing Corporation for the purpose of the clearing and settlement; if this amount is not sufficient to settle the obligation,
- (2) any contribution or deposit made by or bank guarantee arranged by the defaulting member to the settlement fund, whether in the form of cash or securities or bank guarantee; if this amount is not sufficient to settle the obligation,
- (3) the amount of security deposit, if any, made by the defaulting member to the Specified Exchange to the extent not appropriated by the Specified Exchange towards the obligations of the defaulting member to it; if this amount is not sufficient to settle the obligation,
- (4) the proceeds, if any, recovered from auctioning or transferring the membership of the defaulting member in the Specified Exchange, subject to deduction of the expenses relating or incidental to the auction; if this amount is not sufficient to settle the obligation,
- (5) the fines, penalties, penal charges, auction difference, interest on delayed payments, interest or other income, if any, earned by investment or disinvestment of Settlement Fund or interest earned on margin monies that form part of the Settlement Fund to the extent as may be decided by the Clearing Corporation; if the amount is not sufficient to settle the obligation,
- (6) the retained earnings of the Clearing Corporation to the extent available; if this amount is not sufficient to settle the obligation,
- (7) the profits available for appropriation in the respective year in which the default took place; if this amount is not sufficient to settle the obligation,
- (8) the amount of contribution and deposit made by all categories of clearing members to the Settlement Fund in proportion to the total contribution and deposit made by each clearing member.
- (9) If the above amount is not sufficient, the balance obligation remaining after application of the above funds shall be assessed against the clearing members

in the same proportion as their total contribution and deposit and clearing members shall be required to contribute or deposit in the Settlement Fund, within such time as the relevant authority shall require, the deficient amount.

#### **8. OBLIGATION TO BRING IN ADDITIONAL CONTRIBUTION OR DEPOSIT**

- (1) If a pro-rata charge is made as mentioned in the above provision against a clearing member's actual contribution or deposit, and as a consequence the clearing member's remaining contribution and deposit towards the Settlement Fund is less than his required contribution and deposit, the clearing member shall contribute or deposit in the Settlement Fund, within such time as the relevant authority shall require the deficient amount.
- (2) If the clearing member shall fail to do so, the relevant authority may charge such interest, impose penalties and fines and take such disciplinary action against the clearing member as it may determine from time to time. Any disciplinary action which the relevant authority takes pursuant to the above provisions or involuntary cessation of membership by the clearing member shall not affect the obligations of the clearing member to the Clearing Corporation or any remedy to which the Clearing Corporation may be entitled under applicable law.

#### **9. ALLOCATION OF THE CONTRIBUTION OR DEPOSIT**

Each clearing member's contribution and deposit towards Settlement Fund shall be allocated by the Clearing Corporation among the various segments which are designated as such by the Clearing Corporation and in which the clearing member participates, in such proportion as it may decide from time to time. The Clearing Corporation shall retain the right to utilise the fund allocated to a particular segment to the satisfaction of losses or liabilities of the Clearing Corporation incident to the operation of that segment or for any other segment as may be decided by the Clearing Corporation at its discretion.

#### **10. CESSATION OF THE CLEARING MEMBER**

- (1) A clearing member shall be entitled to the repayment of deposit made by him to the Settlement Fund after –
  - (a) the clearing member ceases to be a member, and
  - (b) all pending deals, at the time the clearing member ceases to be a clearing member which could result in a charge to the Settlement Fund, have been closed and settled, and
  - (c) all obligations to the Clearing Corporation for which the clearing member was responsible while he was a member have been satisfied or, at the discretion of the relevant authority, have been deducted by the Clearing

Corporation from the clearing member's actual deposit; provided, however, that the clearing member has presented to the Clearing Corporation such indemnities or guarantees as the relevant authority deems satisfactory or another clearing member has been substituted on all deals and obligations of the clearing member, and

- (d) a suitable amount as may be determined by the relevant authority at its discretion has been set aside for taking care of any loss arising from any document defects that may be reported in the future, and
  - (e) a suitable amount as may be determined by the relevant authority at its discretion towards such other obligations as may be perceived by the Clearing Corporation to exist or may be perceived to arise in future.
- (2) The relevant authority may specify rules for the repayment of deposit including the manner, amount and period within which it will be paid but at no point of time will the repayment exceed the actual deposit available to the credit of the clearing member after deducting the necessary charges from the same.
- (3) Any obligation of a clearing member to the Clearing Corporation unsatisfied at the time he ceases to be a clearing member shall not be affected by such cessation of membership.

## **11. RECOVERY OF LOSS AND RE-DISTRIBUTION**

If a loss charged pro rata is afterwards recovered by the Corporation, in whole or in part, through insurance or otherwise, the net amount of the recovery shall be credited to the persons against whom the loss was charged in proportion to the amounts actually charged against them.

## **12. LIMITATION OF LIABILITY**

The liability of the Clearing Corporation resulting from the deemed contracts of clearing members with the Clearing Corporation and to losses in connection therefrom be limited to the extent of contributions available to the Settlement Fund. The Clearing Corporation shall not be available for obligations of a non-clearing member, obligations of a clearing member to a non-member, obligations of a clearing member to another member of the Clearing Corporation towards deals to which the Clearing Corporation is not a counter party or obligations to a constituent by a clearing member, and to losses in connection therefrom.

**CHAPTER XIII : MISCELLANEOUS**

1. Save as otherwise specifically provided in the Bye Laws and Regulations prescribed by the relevant authority regarding clearing and settlement arrangement, in promoting, facilitating, assisting, regulating, managing and operating the Clearing Corporation, the Clearing Corporation should not be deemed to have incurred any liability, and accordingly no claim or recourse in respect of or in relation to any dealing in securities or any matter connected therewith shall lie against the Clearing Corporation or any authorised person(s) acting for the Clearing Corporation.
  
2. No claim, suit, prosecution or other legal proceeding shall lie against the Clearing Corporation or any authorised person(s) acting for the Clearing Corporation in respect of anything which is in good faith done or intended to be done in pursuance of any order or other binding directive issued to the Clearing Corporation under any law or delegated legislation for the time being in force.