

**BYE-LAWS**

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## CHAPTER - I

### PRELIMINARY & DEFINITIONS

#### PRELIMINARY

##### **Short Title**

These Bye- Laws shall be called "Bye-Laws" or "ICCL Bye-Laws".

##### **Applicability of the Securities Laws**

These Bye-Laws and Regulations prescribed there under shall be subject to the provisions of the Securities Laws.

##### **Definitions:**

##### **1.1 "Board Of Directors" or "Board"**

"Board of Directors" or "Board" means Board of Directors of the Indian Clearing Corporation Limited or wherever the context requires the Board of Directors of the Specified Exchange;

##### **1.2 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;

##### **1.3 Clearing Bank(s)**

"Clearing Bank(s)" shall mean the banks presently engaged by the Specified Exchange to act as clearing banks, banks that may be engaged by the Specified Exchange in future to act as clearing banks and such bank(s) as the Clearing Corporation may appoint to act as funds settling agency, to collect margin money for all Deals and any other funds movement inter se between Clearing Members and Clearing Members and the Clearing Corporation as may be directed by the Clearing Corporation from time to time;

##### **1.4 Clearing Corporation**

"Clearing Corporation" means Indian Clearing Corporation Limited;

##### **1.5 Clearing Member**

"Clearing Member" shall mean all existing members of the Clearing House, and all Trading Members of Equity segment of the, Specified Exchange (as defined hereinafter) a member of the Clearing Corporation and includes all categories of members that may be admitted by the Clearing Corporation as the clearing

members; and the term "Clearing Membership" shall be construed accordingly however does not denote the shareholder of the Clearing Corporation;

#### **1.6 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;

#### **1.7 Client/Constituent**

"Client" or "Constituent" means a person on whose instructions and on whose account the Clearing Member settles deals on the Clearing Corporation or as may be permitted by the Clearing Corporation and may also be called as investor;

*Explanation 1:*

The terms 'Constituent' and 'Client' are interchangeably used in the Bye-Laws, Rules & Regulations and shall have the same meaning as assigned herein.

*Explanation 2:*

Whether the context requires the term 'Constituent' in relation to trades shall also include a Trading Member where such trades, done on the Specified Exchange/Exchange, are cleared and settled on his behalf by the Clearing Member.

#### **1.8 Deal**

"Deal" means, unless the context indicates otherwise, deals which are admitted to be cleared and settled through the Clearing Corporation;

#### **1.9 Delivering Member / Selling Member**

"Delivering Member / Selling Member" means a Clearing Member who ought to or has effected delivery in fulfillment of contracts to which these Rules, Bye-Laws and Regulations apply unless the context indicates otherwise;

#### **1.10 Exchange**

"Exchange" means any stock exchange recognised under the SCRA as a stock exchange and shall include the Specified Exchange wherever the context so admits or requires;

#### **1.11 Receiving Member / Buying Member**

"Receiving Member / Buying Member" shall mean a Clearing Member who ought to or has taken delivery in fulfillment of contracts to which these Rules, Bye-Laws and Regulations apply;



#### **1.12 Regulations**

"Regulations" shall have the same meaning as assigned to it in the Rules, Bye-laws and Regulations of the Clearing Corporation;

#### **1.13 Relevant Authority**

"Relevant Authority" shall have the same meaning as assigned to it in the Rules of the Clearing Corporation;

#### **1.14 Rules**

"Rules" shall have the same meaning as assigned to it under the Rules of the Clearing Corporation;

#### **1.15 SEBI**

"SEBI" means Securities and Exchange Board of India established under Section 3 of Securities and Exchange Board of India Act, 1992;

#### **1.16 Securities**

"Securities" shall have the meaning assigned to it in the Securities Contracts (Regulation) Act, 1956 and any modification thereof;

#### **1.17 Core Settlement Guarantee Fund**

"Core Settlement Guarantee Fund" means a fund established and maintained in accordance with the relevant provisions of the Bye-Laws of Clearing Corporation;

#### **1.18 Specified Exchange**

"Specified Exchange" or "specified exchange" means BSE Limited

#### **1.19 Trading Member**

"Trading Member" or "trading member" means a Stock Broker or Trading Member of any segment of any Exchange and registered with SEBI as such under the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992; and the term "Trading Membership" shall be construed accordingly;

Note: Unless the context otherwise requires, the terms used but not defined in these Bye-Laws shall have the meaning assigned to such terms under the Rules or Regulations of the Clearing Corporation or under the Rules, Regulations and Bye-Laws of the Specified Exchange whenever the context so admits and to the extent requires.

#### **Business Days:**

- 1.20** (a) The Clearing Corporation shall be open on all days except on public holidays under the Negotiable Instruments Act, 1881 and whenever declared in advance by the Relevant Authority and not exceeding twelve in any calendar year.

Exception

- (b) Notwithstanding anything contained in sub-clause (a) the Clearing Corporation shall be open for business during the Diwali holidays on such "Moorat Day" as the Relevant Authority may fix.

## **1.21 Alteration or Cancellation of Clearing Corporations' Holidays**

### **1.21.1 The Relevant Authority may from time to time:**

- (a) alter or cancel any of the Clearing Corporations holidays fixed in accordance with these provisions;
- (b) keep the Clearing Corporation open for Clearing and Settlement of Deals on any day notwithstanding that such day is a public holiday under the Negotiable Instruments Act, 1881 or an Clearing Corporations holiday declared by the Relevant Authority in advance.

## **1.22 Closure of Clearing Corporation during Market Closure**

The Relevant Authority may for reasons to be recorded close the Clearing Corporation on the Market Closure days other than or in addition to holidays:

## **1.23 Clearing and Settlement Session**

Meetings of the Clearing Members for clearing and settlement purposes to be called clearing and settlement sessions shall be held in such manner as may be specified by the Relevant Authority from time to time.

## **1.24 Altering Time of Clearing Session**

The Relevant Authority may reduce, extend or otherwise alter the time of Clearing session of the Clearing Corporation on any particular day.

## **CHAPTER – II**

### **CLEARING SEGMENTS**

- 2.1 The Clearing Corporation may establish more than one Clearing Segments as may be determined by the Relevant Authority from time to time. As to which Deals which may be admitted to which Clearing Segment for the purpose of clearing and settlement shall be determined by the Relevant Authority.
- 2.2 Without prejudice to generality of the Bye-law 2.1, the Clearing Corporation has created separate Clearing Segments for Equity, Debt, Currency Derivatives and Equity Derivative Segment of the Specified Exchange and Currency Derivative Segment of United Stock Exchange of India Limited.

## **CHAPTER – III**

### **COMMITTEE(S)**

- 3.1 Various committee(s) shall be appointed by Board/ the Relevant Authority in such manner as may be prescribed by the SEBI from time to time.
- 3.2 Such committee(s) shall function and shall have such powers/responsibilities as may be laid down in the Rules or as may be specified by SEBI/Board/Relevant Authority.

**CHAPTER – IV**  
**REGULATIONS**

- 4.1 The Relevant Authority 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.
- 4.2 Without prejudice to the generality of the above, the Relevant Authority may prescribe regulations from time to time, inter alia, with respect to:
- (a) Norms, procedures, terms and conditions for admission of Clearing Member/Clearing Banks;
  - (b) Norms, procedures, terms and conditions to be complied with for admission of Deals for Clearing and Settlement by the Clearing Corporation;
  - (c) Norms, procedures, terms and conditions for clearing and settlement of Deals for different Clearing Segments and different securities and instruments;
  - (d) 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;
  - (e) Norms, procedures, terms and conditions for guaranteed settlement by the Clearing Corporation;
  - (f) 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;
  - (g) 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.
  - (h) 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;
  - (i) Supervision of the clearing operations and promulgation of such Business Rules and Codes of Conduct as it may deem fit;
  - (j) Inspection and audit of records and books of accounts;
  - (k) 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;

- (l) Norms, procedures, terms and conditions for arbitration;
- (m) Administration, maintenance and investment of the corpus of the Core Settlement Guarantee Fund/Fund(s) set up by the Clearing Corporation
- (n) Establishment, norms, terms and conditions, functioning and procedures of Clearing Corporation, clearing through depository or other arrangements including custodial services for clearing and settlement;
- (o) Norms, procedures, terms and conditions in respect of, incidental to or consequential to closing out of Deals;
- (p) Dissemination of information and announcements;
- (q) Any other matter as may be decided by the Relevant Authority.

## CHAPTER – V

### CLEARING MEMBERS

- 5.1 The Relevant Authority is empowered to admit Clearing Members in accordance with Rules, Bye-laws and Regulations of the Clearing Corporation. The Clearing Member shall pay such fees, security deposits and other monies as may be specified by the Relevant Authority from time to time, on admission of the 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 the 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 fulfillment of engagements, obligations and liabilities of Clearing Members arising out of or incidental to any Dealing made subject to the Bye-Laws, 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 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.
- 5.2 Clearing Member of any Clearing 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 in that segment.
- 5.3 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.
- 5.4 On cessation of clearing membership right of a Clearing Member, all security deposits and monies not applied under the Rules, Bye-laws and Regulations of the Clearing Corporation, shall at the cost of the Clearing Member be returned and/or transferred either to him or as he/it shall direct or in absence of such direction to his legal representatives/successors/assignees. For the purpose of ascertaining legal representatives/successors/assignees, the Relevant Authority shall prescribe such course of action to be taken by the concerned person(s) as it may in its absolute discretion and in the interest of the Clearing Corporation, deem fit and proper.

## CHAPTER – VI

### CLEARING AND SETTLEMENT OF DEALS

#### 6.1 Clearing And Settlement Of Deals

- 6.1.1 The Clearing Corporation shall not clear and settle the Deals which are not carried out in accordance with the provisions of the Rules, Bye-Laws and Regulations.
- 6.1.2 Notwithstanding what is stated above the Relevant Authority may in its discretion and subject to such conditions as it may deem fit admit any other deals which are not carried out in accordance with the provisions of the Rules, Bye-Laws and Regulations.
- 6.1.3 "Netting" means the determination by Clearing Corporation of net payment or delivery obligations of the clearing members of the recognised clearing corporation by setting off or adjustment of the inter se obligations or claims arising out of buying and selling of securities including the claims and obligations arising out of the termination by the Clearing Corporation or Stock Exchange, in such circumstances as the Clearing Corporation may specify in bye-laws, of the transactions admitted for settlement at a future date, so that only a net claim be demanded, or a net obligation be owed.
- 6.1.4 "Settlement and Netting: (1) The payment and settlement in respect of a transaction in the Stock Exchange and Clearing Corporation shall be determined in accordance with the netting or gross procedure as specified in the bye-laws of the Stock Exchange and the Clearing Corporation, with the prior approval of the Securities and Exchange Board of India. (2) Payment and settlement in respect of a transaction between parties referred to in the above bye-law (1), effected under the bye-laws of the Stock Exchange or Clearing Corporation, shall be final, irrevocable and binding on such parties. (3) When a settlement has become final and irrevocable, the right of the Stock Exchange or the Clearing Corporation, as the case may be, to appropriate any collaterals or deposits or margins contributed by the trading member, clearing member or client towards its settlement or other obligations in accordance with the bye-laws of the Stock Exchange or Clearing Corporation shall take priority over any other liability of or claim against the said trading member, clearing member or client, as the case may be.  
Explanation. – For removal of doubts, it is hereby declared that the settlement, whether gross or net, referred to in this bye-law is final and irrevocable as soon as the money, securities or other transactions payable as a result of such settlement is determined, whether or not such money, securities or other transactions is actually paid.
- 6.1.5 Right of Clearing Corporation: The right of recognised clearing corporation(s) to recover the dues from its clearing members, arising from the discharge of their clearing and settlement functions, from the collaterals, deposits and the assets of the clearing members, shall have priority over any other liability of or claim against the clearing members."

#### 6.2 Admission Of Deals



- 6.2.1 Clearing and settlement shall be permitted on the Clearing Corporation in Deals which are from time to time admitted on the Clearing Segment by the Relevant Authority in accordance with the provisions of the Bye-Laws and Regulations.
- 6.2.2 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.
- 6.2.3 The Relevant Authority may specify stock exchanges, 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.

### **6.3 Conditions And Requirements Of Clearing And Settlement**

The Relevant Authority may grant admission of deals dealt on the Specified Exchange and/or the Exchange/s provided all the conditions and requirements including the conditions and requirements prescribed by the Relevant Authority are duly fulfilled by the parties concerned.

### **6.4 Refusal Of Admission Of Deals**

The Relevant Authority may, in its sole 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.

### **6.5 Deals In Provisional Documents**

- 6.5.1 The Relevant Authority may, in its discretion, admit deals in Provisional Documents.
- 6.5.2 Provisional Documents for the purpose of these Bye-Laws and Regulations denote 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.

### **6.6 Specific Deals**

The Relevant Authority may, in appropriate cases solely at its discretion from time to time decide specific deals to be cleared and settled through the Clearing Corporation in case of securities which are not admitted for clearing on the Clearing Corporation or are for the time being prohibited or suspended.

### **6.7 Suspension Of Admission Of Deals**

The Relevant Authority may suspend at any time admission of deals including of any security of Specified Exchange/Exchange on clearing segment for such period as it may determine and reinstate such deals subject to such conditions as it may deem fit.

### **6.8 Withdrawal Of Admission Of Deals**

The Relevant Authority may where it deems necessary withdraw admission to dealings of the Specified Exchange/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.

## **6.9 Readmission Of Deals**

The Relevant Authority in its discretion may readmit deals of the Specified Exchange/Exchange which have been previously withdrawn.

## **6.10 Clearing And Settlement**

Settlement shall be effected by the Clearing Members selling the securities by giving delivery and receiving payment and by the Clearing Members buying securities by receiving securities and paying funds, as the case may be or as specified by the Relevant Authority from time to time in the Bye-Laws and Regulations.

## **6.11 Privity Of Contract**

6.11.1 Except as provided herein, the Clearing Members giving and receiving delivery and/or payment 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 with their respective immediate contracting party shall not be affected thereby. The selling member (unless he be himself the delivering member) shall however be released from all responsibility in regard to the title, ownership, genuineness, regularity and validity of the documents once the documents are received by the receiving member and in the event of any loss and/or damages arising to the receiving member therefrom, the same shall be dealt with in accordance with the provisions of Bye-Laws and Regulations thereof.

6.11.2 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 through full novation 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 shall not be deemed to be affected thereby and the Clearing Corporation shall not be responsible in respect of the title, ownership, genuineness, regularity and validity in respect of the documents delivered or received and in the event of any loss and/or damages arising to the delivering and receiving members therefrom, shall be dealt with in accordance with the provisions of Bye-Laws and Regulations thereof.

## **6.12 Arrangement For Clearing And Settlement**

6.12.1 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.

6.12.2 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.

6.12.3 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 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.

### **6.13 Operational Parameters For Clearing**

6.13.1 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.

6.13.2 The operational parameters may, inter alia, include:

- (a) Clearing limits allowed which may include clearing limits with reference to net worth 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 particular kind of 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.

### **6.14 Clearing Hours**

6.14.1 The hours for clearing and settlement of deals in different Clearing Segments of the Clearing Corporation shall be such 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 in one Clearing Segment and/or in different Clearing Segments.

6.14.2 The Relevant Authority may decide such number of days as holidays in a calendar year and declare a list of such holidays to the Clearing Members. The Relevant Authority may, from time to time, alter or cancel any of the holidays so fixed. The Relevant Authority may suspend clearing and settlement operations on days other than or in addition to holidays.

### **6.15 Delivery Of Securities**

6.15.1 Delivery and settlement of all securities, documents and papers and payment in respect of all Deals shall be in such manner and at such place(s) as may be prescribed by the Relevant Authority from time to time.

6.15.2 Notwithstanding and without prejudice to what is stated in Bye-Law 10.2..2 hereinafter 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 such delivery with the good delivery acceptable to the Relevant Authority within such time as may be specified.

6.15.3 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.

6.15.4 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 and Regulations, be as prescribed by the Relevant Authority from time to time.

### **6.16 Closing Out**

6.16.1 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.

6.16.2 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;

- (b) in case of the buying Clearing Members, on failure to pay the amount due on the due date; and
- (c) 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.

## **6.17 Borrowing Of Securities**

- 6.17.1 Notwithstanding anything contained in Bye-Law 6.16 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.
- 6.17.2 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.
- 6.17.3 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.

## **6.18 Failure To Meet Obligations**

In the event of Clearing Member failing to meet its 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 to against such Clearing Member under applicable law.

## **CHAPTER – VII**

### **DEALINGS BY CLEARING MEMBERS**

#### **7.1 Jurisdiction**

- 7.1.1 All deals admitted by the Clearing Corporation for clearing and settlement shall be deemed to have been entered into exclusively in the city of Mumbai and courts in Mumbai shall have exclusive jurisdiction with regard to such deals, admitted on the Clearing Corporation.

#### **7.2 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 or in any other manner shall constitute the agreed and authentic record in relation to any deals cleared and settled through the Clearing Corporation. In the event of any dispute or claim between the constituents and the Clearing Member of the Clearing Corporation or between the Clearing Members inter-se of the Clearing Corporation or between the Clearing Members and the Clearing Corporation regarding clearing and settlement of deals, the records maintained by the Clearing Corporation shall constitute valid and final evidence.

#### **7.3 Clearing Member Only Parties To Deals**

The Clearing Corporation shall not recognise as parties to deals any person other than its own Clearing Members. Every Clearing Member is liable for due fulfillment of the Deal and 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 on account of a Constituent.

#### **7.4 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 such Rules, Regulations and Bye-Laws shall form a part of the terms and conditions of all such Deals. The deals shall be subject to the exercise by the Relevant Authority of the powers with respect thereto vested in it by the Rules, Bye-Laws and Regulations of the Clearing Corporation.

#### **7.5 Inviolability Of Admitted Deals**

- 7.5.1 All dealings in securities on the Clearing Corporation made subject to the Rules, Bye-Laws and Regulations of the Clearing Corporation shall be inviolable and shall be cleared and settled in accordance with these Bye-Laws and Regulations of the Clearing Corporation. However, the Clearing Corporation may by 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 willful misrepresentation or material mistake in the trade.

- 7.5.2 Notwithstanding anything contained in clause (7.5.1) 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 of like nature.
- 7.5.3 Any annulment made pursuant to clauses (7.5.1) and (7.5.2) above, shall be final and binding upon the parties to trades. In such an event, the Clearing Member shall be entitled to cancel the relevant Deal(s) with its Constituents.

#### **7.6 Deals By Representative Clearing Members**

The Clearing Member may authorise another Clearing Member to act as its representative for a specified period with the prior permission of the Relevant Authority.

#### **7.7 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 not including deals cleared and settled through the Clearing Corporation save and except and to the extent provided for in the Bye-Laws and Regulations.

## CHAPTER – VIII

### MARGINS

#### 8.1 Margin Requirements

- 8.1.1 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.
- 8.1.2 Every Clearing Member has continuing obligation to maintain margins at such levels and during such periods as may be stipulated by the Clearing Corporation from time to time. Out of the margins so required to be deposited and maintained by a Clearing Member, margins deposited by Clearing Members on their own account and on behalf of their Constituents or the trading members of an Exchange, shall be segregated by the Clearing Corporation in such manner as it may deem fit.

#### 8.2 Form Of Margin

The margins to be provided by the Clearing Member under the Bye-Laws and Regulations shall be in cash. The Relevant Authority may at its discretion and on such terms and conditions as it may deem fit to impose accept deposit receipts, guarantee of bank(s) or such, securities as may be approved by it, as margin. Any such substitute of cash like deposit receipts, bank guarantee/s, securities approved by it shall be deemed to have been pledged and/or hypothecated as the case may be in favour of the Clearing Corporation.

#### 8.3 Quantum Of Margin

The Clearing Member depositing margins, in the form of securities shall always maintain the value thereof so that the same does not go below the quantum of margin required to be deposited by such member. In the event of the value of such securities going below the level of margin, then such member shall provide further security to the satisfaction of the Relevant Authority. The Relevant Authority alone shall be entitled to determine the value of the additional security provided by such member.

#### 8.4 Margin To Be Held By The Clearing Corporation

The margins shall be held by the Clearing Corporation and when such margin is in the form of bank deposit receipts and/or securities, such deposit receipts and/or securities may be transferred to such person/s and/or to the custodian and/or to such other entity approved by the Clearing Corporation. All margin deposits shall be held either by the Clearing Corporation, the approved persons and/or the Custodian, as the case may be, for and on account of the Clearing Corporation without any right whatsoever of the Clearing Member depositing such margin or such authorized persons/custodian to call in question the exercise of such discretion by the Clearing Corporation.



## **8.5 Lien On Margins**

The cash or substitute thereof, paid or deposited by the Clearing Member as margin shall be subject to 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 due fulfillment of his obligations and liabilities arising out of or incidental to any deals made subject to the Rules, Bye- Laws and Regulations of the Clearing Corporation or anything done in pursuance thereof.

## **8.6 Utilisation For Failure To Meet Obligations**

In the event of the Clearing Member failing to meet its obligations to the Clearing Corporation arising out of clearing and settlement operations of such deals as provided in these Bye-Laws and Regulations, the Relevant Authority shall be entitled to utilise any amount paid by the Clearing Member to the Clearing Corporation either in the form of margin, deposit, security or in any other form or any other payment retained by the Clearing Corporation for the purpose of clearing and settlement of the deals of such Clearing Member subject to Bye-law 9.14.

## **8.7 Evasion Of Margin Requirements Forbidden**

The Clearing Member shall not directly or indirectly enter into any agreement/arrangement or adopt any method for the purpose of evading or assisting in the evasion of the margin requirements prescribed under the Bye-Laws and Regulations.

## **8.8 Suspension On Failure To Pay Margin**

If the 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 against such Clearing Member including suspension of such Member.

## **8.9 Interest, Dividend And Calls**

8.9.1 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 required to provide all such 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.

8.9.2 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.

8.9.3 In respect of a deal in securities which shall become or are exchangeable for new or other securities under a scheme of reconstruction or re-organisation, 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.

#### **8.10 Clearing Fees**

The Relevant Authority may from time to time prescribe fees, charges and recoveries to be levied on the Clearing Members in respect of clearing and settlement of deals and in respect of any dues payable by such Clearing Member to the Clearing Corporation.

## **CHAPTER – IX**

### **RIGHTS, DUTIES AND LIABILITIES OF THE CLEARING MEMBERS AND CONSTITUENTS**

#### **9.1 Margin From Constituents**

The 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. The Clearing Member shall also have the right to demand an initial margin in cash or the substitute for cash from its Constituent/s before undertaking to clear his obligations and to stipulate that the constituent shall pay margin or furnish additional margin according to changes in market prices. The Constituent shall be bound to comply with the directions of the Clearing Member, when called upon to do so as required under the Rules, Bye-Laws and Regulations.

#### **9.2 Constituent In Default**

9.2.1 The 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 an arrangement satisfactory to the Clearing Member proposing to act for such constituent that such Constituent has or shall settle the claim of the Clearing Member who is his creditor.

9.2.2 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 Member/s restraining them from paying or delivering to the defaulting Constituent any monies or securities up to an amount or value not exceeding the creditor Clearing Member's claim payable or deliverable to the defaulting constituent in respect of deals subject to the Rules, Bye-Laws and Regulations of the Clearing Corporation, which moneys and securities shall be deposited with the Clearing Corporation. The moneys and securities so deposited shall be disposed of in terms of the award in arbitration and pending decree shall be deposited with the concerned court where the proceedings for challenging such award has been instituted unless the creditor Clearing Member and the defaulting constituent mutually agree otherwise.

#### **9.3 Closing-Out Of Constituent's Account**

Unless otherwise prescribed by the Relevant Authority from time to time, at the time of closing-out the account of a Constituent, the 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.

#### **9.4 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.

#### **9.5 Registration Of Securities When In The Name Of Clearing Member Or Nominee**

9.5.1 When the time available to the Constituents of the 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.

9.5.2 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 be indemnified for the consequences of any delay in delivery caused by such action.

9.5.3 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.

#### **9.6 Closing-Out By Constituent On Failure To Perform A Deal**

If the 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 to the extent of the damages sustained by the aggrieved party.

## **9.7 Complaint By Constituent**

When a complaint has been lodged by a Constituent with the Relevant Authority that any Clearing Member has failed to perform as per his instructions, 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 against the Clearing Member.

## **9.8 Relationship Between The 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 and/or SEBI from time to time.

## **9.9 Closing-out in the event of death of a Constituent / trading member**

A Clearing Member may close-out all open transactions on account of a Constituent who has died. A Clearing Member may close-out all open transactions on account of a trading member of an Exchange, who has died.

## **9.10 Closing-out in the event of bankruptcy/ insolvency/dissolution**

A Clearing Member may close-out all open transactions on account of a Constituent or a trading member of an Exchange, becomes bankrupt or insolvent or makes or attempts to make a composition with his creditors or with any of them or who shall have given any admission or intimation or indication of the fact that he will be unable to fulfill his obligations or who in case of a firm undergoes dissolution.

## **9.11 Release of funds and securities by Clearing Members**

A Clearing Member shall make payout of funds and Securities in such manner so as to ensure full and timely compliance of all relevant requirements in this regard as may be prescribed by SEBI/Clearing Corporation.

## **9.12 Confidentiality to be maintained**

The Clearing Corporation shall maintain the details of the Constituents in confidence and it shall not disclose such details to any person / entity, except as required under the law or by any authority.

## **9.13 Transfer of some positions by Clearing Member**

The Clearing Corporation may suo moto or on the application of a Constituent of a suspended or defaulter Clearing Member or and on such terms and conditions as the Clearing Corporation deems fit to impose, permit all or any open positions of the Clearing Member (whether on his own account or on account of his Constituent) or Constituent to be transferred to another Clearing Member who agrees to accept such open positions.

#### **9.14 Segregation of Dues**

The accounts of the Constituent of the Clearing Member, the trading members of an Exchange for whom the Clearing Member is acting as a Clearing Member and the clients of such trading members of an Exchange, shall be segregated from each other and the amounts and assets standing to the debit and credit of a Clearing Member or a Constituent shall not be adjusted against the credit or debit of another Constituent or Clearing Member and one Client's or Clearing Member's funds or assets shall not be utilised for payment of another Constituent's or Clearing Member's dues. Obligations payable by a Clearing Member on his own account shall not be paid or met out of money / assets of a Constituent or trading members of an Exchange. However amounts or assets payable /deliverable to a Clearing Member (on his own account) by the Clearing Corporation may be applied for paying amounts /assets payable / deliverable by the Clearing Member or by any Constituent of the Clearing Member or any trading member of an Exchange (whose trades the Clearing Member had agreed to clear) or any client of such trading members of an Exchange, the Clearing Corporation or any Member or any Constituent of the Clearing Member or of any trading members of an Exchange (whose trades the Clearing Member had agreed to clear).

## **CHAPTER – X**

### **ARBITRATION**

#### **10.1 ARBITRATION OTHER THAN BETWEEN MEMBERS**

##### **10.1.1 Reference to Arbitration**

All claims (whether admitted or not) differences and / or disputes between a Clearing Member and a person or party who/which is not a Clearing Member or inter se between persons/parties who/which are not Clearing Members, arising out of or in relation to dealings, transactions and contracts made subject to the Rules, Bye-Laws and Regulations of the Clearing Corporation or with reference to anything incidental thereto or in pursuance thereof or relating to their construction, fulfillment or validity or in relation to the rights, obligations and liabilities in relation to such dealings, transactions and contracts shall be referred to and decided by arbitration as provided in these Rules, Bye-laws and Regulations.

##### **10.1.2 Contract Constitutes Arbitration Agreement**

An acceptance whether express or implied of a contract subject to arbitration as provided in sub-clause 10.1.1 and with this provision for arbitration incorporated therein shall constitute and shall be deemed to constitute an agreement between the Clearing Member and others or between others inter se that all claims (whether admitted or not), differences and disputes of the nature referred to in sub-clause 10.1.1 in respect of all dealings, transactions and contracts of a date prior or subsequent to the date of contract shall be submitted to and decided by arbitration as provided in these Rules, Bye-Laws and Regulations and that in respect thereof any question whether such dealings, transactions and contracts have been entered into or not shall also be submitted to and decided by arbitration as provided in these Rules, Bye-Laws and Regulations.

If any claim (whether admitted or not), difference or dispute arises between a party or person (both being not Clearing Members) arising out of or in relation to dealings, transactions and contracts made in accordance with and subject to the Rules, Bye-Laws and Regulations of the Clearing Corporation or with reference to anything incidental thereto or in pursuance thereof or relating to their construction fulfillment or validity or in relation to the rights, obligations and liabilities of such parties, then such claim, difference or dispute shall be brought to the notice of the Relevant Authority in writing within { six } months from the date such dispute has commenced and the same shall as far as possible be settled with the help of the Relevant Authority. If a claim, dispute or difference persists, the same shall be referred to and decided by arbitration as provided in the Rules, Bye-Laws and Regulations of the Clearing Corporation.

##### **10.1.3 Liability Of The Member**

In case of claims, differences and disputes between parties (both being not the Clearing Members of the Clearing Corporation), if the arbitral award is made

against any of the parties, such party shall be liable to comply with such arbitral award. If such party fails to comply with such arbitral award, then the Clearing Member who/which is concerned with or liable/responsible for the party against whom the award has been made by virtue of the provisions of these Rules, Regulations and Bye-Laws, shall be liable to comply with such arbitral award as if such arbitral award had been made against such Clearing Member within such time period as may be specified by the Clearing Corporation.

Provided that the dispute should have been brought to the notice of the Clearing Member by the claimant, within six months as specified under the Bye-Laws, failing which the Clearing Member shall not be made responsible for the liabilities of such party against whom the arbitral award has been made.

Provided further that the claim of the claimant arises out of dealings admitted on the Clearing Corporation through the concerned Clearing Member and the same is backed by sufficient proof as may be specified by the Relevant Authority including carrying cross references of details of the Contract Note issued by the Clearing Member and other details such as Client – ID no of the client etc.

The Clearing Member shall be entitled to recover the amount paid to the claimant under this Bye-Law from the party against whom such arbitral award had been made.

#### **10.1.4 Appointment Of Arbitrators**

The Relevant Authority shall, from time to time, provide for establishment of Regional Arbitration Centers, different seats of arbitration for different regions and / or prescribe geographical jurisdiction for each Centre or seat, as the case may be, for conducting arbitration and prescribe the courts which shall have jurisdiction for the purpose of these Rules, Byelaws and Regulations.

All claims, differences and disputes which are required to be referred to arbitration under these Bye-Laws and Regulations shall be referred to arbitration of a sole arbitrator or of three arbitrators to be appointed by the Relevant Authority or by the parties from the Panel of Arbitrators constituted by the Relevant Authority. Sole Arbitrator shall be appointed by the Relevant Authority.

In an arbitral tribunal of three arbitrators, each party shall appoint one arbitrator and the third arbitrator will be appointed by Relevant Authority. Those proposed arbitrators shall be from the panel of Arbitrators constituted by the Relevant Authority. If any of the parties fail to appoint the arbitrator within such period as may be provided by the Clearing Corporation, the Relevant Authority shall appoint such arbitrators in the manner provided in these Rules, Bye-laws and Regulations. All the Bye-laws providing arbitration by a single arbitrator shall apply mutatis-mutandis to arbitration by three members.

While making an application for reference to arbitration, the claimant shall state the names of 3 proposed arbitrators from amongst the panel of arbitrators prepared by the Relevant Authority from time to time in such manner as the Relevant Authority may deem fit and proper in its sole and absolute discretion.



The names of the proposed arbitrators shall be forwarded by the Clearing Corporation's arbitration department to the respondent or all the respondents (as the case may be).

If there is only one respondent, the respondent may consent to any one of the proposed arbitrators being appointed as the arbitrator by delivering to the concerned Regional Arbitration Centre of the Clearing Corporation, within such period as may be provided by the Clearing Corporation, of the respondent having received from the concerned Regional Arbitration Centre of the Clearing Corporation, the names of the proposed arbitrators in writing in a form prescribed by the Clearing Corporation signed by the respondent signifying his consent, failing which the claimant and the respondent shall be deemed to have failed to have agreed as to the person to be appointed as the arbitrator.

If there are two or more respondents then each respondent may consent to the appointment of any one or more of the proposed arbitrators as the arbitrator by delivering to the concerned Regional Arbitration Centre of the Clearing Corporation, within such period as may be provided by the Clearing Corporation of the respondent having received from the concerned Regional Arbitration Centre of the Clearing Corporation, the names of the proposed arbitrators in writing in a form prescribed by the Clearing Corporation signed by that respondent signifying his agreement to one or more of the proposed arbitrators being appointed as the arbitrator. If the claimant and all the respondents agree to any one of the proposed arbitrators being appointed as the arbitrator, such person shall act as the arbitrator.

If the claimant and all the respondents agree to more than one of the proposed arbitrators being appointed as the arbitrator, the Relevant Authority shall name one of such persons to act as the arbitrator. If the claimant and all the respondents do not agree to at least one of the proposed arbitrators being appointed as the arbitrator, the claimant and the respondents shall be deemed to have failed to have agreed as to the person to be appointed as the arbitrator.

#### **10.1.5 Appointment of Arbitrator by the Relevant Authority**

10.1.5.1 On payment in advance of the minimum fees of an arbitrator prescribed under these Bye-Laws and Regulations by any party to a claim, difference or dispute, the Relevant Authority shall appoint an arbitrator;

- (a) if the parties have failed to agree as to the person to be appointed as the arbitrator;
- (b) if the arbitrator dies or fails, refuses or neglects to act or becomes incapable of acting as an arbitrator before an award is made by him;

10.1.5.2 An arbitrator to be appointed under clause (10.1.5.1) shall be from the panel of arbitrators prepared by the Relevant Authority;

10.1.5.3 While appointing arbitrator it shall be ensured that the arbitrator is independent and impartial not interested in any of the parties or the claim dispute or difference referred to in arbitration.

## **10.1.6 Commencement Of Arbitration**

- 10.1.6.1 There shall be an officer of the Clearing Corporation designated as secretary of arbitration. All applications for reference shall be in such forms as the Clearing Corporation may prescribe and shall be accompanied by as many copies thereof as there are respondents and the same number of copies of the statement of claims, documents relied upon, such as contract, bills, ledger accounts, acknowledgement on delivery and receipt of shares etc, accompanied by an accurate list thereof shall be received by the secretary when presented in person and / or transmitted by post and the receipt shall be duly acknowledged. The date on which the application for reference along with fees is received shall be the date of making reference to arbitration. The secretary shall scrutinise the application and the accompaniments thereof and shall verify whether the applicant has paid the required charges and fees prescribed by the Clearing Corporation and when he finds that the application is complete in all respects, he shall assign reference number and register the application in the register of references. Thereafter he shall issue notices to the respondent's accompanied by the copies of the application and the documents, and list of the names of the proposed arbitrators submitted by the applicant and shall call upon the respondent/s to convey his / their choice from the three proposed arbitrators or otherwise within such period as may be provided by the Clearing Corporation of the receipt of the notice.
- 10.1.6.2 In case the secretary finds that the application for reference is not in order and is not accompanied by the copies of the application and the documents and/or required fees and charges are not paid and the claimant fails to comply within the reasonable time allowed by the secretary, the secretary may reject the application and the applicant shall be informed of the fact of rejection with reasons thereof.
- 10.1.6.3 In case the applicant is aggrieved by rejection of his application by the secretary, he may apply to the Relevant Authority within seven days of receipt of the intimation of rejection and the Relevant Authority may, on being satisfied on hearing the applicant or otherwise that there was reasonable cause for the applicant not complying, on the applicant doing the needful, set aside the rejection and restore the application. Thereafter the secretary shall take further steps indicated in clause (10.1.6.1).
- 10.1.6.4 The secretary shall complete the scrutiny of the papers, issuing of notices to the respondents and all other secretarial work preliminary to the arbitrator entering on the reference, within a reasonable period, as far as possible, of the receipt of application for reference to arbitration.
- 10.1.6.5 After the parties agree upon the sole arbitrator or the arbitrator is appointed as per the Bye-Laws, the secretary shall place the arbitration application and the connected papers before the arbitrator, the due notice of the date thereof shall be given to the parties and the arbitrator may accept the appointment and enter on the reference. If, for any reason, the arbitrator either does not accept the appointment or neglects to enter on the reference, the appointment of the arbitrator shall be terminated and appointment of another arbitrator as per Rules, Bye-Laws and Regulations of the Clearing Corporation shall be made.

10.1.6.6 In the absence of the secretary, the Relevant Authority may direct any other employee to perform the duties of the secretary.

## **10.1.7 Limitation**

### **10.1.7.1 Time Period For Filing Of Arbitration Reference:**

The Arbitrators shall not take cognizance of any claim, complaint, difference or dispute unless the same has been received by the concerned Regional Arbitration Centre of the Clearing Corporation within the period prescribed therefor under the Limitation Act, 1963. Any dispute as to whether a claim, complaint, difference or dispute falls within the ambit of this clause shall be decided by the Arbitrators.

The Relevant Authority may, from time to time, appoint Committees separately for each Regional Arbitration Centre to amicably settle all claims, complaints, differences and disputes that are referred to it.

Provided however the time taken by such committees in amicable settlement of such claims, complaints, differences and disputes shall not be excluded while computing the period of limitation under the Limitation Act, 1963 for any arbitration reference to be filed before the Arbitrator/s under the Rules, Bye-laws & Regulations of the Clearing Corporation.

An arbitration shall be deemed to have commenced on the date on which the application for arbitration along with the fees is received by the concerned Regional Arbitration Centre of the Clearing Corporation.

### **10.1.8 Arbitrator To Make Award Expeditiously**

(a) (i) Time for completion of Arbitration

The arbitral tribunal shall make the arbitral award within four months from the date of appointment of arbitrator(s).

(ii) Adjournment

Adjournment, if any, shall be granted by the arbitral tribunal only in exceptional cases, for bonafide reasons to be recorded in writing.

(iii) Request for extension

The Relevant Authority, on the application of either of the parties or the arbitral tribunal, as the case may be, may for sufficient cause extend the time for issue of the arbitral award by not more than two months on a case to case basis after recording the reason for the same.

(iv) Date of entering reference

For the purpose of calculating the period of four months under this Bye-Law 10.1.8 (a) (i), the date of appointment of the arbitrator/s shall

be the date on which the arbitrator/s, who passes/pass the award has been duly appointed.

#### **10.1.9 Arbitrator's Award**

- (a) Every award shall be made in writing and shall be signed by the arbitrator.
- (b) The award shall state the reasons upon which it is based, unless:
  - (i) the parties have agreed that no reasons are to be given; or
  - (ii) the award is on terms agreed between the parties.
- (c) The award shall state its date and the place of arbitration and the award shall be deemed to have been made at that place.

#### **10.1.10 Publication Of Award**

After the award is made, a signed copy of the award shall be delivered to each party.

#### **10.1.11 Award Binding On Parties And Their Representatives**

The parties to the reference shall in all things abide by and forthwith carry into effect the award of the arbitrators which shall be final and binding on the parties and their respective representatives notwithstanding the death of or legal disability occurring to any party before or after the making of the award and such death or legal disability shall not operate as a revocation of the reference or award.

#### **10.1.12 Correction And Interpretation Of Award**

- (a) Within 15 days of the receipt of the arbitral award;
  - (i) Any party to an arbitration reference, with notice to the other party, may request the arbitral tribunal to correct any computational error, any arithmetical error, any clerical or typographical error or any other error of a similar nature occurring in the award;
  - (ii) A party with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.
- (b) If the arbitral tribunal considers the request made under clause (a) to be justified, it shall make the correction or give the interpretation and the interpretation shall form part of the award.
- (c) The arbitral tribunal may on its own correct the errors of the type indicated in sub clause (i) of clause (a) within 10 days of making the award. An intimation of such correction shall be given to the parties in case the

correction is made after delivering an uncorrected copy of the award to the parties and corrected copies of the award shall be given to the parties.

- (d) A party with notice to the other party may request the arbitral tribunal within 15 days of receipt of the award, to make an additional award as to claims presented in the arbitral proceedings, but omitted from the arbitral award.
- (e) If the arbitral tribunal considers the request made under clause (d) to be justified, it shall make the additional arbitral award within 7 days of the receipt of such request.

#### **10.1.13 Enforcement Of The Award**

- (a) A party to a reference who is dissatisfied with an award of an arbitrator(s) shall appeal to an Appeal Bench against such award within 30 days of receipt of the award.
- (b) When the time for preferring an appeal has expired and no appeal has been preferred or the appeal has been preferred and the award has been passed in the appeal, and when the time for making an application to set aside the award under Section 34 of the Arbitration and Conciliation Act, 1996 has expired, or such application having been made, it has been refused, the final award shall be enforceable in the same manner as if it were a decree of the Court.

#### **10.1.14 Debit Of Arbitration Award**

If an award is made against a Clearing Member, and the time for making payment of the amount awarded, as set out in the award, if any, has expired, the Clearing Corporation shall soon thereafter debit the amount awarded to the Clearing Member concerned from the security deposit or any other monies of such Clearing Member held by the Clearing Corporation, and credit such amount to a separate account to the credit of the award holder in accordance with the provisions of the Bye-Laws and Regulations of the Clearing Corporation. The said debit shall be reversed if the Clearing Member deposits the equivalent amount with the Clearing Corporation, in which event, the amount so deposited will be kept in a separate account to the credit of the award holder. The said amount shall not be released to the award holder during the pendency of an appeal or proceeding before the Hon'ble Court unless the award has become executable or the time for filing of the appeal or the petition for setting aside the award has expired and no proceeding is taken by the member in this behalf.

Provided however, where the award is for the delivery of securities, the Clearing Corporation may consider the closing price of such securities on the Exchange as on the date of the award or such other date specified by Relevant Authority, stating the reasons in case the date is other than the award date, for arriving at the value of such securities and award amount.

#### **10.1.15 Setting Aside Of Award And Fresh Reference**

- (a) An arbitration award may be set aside by the court on an application made under Section 34 of the Arbitration and Conciliation Act, 1996 on the grounds mentioned in that section.
- (b) Whenever an award made under these Bye-Laws and Regulations is set aside by the court, the matter shall be again referred to arbitration as provided in these Bye-Laws and Regulations and the claims, differences and disputes shall be decided by arbitration only.

#### **10.1.16 Appointment Of Arbitrators From Panel Of Arbitrators Consisting Of Members And Non-Members**

- (a) The arbitrator appointed under these Bye-Laws and Regulations in respect of an arbitration other than between members shall be from amongst persons nominated by the Relevant Authority.
- (b) The Relevant Authority may nominate a person on the panel of arbitrators by adopting the criteria laid down by SEBI and/or the Clearing Corporation from time to time. The Relevant Authority may also, at its discretion and without assigning any reasons, remove a person from the panel of arbitrators. The appraisal of the arbitrators, imparting of training/education to the arbitrators etc. shall be done in accordance with the policy that the Clearing Corporation formulates from time to time. The arbitral panel shall be reconstituted at least once a year.

#### **10.1.17 Relevant Authority To Prescribe Arbitration Fees, Forms And Procedure**

The fees to be paid, the forms to be used and the procedure to be followed in connection with a reference to arbitration under these Bye-Laws and Regulations shall be such as are either prescribed in the relative Regulation or as may be provided by the Relevant Authority from time to time in addition thereto or in modification or substitution thereof.

#### **10.1.18 Fees And Charges**

The fees in arbitration and the charges for submitting and regulating the proceedings of the reference shall be payable in advance and when there is failure, neglect or refusal on the part of a party or parties to pay accordingly the other party shall be responsible for making such payment in advance without prejudice however to his right if any to recover the same from such party or parties failing, neglecting or refusing to pay. It shall be a condition precedent to the hearing of any reference that the prescribed fees and charges shall have been paid in advance to the Clearing Corporation by the party or parties to the reference. The Clearing Corporation shall collect all such fees and charges and make the necessary payments provided always that no larger sum shall be paid than actually collected.

Provided that, in case of failure, neglect or refusal on the part of a Clearing Member who has been declared a defaulter against whom a reference to arbitration has

been filed, to pay the arbitration fees, the Clearing Corporation shall make such payment and recover the same from the assets of such member.

Provided further, that in case of failure, neglect or refusal on the part of a Clearing Member, against whom a reference to arbitration has been filed, to pay the arbitration fees, the Clearing Corporation shall debit the same from the security deposits, margins etc. of the Clearing Member with the Clearing Corporation.

#### **10.1.19 Decision on Written Statements or by Hearings**

- (a) A reference may be decided by the arbitrator on the written statements of the parties and the documents produced by them. However any party may require of the arbitrator that he be given a hearing. In that event he shall be so heard and the other party or parties shall have a similar privilege.
- (b) No party shall be entitled without the permission of the Arbitrator nor shall be entitled to insist on a request to the arbitrator to hear or examine witness or receive oral or documentary evidence other than what is deemed necessary by the arbitrators.

#### **10.1.20 Proceedings**

The arbitrator may proceed with the reference notwithstanding any failure to file a written statement within due time and may also proceed with the reference in the absence of any or all the parties who after due notice fail or neglect or refuse to attend at the appointed time and place.

#### **10.1.21 Adjournment Of Hearings**

The arbitrator may adjourn the hearings from time to time upon the application of any party to the reference or at his own instance provided however that when the adjournment is granted at the request of one of the parties to the reference the arbitrator may, if deemed fit, requires such party to pay the fees and costs in respect of the adjourned hearing borne by the other party and in the event of such party failing to do so may refuse to hear him further or dismiss his case or otherwise deal with the matter in any way the arbitrator may think just.

#### **10.1.22 Assistance In Conduct Of Arbitration Proceedings**

No advocate shall be permitted to appear, plead or act in the arbitration proceedings herein without permission of arbitral tribunal. The arbitral tribunal may permit the parties to take assistance of their duly authorised next friend in the conduct of arbitration proceedings. This Bye-Law shall operate subject to the following:

- (a) The arbitral tribunal may permit the parties appearing before it to be represented by an advocate in the conduct of arbitration proceedings. Necessary application shall be in conformity with the regulations made for this purpose.
- (b) In all such cases, where permission is granted by arbitral tribunal, the advocate appearing before the arbitral tribunal shall be required to make a

statement in writing or give an undertaking to the effect that the Advocate shall continue to appear in the arbitration proceedings till the proceedings are completed and the Advocate shall not withdraw from the proceedings.

- (c) The arbitral tribunal shall not be bound to grant an adjournment of the proceedings simply because an advocate engaged by the party is not available or is absent at the hearing.
- (d) In case the Advocate withdraws from the proceedings or is not available at the date of hearing, for whatever reasons, the arbitration proceedings shall continue. In case an advocate is permitted to withdraw his appearance with the permission of arbitral tribunal, the concerned party may not be permitted to be represented by engagement of another lawyer so that the arbitration proceedings are not delayed.

#### **10.1.23 Consideration Of Recorded Proceedings And Evidence**

If an arbitrator dies or fails or neglects or refuses to act or becomes incapable of acting as an arbitrator the Relevant Authority may appoint a substitute arbitrator from among the panel of arbitrators and such substitute arbitrator shall be at liberty to act upon the record of the proceedings as then existing and on the evidence, if any, then taken in the reference or to commence the reference de novo. The hearing shall be held de novo unless the parties agree otherwise.

#### **10.1.24 Set-Off And Counter-Claim**

On a reference to arbitration by one party, the other party or parties shall be entitled to claim a set-off or make a counter-claim against the first party provided such set-off or counter-claim arises out of or relates to dealings, transactions and contracts made subject to the Rules, Bye-Laws and Regulations of the Clearing Corporation and subject to arbitration as provided therein and provided further such set-off or counter-claim is presented together with full particulars at or before the first hearing of the reference but not afterwards unless permitted by the arbitrator.

#### **10.1.25 Award To Adjudge Interest**

Where and in so far as an award is for the payment of money the arbitrator may adjudge in the award the interest to be paid on the principal sum adjudged for any period prior to the institution of the arbitration proceedings and may also adjudge the additional interest on such principal sum as is deemed reasonable for the period from the date of the institution of the arbitration proceedings to the date of the award and further interest on the aggregate sum so adjudged at such rate as is deemed reasonable from the date of the award to the date of payment. If the award is silent on interest, the award shall carry interest @ 18 % p.a. from the date of the award to the date of the payment.

#### **10.1.26 Costs**

- (1) Unless otherwise agreed by the parties:



- (a) the costs of an arbitration shall be fixed by the arbitral tribunal;
- (b) the arbitral tribunal shall specify:
  - (i) the party entitled to costs,
  - (ii) the party who shall pay the costs,
  - (iii) the amount of costs or method of determining that amount, and
  - (iv) the manner in which the costs shall be paid.

*Explanation:*

For the purpose of clause (a), “costs” means reasonable costs relating to:

- (i) the fees and expenses of the arbitrators and witness.
  - (ii) legal fees and expenses.
  - (iii) any administration fees of the institution supervising the arbitration, and
  - (iv) any other expenses incurred in connection with the arbitral proceedings and the arbitral award.
- (2) Adjournment costs

The arbitral tribunal shall not be obliged to adjourn a hearing on the request of any party. However in the event of adjournment being granted the Arbitral tribunal shall be entitled to direct the parties requesting the adjournment to pay to the other party/ parties such amount as costs as it claims proper.

### **10.1.27 Operation Of Contracts**

All dealings, transactions and contracts which are subject to the Rules, Bye-Laws and Regulations of the Clearing Corporation and every arbitration agreement to which the Rules, Bye-Laws and Regulations of the Clearing Corporation apply shall be deemed in all respects to be subject to the Rules, Bye-Laws and Regulations of the Clearing Corporation and shall be deemed to be and shall take effect as wholly made, entered into and to be performed in the city of Bombay and the parties to such dealings, transactions, contracts and agreements shall be deemed to have submitted to the exclusive jurisdiction of the Courts in Bombay for the purpose of giving effect to the provisions of the Rules, Bye-Laws and Regulations of the Clearing Corporation. Provided however on establishment of Regional Arbitration Centres, the Courts in Bombay shall have exclusive jurisdiction in respect of all proceedings under these Bye-laws to which the Clearing Corporation is a party and in respect of all other proceedings, the Courts having jurisdiction over the area in which the respective Regional Arbitration Centre is situated, shall have the jurisdiction.

### 10.1.28 Appeal Against Arbitral Award

Appeal Bench:

- (a) The Relevant Authority shall constitute one or more Appeal Benches, each comprising of three arbitrators from the concerned panel of arbitrators for each Regional Arbitration Centre.
- (b) None of the arbitrators who have heard the reference or passed the award shall be a member of the Appeal Bench hearing an appeal against that award.
- (c) A party dissatisfied with an Award shall appeal to the Appeal Bench of the concerned Regional Arbitration Centre against such Award within 30 days of the receipt of such award. The Appeal Bench of the concerned Regional Arbitration Centre shall not take cognizance of any appeal unless the same has been received by the concerned Regional Arbitration Centre within the said period of 30 days.
- (d) The party appealing shall pay the necessary fees and charges for preferring the appeal as may be fixed by the Relevant Authority from time to time.
- (e) No appeal shall be entertained by the arbitration secretary against an award of the lower bench, unless the appellant has first deposited the amount awarded with the concerned Regional Arbitration Centre of Clearing Corporation. If the amount awarded is deposited by the member and the same is credited in a separate account as contemplated under Bye-Law 10.1.14, the debit made to the account of the member as provided in the said Bye-Law shall be reversed.
- (f) The party placing the deposit shall be deemed to have agreed that on expiry of 3 months from the date on which the appellant had received the appellate arbitral award, the concerned Regional Arbitration Centre of the Clearing Corporation shall implement the Appellate arbitral award in accordance with the decision in the appeal unless the payment of such amount to the award holder is stayed by an order of the competent court within such period.
- (g) The Appeal Bench shall not proceed to hear the appeal unless the concerned Regional Arbitration Centre of Clearing Corporation has certified that the required deposit has been made.

Provided however that when the account of the member has been debited by the Clearing Corporation in accordance with the provisions of Bye-Law 10.1.14 and 10.1.28 (e) above, the Clearing Corporation shall neither be liable to any person for any purported loss occurring to them as a result of such debit as aforesaid nor shall be liable to pay any interest to anyone for any reason whatsoever.

Hearing and decision of Appeal:

The arbitration secretary after all the formalities are complete shall issue notice to the respondent. A copy of the memo of Appeal shall accompany the notice and respondent shall be called upon to appear before the Appeal Bench on the date specified therein. On that day the secretary shall place all papers before the Appeal Bench and the Appeal Bench shall on the same day or on some adjourned date hear the parties and shall make the award in writing giving their reasons for the award. The Award made by them shall be deemed to be final and binding on the parties. The judgement of the Appeal Bench shall be a majority judgement and the award shall be as per majority decision.

(h) Signing of the Award

The Award made by the Appeal Bench shall be signed by all members of the Appeal Bench.

(i) Publication of the Award:

After the award is made, a signed copy of the award shall be delivered to each party.

(j) The Appeal to be decided expeditiously:

The process of appointment of arbitrators for appeal bench from the panel of arbitrators shall be completed within thirty days from the date of receipt of the appeal memo by the concerned Regional Arbitration Centre of the Clearing Corporation and such appeal shall be decided by the Appeal Bench within three months from the date of its appointment.

(k) Application of provisions relating to arbitrations

All the other Bye-Laws of this chapter as far as may be applicable shall apply mutatis mutandis to the proceedings before the Appeal Bench and the award of the Appeal Bench. However, there shall be no appeal from the award of the Appeal Bench.

#### **10.1.29 Notices and Communications How to be Served**

Notices and communications to a Clearing Member or a non-member shall be served in any one or more or all of the following ways and any such notice or communication under (i) to (vi) below shall be served at his ordinary business address and/or at his ordinary place of residence and/or at his last known address:

- (i) by delivering it by hand;
- (ii) by sending it by registered post;
- (iii) by sending it under certificate of posting;
- (iv) by sending it by express delivery post;

- (v) by sending it by telegram;
- (vi) by affixing it on the door at the last known business or residential address;
- (vii) by its oral communication to the party in the presence of a third person;
- (viii) by advertising it at least once in any daily newspaper published where the concerned Regional Arbitration centre is located;
- (ix) by Notice posted on the Clearing Corporation's website.

#### **10.1.30 Service By Hand Delivery When Complete**

A notice or communication served by hand shall be deemed to have been received by the party on the production of a certificate to that effect signed by the person delivering the notice or communication.

#### **10.1.31 Service By Post Or Telegram When Complete**

A notice or communication served by post or telegram or courier shall be deemed to have been served on the concerned party, upon the expiry of 7 days period from the date of dispatch of such notice or communication under any of the modes as specified in Bye-law 10.1.29. If no response is received by the Clearing Corporation within the period set out in the communication addressed to the party then the Clearing Corporation shall proceed to appoint the Arbitrator/s.

Provided however if the appointment of the arbitrator/s is not completed within 30 days from the date of receipt of the application by the concerned Regional Arbitration Centre due to any reason not attributable to the Clearing Corporation, then the additional time, if any, taken by the Clearing Corporation in appointing the Arbitrator(s) shall be excluded for the purpose of calculating the period prescribed above.

#### **10.1.32 Refusal To Accept Delivery Does Not Affect Service**

In no case shall any refusal to take delivery of the notice or communication affect the validity of its service.

#### **10.1.33 Service by Advertisement or by Notice on Notice Board when Complete**

A notice or communication published in a newspaper or posted on the notice board of the Clearing Corporation shall be deemed to have been served on the party on the day on which it is published or posted.

#### **10.1.34 Secretarial Duties**

The secretary and the employees of the Clearing Corporation acting under his authority shall:

- (i) maintain a register of references;
- (ii) Register of references rejected by the secretary.
- (iii) Receive all applications for arbitration, references and communications addressed by the parties before or during the course of arbitration or otherwise in relation thereto;
- (iv) receive payment of all costs, charges, fees and other expenses;
- (v) give notices of hearing and all other notices to be given to the parties before or during the course of the arbitration or otherwise in relation thereto;
- (vi) communicate to parties all orders and directions of the arbitrator;
- (vii) receive and record all documents and papers relating to the reference and keep in custody all such documents and papers except such as the parties are allowed to retain; for such period as may be prescribed by the Relevant Authority;
- (viii) publish the award on behalf of the arbitrator;
- (ix) to enter the award and any changes therein in the register of references;
- (x) generally do all such things and take all such steps as may be necessary to assist the arbitrator in the execution of their functions;
- (xi) to maintain a register of Appeals and make necessary entries therein.

#### **10.1.35 Indemnity**

No party shall bring or prosecute any suit or proceedings whatever against the Clearing Corporation, the Relevant Authority, the secretary or any employee or employees of the Clearing Corporation acting under the order or direction of the Relevant Authority or against the arbitrators for or in respect of any matter or thing purporting to be done under these Bye-Laws and Regulations nor any suit or proceedings (save for the enforcement of the award) against the other party or parties to the reference.

#### **10.1.36 Removal Of Difficulties**

If any difficulty arises in giving effect to these Bye-Laws in the conduct of arbitration, resort may be had to the provisions of Part - I of the Arbitration and Conciliation Act, 1996, which are not inconsistent with these Bye-Laws.

An Arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or as respects any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

### **10.1.37 Administrative Assistance**

The Clearing Corporation shall render all secretarial and other assistance for the conduct of arbitration proceedings by appointing adequate staff and by providing proper accommodation, stationery and other facilities.

The secretary of the arbitration division with the help of the assistants shall maintain all registers, files and records of arbitrations in proper order and shall be responsible for keeping them upto date. He shall maintain statistics of all pending and disposed of references and at the end of each quarter shall report to the Relevant Authority of the Clearing Corporation the number of pending references at the commencement of every month, references received during the month and the references disposed off. He shall report the references pending for more than four months, with the reasons for the delay and the steps taken for the early disposal of those references and shall carry out the directions issued by the Relevant Authority from time to time. The secretary shall also arrange to issue certified copies of the documents, awards and other proceedings to the parties on receiving the charges fixed by the Relevant Authority from time to time and shall render all other assistance for enforcement of the awards.

### **10.1.38 Maintenance/Disposal of Arbitration Records**

The Clearing Corporation shall adopt the following in respect of disposal of the arbitration records:

- (a) The original arbitration award with acknowledgements shall be preserved permanently. In respect of awards passed prior to the date of these Bye-Laws coming into force, certified copies of such awards shall be preserved permanently.
- (b) Records pertaining to arbitration proceedings / submissions / forms etc. shall be preserved for a period of 5 years from the date of the award, if no appeal for setting aside the award is filed before the Court of Law.
- (c) In case, an appeal is filed before the Court of Law, the records shall be preserved for a period of five years from the date of final disposal of the matter by the Court. Further, where any order / judgement of any Court of Law in respect of award is received, certified copy of the same shall be retained permanently along with the original award.
- (d) The destruction of records shall be subject to the previous order in writing of the Relevant Authority.
- (e) The Clearing Corporation shall maintain a register wherein the brief particulars of the records destroyed shall be entered, alongwith the certification regarding the date and mode of destruction.

Provided further that this Bye-Law shall also be applicable to all arbitration awards, passed prior to these Bye-Laws coming into effect and the Arbitration Records meeting the criterion as above on the date of this Bye-Law coming into effect, will be destroyed in the manner specified.

## **10.2 Arbitration Between Members**

### **10.2.1 Reference To Arbitration**

All claims, complaints, differences and disputes between Clearing Members arising out of or in relation to any bargains, dealings, transactions or contracts made subject to the Rules, Bye-Laws and Regulations of the Clearing Corporation or with reference to anything incidental thereto (including claims, complaints, differences and disputes relating to errors or alleged errors in putting any data or command in the Clearing Corporation's computerised system or in settling any trades on or by such system) or anything to be done in pursuance thereof and any question or dispute whether such bargains, dealings, transactions or contracts have been entered into or not shall be subject to arbitration and referred to the Arbitration Committee as provided in these Bye-Laws and Regulations.

### **10.2.2 Reference To Dispute Resolution Officers**

Notwithstanding anything stated in Bye-Law 10.2.1, if any claim, complaint, difference or dispute between Clearing Member of the nature referred to in Bye-Law 10.2.1 involves, in whole or in part, one or more of the following matters then the decision on such matter or matters shall be referred to the arbitration of a Dispute Resolution Officer as provided in the Bye-Law 10.2.4 and the concerned Regulations:

- (i) the determination as to whether any document constitutes good delivery or bad delivery;
- (ii) the determination of the correctness or validity of an objection to transfer of a security raised by a company or other issuer of securities or its transfer agent;
- (iii) the determination of a question whether a Clearing Member is obliged to rectify or replace any document on the ground that it is a bad delivery document;
- (iv) the applicability and/or interpretation of any Rules, Bye-Laws, Regulations, guidelines, directions or instructions (by whatever name called) for determining any matter referred to in sub-clauses (i) to (iii) of this Bye-Law;
- (v) such other matters as may be specified by the Relevant Authority for the purposes of this Bye-Law.

### **10.2.3 Legal Proceedings With Permission Of The Relevant Authority**

In respect of any claim, complaint, difference or dispute required to be referred to arbitration under these Bye-Laws and Regulations, no Clearing Member shall commence legal proceedings against another without the permission of the Relevant Authority. If a Clearing Member institutes such proceedings without permission and recovers any money or other relief he shall hold the same in trust

for the Clearing Corporation and shall pay the same to the Clearing Corporation to be dealt with in the manner directed by the Relevant Authority.

#### **10.2.4 Application For Arbitration**

Whenever a claim, complaint, difference or dispute which under these Bye-Laws and Regulations must be referred to the Arbitration Committee arises between Clearing Members any Clearing Member who is a party to such claim, complaint, difference or dispute may apply to the Arbitration Committee to inquire into and arbitrate in the dispute.

#### **10.2.5 Arbitrators**

Whenever a reference is made to the Arbitration Committee, it shall be heard by a sole arbitrator or by three of its members to be specified either generally or with reference to any particular claim, complaint, difference or dispute at a meeting of the full Bench of the Arbitration Committee. While appointing the members of the arbitral tribunal the Arbitration Committee shall have regard to the fact that none of them is interested in either of the parties and is independent while deciding the disputes between the parties. Such member or members shall act as the Arbitrator or Arbitrators, in regard to such reference (hereafter referred to as "The Lower Bench of the Arbitration Committee" or "the Lower Bench").

#### **10.2.6 Commencement of Arbitration**

- (a) The Clearing Corporation shall appoint one of its employees as arbitration secretary and one or more of its employees as arbitration assistants to assist the secretary to render ministerial and secretarial assistance and perform other functions as provided in these Bye-Laws and Regulations. The arbitration secretary and arbitration assistants for arbitrations between Member and non-member/s and for arbitrations between Clearing Members may be the same or different as may be decided by the Relevant Authority.
- (b) The arbitration secretary or any other assistant authorised by arbitration secretary shall receive applications for reference, in such forms as the Clearing Corporation may prescribe, made under Bye-Law 10.2.4 accompanied by the prescribed fees and charges and as many additional copies of application for reference, statement of claim and copies of the documents relied upon such as contract, bills, ledger account, acknowledgment of delivery and receipt of shares etc. in support of the claim. Arbitration secretary shall verify whether the application for reference is accompanied by the copies of the application and the documents. He shall also verify whether the prescribed fees and charges for arbitration have been paid. The arbitration secretary shall call upon the parties to the reference to ensure that filing of papers and pleadings are completed expeditiously. The arbitration secretary shall be entitled to give directions relating to filing of papers and pleadings and all secretarial matters and shall also be entitled to specify and extend the period within which a party should file papers and pleadings. Any dispute relating to filing and the arbitration secretary's directions in relation thereto shall be



decided by the Lower Bench after hearing the concerned parties. The arbitration secretary shall endeavour to ensure that filing of papers and pleadings and all secretarial matters are completed within two months of the application for reference being made and shall place the matter before the Lower Bench forthwith upon the same being completed. The date on which application for reference is received by the Clearing Corporation shall be the date of reference to arbitration. Any arbitration assistant authorised by the arbitration secretary may perform the duties of the arbitration secretary.

- (c) The Lower Bench shall not be obliged to commence the hearing of the arbitration reference until filing of papers and pleadings and all secretarial and ministerial matters have been completed unless:
  - (i) The arbitration secretary, being of the view that the matter should be placed before the Lower Bench for directions, places the matter before the Lower Bench for directions; or
  - (ii) The arbitration secretary is of the view that filing of papers and pleadings and/or any secretarial or ministerial matter(s) has/have not been completed despite sufficient time having been given for the same and the matter should be placed before the Lower Bench.
- (d) If the amount of the claim involved in a reference does not exceed Rs 5000/- then, notwithstanding anything stated in the other Rules, Bye-Laws and Regulations, the Lower Bench shall decide the reference on the basis of the pleadings and documents before it without hearing the parties, provided that the Lower Bench may afford the concerned parties an opportunity to be heard if it is of the opinion that in view of the facts and circumstances of any particular reference it is necessary to do so in order to properly decide the reference.

#### **10.2.7 Notice**

Save as otherwise provided not less than seven days' notice of the time and place appointed for the hearing shall be given to both the parties to the reference.

#### **10.2.8 Both Parties Present**

If both the parties to the reference are present at the appointed time and place the arbitrators shall proceed to hear the reference and to give the award.

#### **10.2.9 Ex Parte Decision And Summary Disposal**

If the party against whom the reference is filed be not present at the appointed time and place the arbitrators may hear and decide the reference ex parte and if the party filing the reference be not present the arbitrators may dismiss the reference summarily.

#### **10.2.10 Set-Off And Counter-Claim**

On a reference to arbitration by one party the other party or parties shall be entitled to claim a set-off or make a counter-claim against the first party provided such set-off or counter-claim arises out of or relates to dealings, transactions and contracts made subject to the Rules, Bye-Laws and Regulations of the Clearing Corporation and subject to arbitration as provided therein and provided further such set-off or counter-claim is presented together with full particulars at or before the first hearing of the reference by the arbitrator or arbitrators but not afterwards unless permitted by the arbitrator or arbitrators.

#### **10.2.11 Period For Lower Bench Award**

The Lower Bench shall make the award within one month of the completion of the filing of papers and pleadings and all secretarial and ministerial matters or the matter being placed before it pursuant to clause (II) of sub-clause "c" of Bye-Law 10.2.6. The award of any two out of 3 arbitrators, in case of disagreement shall be deemed to be the award in arbitration.

#### **10.2.12 Costs**

Unless otherwise agreed by the parties:

- (a) the costs of an arbitration shall be fixed by the arbitral tribunal ;
- (b) the arbitral tribunal shall specify -
  - (i) The party entitled to costs,
  - (ii) The party who shall pay the costs,
  - (iii) The amount of costs or method of determining that amount, and
  - (iv) The manner in which the costs shall be paid.

*Explanation:*

For the purpose of clause (a), "costs" means reasonable costs relating to:

- (i) The fees and expenses of the arbitrators and witness,
- (ii) Legal fees and expenses,
- (iii) Any administration fees of the institution supervising the arbitration, and
- (iv) Any other expenses incurred in connection with the arbitral proceedings and the arbitral award.

### **10.2.13 Lower Bench Award When Final And Appeal To Arbitration Committee**

The Award of the Lower bench of the Arbitration Committee in a reference shall be final and binding to the reference unless a party is entitled to appeal to the full bench therefrom under these Bye-law.

A party to a reference who is dissatisfied with any award of the “Lower Bench” may appeal to the Full Bench of the Arbitration Committee against such award within seven days of the receipt by him of such award if the principal amount of the claim disallowed by the Lower Bench to the Appellant exceeds Rs 100000/- (Rupees one lac only) or if the amount awarded against the Appellant by the Lower Bench (without taking into account interest from the date of the award) exceeds Rs 100000/- (Rupees one lac only)

### **10.2.14 Deposit And Statement Of Objections**

The party appealing to the full bench of the Arbitration Committee shall state in writing the objections to the award of the “Lower Bench” and shall unless exempted in whole or in part by the Relevant Authority deposit with the Clearing Corporation in cash the full amount ordered to be paid or the securities or the value at the ruling market price of the securities ordered to be delivered in the award. The party placing the deposit shall be deemed to have agreed that such deposit be handed over by the Clearing Corporation to the other party in accordance with the terms of the decision in appeal.

### **10.2.15 Deposit Certificate**

A certificate from the Clearing Corporation showing that the deposit if any as required by sub-clause 10.2.14 has been lodged shall be attached to the appeal and the full bench of the Arbitration Committee shall not entertain an appeal to which such certificate is not annexed.

### **10.2.16 Hearing Of Appeal**

When the deposit certificate is annexed to the appeal the full bench of the Arbitration Committee shall itself proceed to hear the appeal and arbitrate in the reference.

### **10.2.17 Period For Full Bench Award**

The full bench of the Arbitration Committee shall endeavor to make the award within one month of the date of filing of the appeal.

### **10.2.18 Certain Members May Not Vote**

The members of the full bench of the Arbitration Committee who have made the award against which an appeal is made to the full bench of the Arbitration Committee shall not attend the meetings or vote at the full bench of the Arbitration Committee at which the appeal is heard or decided.

### **10.2.19 Award Of Arbitration Committee When Final**

The award of the full bench of the Arbitration Committee in a reference shall be final and binding on the parties to the reference if the principal amount of the claim disallowed by the full bench of the Arbitration Committee to the Appellant does not exceed Rs. 500000/- (Rupees five lacs only) or if the amount awarded against either party by the Full Bench (without taking into account interest from the date of the award) does not exceed Rs 500000/- (Rupees five lacs only).

### **10.2.20 Appeal To The Board**

If the principal amount of the claim disallowed by the Full Bench of the Arbitration Committee to a party dissatisfied with the award exceeds Rs. 500000/- (Rupees five lacs only) or if the amount awarded by the Full Bench against a party dissatisfied with the award (without taking into account interest from the date of the award) exceeds Rs 500000/- (Rupees five lacs only) the party dissatisfied with the award of the full bench of the Arbitration Committee may appeal to the Relevant Authority against such award within seven days of the receipt by him of such award.

### **10.2.21 (a) Written Objections and Certificate**

The party appealing to the Relevant Authority shall state in writing the objections to the award of the full bench of the Arbitration Committee and shall unless exempted in whole or in part by the Relevant Authority deposit with the Clearing Corporation in cash the full amount ordered to be paid or the securities or the value at the ruling market price of the securities ordered to be delivered in the award. The party placing the deposit shall be deemed to have agreed that such deposit be handed over by the Clearing Corporation to the other party in accordance with the terms of the decision in appeal.

### **(b) Deposit Certificate**

A certificate from the Clearing Corporation showing that the deposit if any as required by sub-clause (a) of Bye-Law 10.2.21 has lodged shall be attached to the appeal and the Relevant Authority shall not entertain an appeal to which such certificate is not annexed.

### **10.2.22 Decision Of The Relevant Authority Final**

When the deposit certificate is annexed to the appeal the Relevant Authority shall proceed to hear the appeal and the decision of the Relevant Authority shall be deemed final and binding on the parties to the appeal.

### **10.2.23 Period for Relevant Authority's Award**

The Relevant Authority shall endeavour to make the award within one month of the appeal being filed.

#### **10.2.24 Signing of Award**

- (i) Every award shall be made in writing and shall be signed by those members of the concerned arbitral tribunal who have participated in making the award.
- (ii) For the purposes of clause (i), the signatures of the majority of the members of the concerned arbitral tribunal who have participated in making the award shall be sufficient so long as the reason for any omitted signature is stated.
- (iii) For the purpose of clauses (i) and (ii) the members of the arbitral tribunal who have participated in making the award or the majority of such members, as the case may be, may by unanimous resolution or writing authorise any member or members of the arbitral tribunal to sign the award on behalf of all the members so authorising. In such event the award shall be considered as duly signed by all the members so authorising if the award is signed by such authorised member or members.
- (iv) The award shall state the reasons upon which it is based, unless:
  - (a) The parties have agreed that no reasons are to be given; or
  - (b) The award is on terms agreed between the parties
- (v) The award shall state its date and the place of arbitration and the award;
- (vi) After the award is made, a signed copy shall be delivered to each party.

#### **10.2.25 Members Interested Not To Attend**

A party to a reference who is a member of the Arbitration Committee or the Relevant Authority shall not attend any meeting of the Arbitration Committee or of the Relevant Authority at which an inquiry into the reference or appeal is made or at which a reference or appeal is heard.

#### **10.2.26 Adjourned Meeting**

It shall be no objection to an award of the Arbitration Committee or of the Relevant Authority that the meeting at which a reference or appeal was inquired into or a reference or appeal was heard was adjourned from time to time or that the inquiry was not completed or that the reference or appeal was not finally heard at one meeting.

#### **10.2.27 Change In Composition**

It shall be no objection to an award of the Arbitration Committee or of the Relevant Authority that the composition of the Arbitration Committee or the Relevant Authority changed during the inquiry or reference or appeal;

Provided however that no member of the Arbitration Committee or the Relevant Authority as the case may be who shall not have been present at every meeting at which inquiry into the reference or appeal was made or the reference or appeal was heard shall participate in giving the final decision.

#### **10.2.28 Summary Dismissal**

If a party to a reference who has appealed to the Arbitration Committee or to the Relevant Authority against an award be not present at the time fixed for hearing the Arbitration Committee or the Relevant Authority as the case may be may dismiss the appeal summarily.

#### **10.2.29 Appeal Ex Parte**

If a party to a reference in whose favour an award has been made be not present at the time fixed by the Arbitration Committee or the Relevant Authority for hearing the appeal against such award the Arbitration Committee or the Relevant Authority may proceed to hear the appeal ex parte.

#### **10.2.30 Rehearing Ex Parte Award**

On sufficient cause being shown the Arbitration Committee may set aside an ex parte award made by the arbitrators or the Arbitration Committee and the Relevant Authority may similarly set aside any ex parte award and in any such case the Arbitration Committee or the Relevant Authority may direct that the reference or the appeal be again enquired into or heard.

#### **10.2.31 Remission of Award**

The Relevant Authority in its discretion may within fifteen days of an award remit the award of any matter referred to arbitration to the arbitrators or the Arbitration Committee upon such terms as it thinks fit and thereupon the arbitrators or the Arbitration Committee shall reconsider the matter and either confirm or revise the previous decision.

#### **10.2.32 Fresh Reference On Non-Compliance With Award When Allowed**

Whenever an award directs that certain acts or things be done by the parties to the reference and a party fails to comply with such direction the other party may make a fresh reference for a future award for determining the dispute outstanding or the amount of damages or compensation payable by reason of such failure.

#### **10.2.33 Late Claims Barred**

- (i) The Arbitration Committee shall not take cognizance of any claim, complaint, difference or dispute unless the same has been referred to it within six months from the date the cause of action arose in favour of a Clearing Member. Any dispute as to whether a claim, complaint, difference

or dispute falls within the ambit of this clause shall be decided by the Lower Bench.

- (ii) The Arbitration Committee shall not take cognizance of any claim, complaint, difference or dispute relating to a company objection in respect of a bad delivery where the Company has issued an objection memo as required by the applicable good/bad delivery guidelines unless the same has been referred to it within the time limit prescribed from time to time by the Securities and Exchange Board of India's guidelines, rules or regulations relating to bad delivery. Any dispute as to whether any claim, complaint, difference or dispute falls within the ambit of this clause shall be decided by the Lower Bench.
- (iii) If a member who desires to refer a dispute to arbitration after the period specified in clause (i) or (ii), as may be applicable, satisfies the Relevant Authority that he had sufficient cause for not making the reference within such period then the Relevant Authority may extend the period to such further period as the Relevant Authority thinks fit and proper. In such event, the Arbitration Committee may take cognizance of the claim, complaint, difference or dispute if it is referred to arbitration within such extended period. Before deciding whether or not to extend the period under this clause, the Relevant Authority shall afford an opportunity to be heard to the member applying for the extension as also to the member or members against whom the reference is proposed to be filed.
- (iv) Every decision of the Relevant Authority under this Bye-Law shall be in writing and shall take the reasons for the decision.
- (v) A member aggrieved by a decision of the Relevant Authority declining to extend the period may file an appeal to the Board within seven days of the Clearing Corporation informing him in writing of the Relevant Authorities decision.

#### **10.2.34 Extension Of Time**

The Relevant Authority may for special reasons extend the time within which a reference to arbitration or an appeal against any award of the arbitrators or the Arbitration Committee may be made whether the time for making the same has expired or not.

#### **10.2.35 Extension Of Time For Making An Award**

The Relevant Authority may if deemed fit whether the time for making the award has expired or not and whether the award has been made or not extend from time to time the time for making an award.

#### **10.2.36 Remedies At Law**

The Arbitration Committee or the Relevant Authority may decline to hear a reference or an appeal or may dismiss any reference or appeal at any time during

the proceedings and refer the parties to their remedies at law and it shall so refer them upon the joint request of the parties.

#### **10.2.37 Penalty On Failure To Submit To Or Abide By Award In Arbitration**

A Clearing Member who fails or refuses to submit to or abide by or carry out any award in arbitration between Clearing Members as provided in these Bye-Laws and Regulations shall be expelled by the Clearing Corporation and thereupon the other party shall be entitled to institute legal proceedings to enforce the award under the Civil Procedure Code 1908 (5 of 1908) in the same manner as if it is a decree of the court.

#### **10.2.38 Setting Aside Of Award And Fresh Reference**

- (a) An arbitration award may be set aside by the court on an application made under Section 34 of the Arbitration and Conciliation Act, 1996 on the grounds mentioned in that section.
- (b) Whenever an award made under these Bye-Laws and Regulations is set aside by the court, the matter shall be again referred to arbitration as provided in these Bye-Laws and regulations and the claims, differences and disputes shall be decided by arbitration only.

#### **10.2.39 Correction And Interpretation Of Award :**

- (a) Within 15 days of the receipt of the arbitral award;
  - (i) Any party to an arbitration agreement, with notice to the other party, may request the arbitral tribunal to correct any computational error, any arithmetical error, any clerical or typographical error or any other error of a similar nature occurring in the award;
  - (ii) A party with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.
- (b) If the arbitral tribunal consider the request made under clause (a) to be justified, it may make the correction or give the interpretation and the interpretation shall form part of the award.
- (c) The arbitral tribunal may on its own correct the errors of the type indicated in sub clause (i) of clause (a) within 10 days of making the award. An intimation of such correction shall be given to the parties in case correction is made after delivering uncorrected copy of the award to the parties and corrected copies of the award shall be given to the parties.
- (d) A party with notice to the other party may request the arbitral tribunal within 15 days of receipt of the award, to make an additional award as to claims presented in the arbitral proceedings, but omitted from the arbitral award.



- (e) If the arbitral tribunal considers the request made under clause (d) to be justified, it shall make the additional arbitral award within 7 days of the receipt of such request.

#### **10.2.40 Arbitration Fees**

The parties desiring to make a reference to arbitration or proceed in appeal shall pay in advance the fees prescribed by the Relevant Authority from time to time.

#### **10.2.41 Payment Of Fees**

Unless otherwise directed in the award the party against whom the award is finally made shall pay all fees paid by the other party to the reference in connection with the arbitration proceedings.

#### **10.2.42 Assistance In Conduct Of Arbitration Proceedings**

No legal Practitioner shall be permitted to plead or act for the parties to arbitration at any level of the arbitration including the appeals. The parties may be permitted by the arbitrator to have assistance of a duly authorised next friend in the conduct of arbitration proceedings.

#### **10.2.43 Dispute Resolution Officers & Umpires**

- (a) The Relevant Authority shall:
  - (i) From time to time appoint one or more Dispute Resolution Officers from amongst the employees of the Clearing Corporation for such period, if any, as may be specified; and
  - (ii) At any time revoke the appointment of any Dispute Resolution Officer without being required to assign any reason.
- (b) The Arbitration Committee shall:
  - (i) From time to time appoint one or more Umpires from amongst the Clearing Corporation's employees for such period, if any, as may be specified; and
  - (ii) At any time revoke the appointment of any Umpire without being required to assign any reason.

#### **10.2.44 References And Appeals To Dispute Resolution Officers & Umpires**

- (a) If a Clearing Member (hereinafter referred to as "the Receiving Member") who has received delivery of a document or an objection memo from a company through the Clearing Corporation is of the view, on a scrutiny of the document or objection memo, that the same does not constitute good delivery or a valid objection and therefore desires to return the document/objection memo to the Clearing Member who delivered the

document/objection memo to the Receiving Member through the Clearing Corporation (hereinafter referred to as “the Delivering Member”) then the Receiving Clearing Member may, within such period as the Relevant Authority may prescribe, apply to a Dispute Resolution Officer for his decision as to whether the documents constitute bad delivery or whether the objection memo constitutes a valid objection. If the Receiving Member does not apply to the Dispute Resolution Officer for a decision within the period prescribed by the Relevant Authority then the procedure provided in this Bye-Law shall not apply and the Receiving Member may refer his claim or dispute relating to the documents/objection memo to arbitration under Bye-Law 10.2.4.

- (b) Notwithstanding anything stated in 10.2.44 (a) or Bye-Law 10.2.2, if a member is declared a defaulter then all proceedings pending before a Dispute Resolution Officer or Umpire at the time of declaration of default and all matters to be thereafter referred to a Dispute Resolution Officer or a Umpire shall be referred to Arbitration in accordance with the provisions relating to Arbitration between Clearing Members.
- (c) Every such application for arbitration to a Dispute Resolution Officer shall mention the number (or other detailed reference in the absence of a number) of the rule, bye-law, regulation, guideline, direction or instruction on the basis of which the Receiving Member is contending that the document does not constitute good delivery or that the objection memo does not constitute a valid objection failing which the Dispute Resolution Officer shall not proceed with the application.
- (d) The proceedings before the Dispute Resolution Officer shall be summary in nature. The Dispute Resolution Officer shall not be required to give any party any notice or an opportunity to reply or be heard unless the Dispute Resolution Officer is of the view that, on the facts of that reference, any, some or all of the parties to the claim, complaint, difference or dispute are required to be heard. In the latter case, the Dispute Resolution Officer may give to the concerned parties an opportunity to be heard by serving upon them not less than two hours’ notice and the provisions of 10.2.8 and 10.2.9 shall apply mutatis mutandis.
- (e) If the Dispute Resolution Officer determines that the documents constitute good delivery or that the company’s objection memo constitutes a valid objection, the Receiving Member shall not be entitled to return the documents or the objection memo to the Delivering Member on the ground of bad delivery/invalid objection memo. However, if the Receiving Member does not accept the Dispute Resolution Officer’s decision that the documents constitute good delivery or that the objection memo constitutes a valid objection, the Receiving Member may prefer an appeal to an Umpire appointed by the Arbitration Committee within three days of the Dispute Resolution Officer’s award or a copy of the award being received by the Receiving Member.
- (f) If the Dispute Resolution Officer decides that the documents constitute bad delivery or that the company’s objection does not constitute a valid

objection, the Receiving Member shall be entitled to return the documents/objection memo to the Clearing Corporation on the ground of bad delivery or invalid objection for being in turn returned to the Delivering Member. However, if the Delivering Member does not accept the Dispute Resolution Officer's decision that the documents constitute bad delivery or that the objection memo does not constitute a valid objection, the Delivering Member may prefer an appeal to an Umpire within three days of the Dispute Resolution Officer's award or a copy of the award being received by the Delivering Member.

- (g) The provisions of Bye-Laws 10.2.8, 10.2.9, 10.2.26, 10.2.27, 10.2.28, 10.2.29, 10.2.40, 10.2.41 shall unless inconsistent with this or any other Bye-Law or regulation relating to Dispute Resolution Officers or Umpires, mutatis mutandis apply to references to and arbitration proceedings before a Dispute Resolution Officer and an Umpire so far as the same may be applicable.
- (h) Every award by a Dispute Resolution Officer or Umpire shall be in writing, shall state the reasons for the award and shall be signed by the Dispute Resolution Officer or the Umpire.
- (i) The Delivering Member or the Receiving Member (or both) may prefer an appeal to the Full Bench of the Arbitration Committee from an award of an Umpire within three days of the award or a copy of the award being received by the member seeking to prefer the appeal. The provisions of these Bye-laws relating to appeals to the Full Bench shall apply mutatis mutandis to the appeals preferred to the Full Bench under this clause.

#### **10.2.45 Forms**

The Relevant Authority may from time to time prescribe forms for the purposes of these Bye-Laws including forms in which the reference should be made, any notice should be given, the award should be passed and in which any appeal may be preferred.

#### **10.2.46 Member**

For the purposes of this chapter the term "Clearing Member" shall include, and shall always be deemed to have included, a former Clearing Member of the Clearing Corporation who was a member of the Clearing Corporation at the time when the concerned bargain, dealing, transaction or contract was entered into.

#### **10.2.47 Limitation**

- (a) Claims against defaulter Clearing Members:
  - (i) No claim which has arisen or has become due before a Clearing Member has been declared defaulter as per the Rules, Bye-Laws and Regulations of the Clearing Corporation, shall be entertained against him by the arbitrators after the expiry of six months from the day the member is declared a defaulter.

- (ii) No claim which has arisen after a Clearing Member has been declared a defaulter as per the Rules, Bye-Laws & Regulations of the Clearing Corporation shall be entertained against him by the arbitrators after the expiry of six months from the day the claim arises or becomes due.
  - (iii) Whether the claim falls within the period of limitation provided in (a) (i) and (ii) shall be decided by the arbitrator and in case he finds that it does not fall within the period specified therein, he shall dismiss the application for reference to arbitration. He may admit the application after the prescribed period if the applicant satisfies him that there is sufficient cause for not making the application within such period as provided in section 5 of the Limitation Act, 1963.
- (b) Application of Limitation Act, 1963:

Subject to (i) to (iii) and special provisions made in these Bye-Laws providing limitation for making various applications, for preferring appeals and for taking other steps in the conduct of arbitration proceedings or in the proceedings before the Dispute Resolution Officers, all the provisions of Limitation Act, 1963 or other Law relating to limitation as may be in force in India from time to time shall apply to arbitrations under this chapter as they apply to proceedings in Court.

#### **10.2.48 Adjournment Costs**

The Relevant Authority, the Arbitration Committee, a Lower Bench, a Dispute Resolution Officer or an Umpire shall not be obliged to adjourn a hearing on the request of any party. However, in the event of an adjournment being granted, the Relevant Authority, the Arbitration Committee, a Lower Bench, a Dispute Resolution Officer or an Umpire shall be entitled to direct the party requesting the adjournment to pay to the other party/parties such amount as costs as the Relevant Authority, the Arbitration Committee, the Lower Bench, a Dispute Resolution Officer or an Umpire thinks fit and proper.

#### **10.2.49 Appeal/Reference Period Ending On Holiday**

If the period within which any reference or appeal is required to be filed ends on a day on which the offices of the Clearing Corporation are not open for filing such reference or appeal, then the appeal may be filed on the next day after such period on which the offices of the Clearing Corporation are open for filing such a reference or appeal.

#### **10.2.50 Award To Adjudge Interest**

Where and in so far an award is for the payment of money the arbitral tribunal may adjudge in the award the interest to be paid on the principal sum adjudged for any time prior to the institution of the arbitration proceedings and may also adjudge the additional interest on such principal sum as is deemed reasonable for the period from the date of the institution of the arbitration proceedings to the date of the

award and further interest on the aggregate sum so adjudged at such rate as is deemed reasonable from the date of the award to the date of payment or the date of the decree. A sum directed to be paid by the arbitral award shall, unless the award otherwise directs, carry interest at the rate of 18 percent per annum from the date of award to the date of payment.

#### **10.2.51 Ministerial Duties**

The Secretary and the employees of the Clearing Corporation acting under the authority of the Relevant Authority shall

- (a) Maintain a register of references;
- (b) Receive all applications for arbitration, references and communications addressed by the parties before or during the course of arbitration or otherwise in relation thereto;
- (c) Receive payment of all costs, charges, fees and other expenses;
- (d) Give notices of hearing and all other notices to be given to the parties before or during the course of the arbitration or otherwise in relation thereto;
- (e) Communicate to parties all orders and directions of the arbitrator;
- (f) Receive and record all documents and papers relating to the reference and keep in custody all such documents and papers except such as the parties are allowed to retain;
- (g) Publish the award on behalf of the arbitrator;
- (h) To enter the award and any changes therein in the register of references.
- (i) Generally do all such things and take all such steps as may be necessary to assist the arbitrator in the execution of their functions.

The secretary or the Clearing Corporation shall not be obliged to maintain records of any transaction or matter for a period longer than 5 years after the date of occurrence of such transaction or matter.

#### **10.2.52 Indemnity**

No party shall bring or prosecute any suit or proceedings whatever against the Clearing Corporation, the Relevant Authority, the Arbitration Committee, the Lower Bench, a Dispute Resolution Officer or an Umpire the secretary, employee or employees acting under the orders or directions of the Relevant Authority or against the arbitrators for or in respect of any matter or thing purporting to be done under these Bye-Laws and Regulations nor any suit or proceedings (save for the enforcement of the award) against the other party or parties to the reference.

### **10.2.53 Removal Of Difficulties**

If any difficulty arises in giving effect to these Bye-Laws in the conduct of arbitration, resort may be had to the provisions of Part I of the Arbitration and Conciliation Act, 1996, which are not inconsistent with these Bye-Laws.

### **10.2.54 Administrative Assistance**

The Clearing Corporation shall render all secretarial and other assistance for the conduct of arbitration proceedings by appointing adequate staff and by providing proper accommodation, stationery and other facilities.

The secretary of the arbitration division with the help of the assistants shall maintain all registers, files and records of arbitrations in proper order and shall be responsible for keeping them upto date. He shall maintain statistics of all pending and disposed off references and at the end of each quarter shall report to the Relevant Authority of the Clearing Corporation the number of pending references at the commencement of every month, references received during the month and the references disposed off. He shall report the references pending for more than four months, with the reasons for the delay and the steps taken for the early disposal of those references and shall carry out the directions issued by the Relevant Authority from time to time. The secretary shall also arrange to issue certified copies of the documents, awards and other proceedings to the parties on receiving the charges fixed by the Relevant Authority from time to time and shall render all other assistance for enforcement of the awards.

### **10.2.55 Maintenance/Disposal Of Arbitration Record**

The Clearing Corporation shall adopt the following in respect of disposal of the Arbitration Records:

- (a) The original arbitration award with acknowledgements shall be preserved permanently.
- (b) Records pertaining to arbitration Proceedings/ Submissions/ Forms etc. shall be preserved for a period of 5 years from the date of the award, if no appeal for setting aside the award is filed before the Court of Law.
- (c) In case, an appeal is filed before the Court of Law, the records shall be preserved for a period of five years from the date of final disposal of the matter by the Court. Further, where any order / judgement of any Court of Law in respect of award is received, certified copy of the same shall be retained permanently along with the original award.
- (d) The destruction of records shall be subject to the previous order in writing of the Relevant Authority of the Clearing Corporation.
- (e) The Clearing Corporation shall maintain a register wherein the brief particulars of the records destroyed shall be entered, alongwith the certification regarding the date and mode of destruction.

Provided further that this Bye-Law shall also be applicable to all arbitration awards, passed prior to this Bye-Law coming into effect and the arbitration records meeting the criterion as above on the date of this Bye-Law coming into effect, will be destroyed in the manner specified.

## CHAPTER – XI

### DEFAULT

#### 11.1 Declaration Of Default

The Clearing Member may be declared a defaulter by direction/circular/notification of the Relevant Authority if:

- 11.1.1 he is unable to fulfill his clearing or settlement obligations; or
- 11.1.2 he admits or discloses his inability to fulfill or discharge his duties, obligations and liabilities; or
- 11.1.3 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
- 11.1.4 he fails to pay any sum payable by him to the Core Settlement Guarantee fund as the Relevant Authority may from time to time prescribe; or
- 11.1.5 he fails to pay or deliver all monies, securities and other assets due to the 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
- 11.1.6 he fails to abide by the arbitration award as laid down under the Rules, Bye Laws and Regulations; or
- 11.1.7 under any other circumstances as may be decided by the Relevant Authority from time to time.
- 11.1.8 a clearing member who has been adjudicated an insolvent or opts for voluntary winding up, as the case may be, he/ it shall ipso facto be declared a defaulter though he/ it may not have defaulted on any of his/ its obligations on the Clearing Corporation.
- 11.1.9 without prejudice to the foregoing provisions contained in Bye-Law 11.1, where the Clearing Member, who is also a trading member the Exchange is declared a defaulter by such Exchange, the said Clearing Member shall ipso facto stand declared a defaulter by the Relevant Authority.

#### 11.2 The Clearing Member's Duty To Inform

The 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.

#### 11.3 Compromise Forbidden



The 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.

#### **11.4 Notice Of Declaration Of Default**

On the Clearing Member being declared a defaulter, a notice shall be forthwith issued by the Relevant Authority to all the other Clearing Members of the Clearing Corporation.

#### **11.5 Notice To the Exchange**

On the Clearing Member being declared a defaulter, a notice shall be forthwith issued by the Relevant Authority to the Specified Exchange if the Clearing Member is also a trading member of that Specified Exchange and similarly to the other Exchanges if the defaulter is a Trading Member of such Exchange.

#### **11.6 Defaulter's Books And Documents**

When the 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 status of his affairs and the defaulter shall hand over such books, documents, papers and vouchers to the Relevant Authority.

#### **11.7 List Of Debtors And Creditors**

The defaulter shall file with the Relevant Authority within such time of he/it being declared a defaulter as the Relevant Authority may direct, a written statement containing the complete list of his debtors and creditors and the sum owed by the defaulter Clearing Member to each of them.

#### **11.8 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.

#### **11.9 Inquiry**

The Relevant Authority shall conduct an inquiry into the accounts and dealings of the defaulter in the market including inquiry with regard to anything improper, unbusinesslike or unbecoming a Clearing Member which may come to its knowledge.

#### **11.10 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, the Specified Exchange, 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 Stock Exchanges / Clearing Corporation.

#### **11.11 Payment To Relevant Authority**

- (a) 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 Clearing Member being declared a defaulter as the Relevant Authority may direct. A Clearing Member violating this provision may be declared a defaulter.
- (b) The 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.
- (c) The 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.

#### **11.12 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.

#### **11.13 Closing -Out**

- (a) The Clearing Members having open deals with the defaulter shall close out such deals after such defaulter member being declared a defaulter. Such closing out shall be in such manner as may be prescribed by the Relevant

Authority from time to time. Subject to the Bye-laws and 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.

- (b) 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.

#### **11.14 Claims Against Defaulter**

Within such time of the defaulter being declared as such the Relevant Authority may direct every Clearing Member carrying on business on the Clearing Corporation either to 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.

#### **11.15 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 by the Relevant Authority from time to time.

#### **11.16 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.

#### **11.17 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.

#### **11.18 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 either in connection with the default/s committed by the defaulter Member or against such defaulter Member.

### **11.19 Application Of Assets**

The Relevant Authority shall apply the net assets remaining in its hands after defraying all such costs, charges and expenses, in accordance with Bye-law 12.22

### **11.20 Certain Claims Not To Be Entertained**

The Relevant Authority shall not entertain any claim against a defaulter:

- 11.20.1 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;
- 11.20.2 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 such comparison, a contract note in respect of such deals not having been rendered as provided in the Rules, Bye-Laws and Regulations;
- 11.20.3 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;
- 11.20.4 which arises from any outstanding balance or any outstanding difference upon previous transactions which has not been claimed at the proper time and in the manner prescribed in these Bye-Laws and Regulations;
- 11.20.5 which is/are in respect of a loan/s with or without security;
- 11.20.6 which is not filed with the Relevant Authority within such time of date of the defaulter being declared as such as may be prescribed by the Relevant Authority.

### **11.21 Assignment Of Claims On Defaulter's Estate**

The 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.

### **11.22 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 Bye-Laws, 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

Relevant Authority, Clearing Corporation as their constituted attorney for the purpose of taking such proceedings.

### **11.23 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 such a Member 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.

### **11.24 Default in case of Multiple Membership:**

I. Whenever a member of any segment is declared defaulter, the concerned Stock Exchange/Clearing Corporation shall immediately declare it a defaulter in all its segments. It shall also immediately inform all other Stock Exchanges/Clearing Corporations the details of the defaulter member such as name of the member, the names of the proprietors/partners/promoters/dominant shareholders, as applicable.

II. Immediately on receipt of the information about default of a member, the Stock Exchange/ Clearing Corporation shall declare the said member defaulter on all its segments.

III. The Stock Exchange/ Clearing Corporations shall take appropriate action against the associate(s) of defaulter member. In this regard, 'associate(s)' shall refer to the associate(s) who are holding membership in stock exchange/Clearing Corporation."

## CHAPTER – XII

### CORE SETTLEMENT GUARANTEE FUND AND DEFAULTS SUBSEQUENT TO COMMENCEMENT OF OPERATION OF CORE SETTLEMENT GUARANTEE FUND

#### 12.1. Definitions

12.1.1 In Bye-Laws 12.1 to 12.49 unless there is anything repugnant in the subject or context:

- (a) “Approved Scheme” shall have the meaning assigned thereto by Bye-Law. 12.49
- (b) “Associate” in relation to a person shall include another person:
  - (i) who, directly or indirectly, by himself, or in combination with other persons, exercises control over the first person;
  - (ii) who holds more than fifteen per cent shares in the paid up equity capital of the first person;
  - (iii) who is a holding company or a subsidiary company of the first person
  - (iv) who is a relative of the first person;
  - (v) who is a member of a Hindu Undivided Family wherein the first person is also a member;
  - (vi) such other cases where SEBI is of the view that a person shall be considered as an associate based on the facts and factors including the extent of control, independence, conflict of interest;”
- (c) “Business Day” shall have the same meaning as is assigned thereto in Bye-Law 1.20
- (d) “Fund” shall mean the Core Settlement Guarantee Fund;
- (e) “Relative” shall mean a person who is a relative within the meaning of:
  - (i) Section 13 of the Income-Tax Act, 1961 or
  - (ii) The Companies Act, 2013.
- (f) “Settlement” shall include an auction settlement {and a settlement pursuant to an Approved Scheme} but shall not include a bad delivery settlement.
- (g) “Settlement in which a Clearing Member or a defaulter has been declared a defaulter” shall have the following meaning:

Where a Clearing Member has been declared a defaulter for non-payment of any amount payable by him into the Clearing Corporation in respect of any Settlement Period then the Settlement Period in respect of the non-payment of which the Clearing Member is declared a defaulter shall be the “Settlement” in which the Clearing Member or the defaulter is or has been declared a defaulter”; and where the Clearing Member has failed to pay any amount payable by him into the Clearing Corporation in respect of

more than one settlement period then the “Settlement in which the Clearing Member or the defaulter is or has been declared a defaulter” shall be the settlement so specified by the Relevant Authority which has declared him as a defaulter.

- (h) Default Waterfall defines the overall loss absorption capacity of the Clearing Corporation and lays down in order, the hierarchy in which the losses arising out of counterparties’ defaults will be absorbed across the various capital layers, which may inter-alia include the defaulting members’ assets, insurance cover, the Core SGF, the networth (or part of) of the Clearing Corporation, additional capped contribution from non-defaulting members and variation margin haircutting.”

12.1.2 In the Rules, Bye-Laws and Regulations, unless there is anything repugnant in the subject or context:

“Date on which the Core Settlement Guarantee Fund becomes operational” means the date specified by the Relevant Authority as the date on which the Core Settlement Guarantee Fund shall become operational”.

12.1.3 (a) The Clearing Corporation shall establish a fund for each segment as determined under Bye-law 2.1 and 2.2 which shall be known as the “Core Settlement Guarantee Fund” or by such nomenclature as Clearing Corporation may specify, in such manner as may be prescribed by SEBI from time to time and such fund shall be used for the designated segment only.

- (b) The corpus of the Fund shall consist of such amounts as provided in Bye-law 12.5.

- (c) to guarantee the settlement of trades executed in respective segment of the Stock Exchange. In the event of a clearing member (member) failing to honour settlement commitments, the Core SGF shall be used to fulfill the obligations of that member and complete the settlement without affecting the normal settlement process.

- (d) The Relevant Authority shall be entitled to make such regulations as it thinks fit and proper in connection with the manner, norms and procedures of the Fund and defaults declared subsequent to the commencement of the operation of the Fund.

- (e) Without prejudice to the generality of clause (d) above, the Relevant Authority shall be entitled to make regulations relating to norms, procedures and manner in respect of:

- (i) the management and administration of the Fund;

- (ii) the structure and composition of the Fund;

- (iii) the contributions to be made to the Fund by the Exchange, Clearing Members of the Clearing Corporation and others;

- (iv) investment of the Fund;
- (v) application of the Fund;
- (vi) persons who would be disentitled from receiving a benefit from the Fund;
- (vii) minimum value of funds in the Fund;
- (vii) the money and property to be paid to or received by the Relevant Authority;
- (ix) the application of the money and property paid to or received by the Relevant Authority including the order of priority in which they shall be applied;
- (x) the closing-out, adjustment, settlement and/or cancellation of contracts entered into by a Clearing Member with the defaulter;

## **12.2 Management Of The Fund**

12.2.1 (a) The Defaulter's Committee/SGF utilization Committee of the Clearing Corporation shall manage the Fund.

(b) Subject to the Rules, Bye-Laws and Regulations of the Clearing Corporation the Relevant Authority shall have complete control over the management and administration of the Fund. In addition to the powers conferred by the other provisions of the Rules, Bye-Laws and Regulations of the Exchange, the Relevant Authority shall be vested with all powers, authorities and discretions necessary or expedient for or incidental to the management and administration of the Fund or for achieving the object and purpose of the Fund;

(c) Without prejudice to the generality of the foregoing, the Relevant Authority shall have for the purposes of the Fund, the power to:

- (i) summon the Clearing Members, partners of the Clearing Members, associates of Clearing Members and directors of the Clearing Members who are individuals, companies, limited liability partnerships or other corporate bodies to appear before the Relevant Authority and question them;
- (ii) call upon the Clearing Members, associates of Clearing Members, partners of the Clearing Members, and directors of the Clearing Members who are individuals, companies, limited liability partnerships or other corporate bodies to furnish to the Relevant Authority such information, documents and papers as the Relevant Authority may require and within the period specified by the Relevant Authority;



- (iii) prescribe forms, agreements, affidavits, undertakings and other writings to be signed by the Clearing Members, partners of the Clearing Members, directors of the Clearing Members who are companies or other corporate bodies or by other persons and specify the period within which the same should be signed and submitted;
- (iv) invest or otherwise deal with the money of the Fund;
- (v) call for and hold any security for the payment of any amount payable to the Fund, and realise or otherwise deal with any security or other property offered to the Fund;
- (vi) borrow money without security or against the security of the Fund or any property of or available to or accessible by the Fund or otherwise;
- (vii) enter into financial arrangements with banks, institutions, companies and other persons;
- (viii) issue guarantees and indemnities;
- (ix) delegate any of its powers and functions to any person subject to such terms and conditions as the Relevant Authority may think fit to impose, and subject to overall ratification by the Relevant Authority;
- (x) do all such acts as the Relevant Authority considers necessary to protect or advance the interests of the Fund or to achieve the purposes and objects of the Fund;
- (xi) institute and conduct legal proceedings to recover assets of a defaulter or a member.

### **12.3 Accounts And Audit Of The Fund**

Unless the Relevant Authority otherwise directs, the accounts of the Fund shall be prepared and maintained as a part of the accounts of the Clearing Corporation and shall be audited as a part of the accounts of the Clearing Corporation

### **12.4 Documents To Be Executed By The Clearing Member And Their Partners**

12.4.1 Within such period as may be specified by the Relevant Authority (as may be extended by the Relevant Authority from time to time), every Clearing Member and every partner of every Clearing Member who is carrying on business on the Clearing Corporation in partnership shall sign and deliver to the Relevant Authority agreements and other writings in such form as may be prescribed by the Relevant Authority from time to time.

12.4.2 In the event of any change in the form of any agreements or writings the Relevant Authority may require every Clearing Member and every partner of every Clearing

Member who is carrying on business on the Clearing Corporation in partnership to sign and deliver to the Relevant Authority supplemental agreements or writings or fresh agreements or writings within such period or extended period as may be specified by the Relevant Authority from time to time).

## **12.5 Composition Of Fund**

1. At any point of time, the contributions of various contributors to Core SGF of any segment shall be as given below or as per the guidelines issued by SEBI from time to time.

The Fund shall consist of:

- (a) Clearing Corporation contribution: CC contribution to Core SGF shall be at least 50% of the MRC. CC shall make this contribution from its own funds. CC contribution to core SGFs shall be considered as part of its net worth.
  - (b) Stock Exchange contribution: Stock Exchange contribution to Core SGF shall be at least 25% of the MRC (can be adjusted against transfer of profit by Stock Exchange as per Regulation 33 of SECC Regulations, which may be reviewed in view of these guidelines).
  - (c) Clearing Member primary contribution: If the CC wishes, it can seek risk based contribution from Clearing Members (CMs) of the segment (including custodial clearing members) to the Core SGF subject to the following conditions:
    - that total contribution from CMs shall not be more than 25% of the MRC,
    - that no exposure shall be available on Core SGF contribution of any CM (exposure-free collateral of CM available with CC can be considered towards Core SGF contribution of CM), and
    - that required contributions of individual CMs shall be pro-rata based on the risk they bring to the system.
  - (d) CC shall have the flexibility to collect CM primary contribution either upfront or staggered over a period of time. In case of staggered contribution, the remaining balance shall be met by CC to ensure adequacy of total Core SGF corpus at all times. Such CC contribution shall be available to CC for withdrawal as and when further contributions from CMs are received.
2. Any penalties levied by CC (as per Regulation 34 of SECC Regulations) shall be credited to Core SGF corpus.
  3. Interest on cash contribution to Core SGF shall also accrue to the Core SGF and pro-rata attributed to the contributors in proportion to their cash contribution.
  4. CC shall ordinarily accept cash collateral for Core SGF contribution. However, CC may accept CM contribution in the form of bank FDs too. CC shall adhere to specific guidance which may be issued by SEBI from time to time in this regard.

## **12.6. Liability Of Clearing Member Unaffected By Cessation Of Membership**

Any unsatisfied obligation of a Clearing Member to the Fund shall not be discharged or otherwise prejudicially affected by the cessation of his membership.

## **12.7. Action for Failure To Pay To Fund**

The Relevant Authority may take such action as it thinks fit and proper against a Clearing Member who fails to pay any amount to the Core Settlement Guarantee

Fund including action by way of suspension of the business or membership right of the Clearing Member, fine, and/or expulsion from the membership of the Clearing Corporation.

#### **12.8. Replacement Of Contribution**

Unless otherwise provided by the Rules, Bye-Laws and Regulations of the Clearing Corporation, the Relevant Authority may permit a Clearing Member to withdraw a contribution after he has furnished to the Fund other contribution of the same or greater value and of a nature acceptable to the Relevant Authority.

#### **12.9. Discharge Of Clearing Member's Obligations**

In the event of a Clearing Member ceasing to be a Clearing Member of the Clearing Corporation otherwise than by being declared a defaulter, the Relevant Authority may retain and/or apply any unutilised contribution of the Clearing Member towards discharging any of his obligations under the Rules and Bye-laws and Regulations of the Clearing Corporation in such manner and in such order or priority as the Relevant Authority thinks fit.

#### **12.10. Investment Of Fund**

- (a) The Relevant Authority may:
  - (i) open, maintain, operate and close one or more bank accounts; and
  - (ii) invest the money of the Fund in such investments as are permissible for investing the funds and money of the Clearing Corporation and sell, transfer, vary, transpose and otherwise deal with such investments;
- (b) All investments of the Fund may be held in the name(s) of, and all bank accounts of the Fund or may be held in the name(s) of and operated by, the Relevant Authority;
- (c) The Relevant Authority shall be entitled to utilise the money of the Fund only for the purposes of the Fund.

#### **12.11. Loss To Fund Investments**

Any loss or diminution in value of the investments of the Fund from whatever cause arising, not being due to the willful default or fraud of any member(s) of the Relevant Authority, shall be borne by the Fund and the members of the Relevant Authority shall incur no responsibility or liability by reason of or on account thereof. In case of any such loss or diminution by reason of willful default or fraud by any member or members of the Defaulters' Committee, the persons committing the willful default or fraud shall be personally liable for the loss or diminution and other persons who are not parties to the willful default or fraud shall not be liable for the loss or diminution.

#### **12.12. Intimation Of Clearing Member's Apprehended Failure**

A Clearing member who has reason to apprehend that he may commit any of the acts or omissions referred to in Bye-Law 11.1 shall immediately notify to the Relevant Authority:

- (a) the details of such acts or omissions;
- (b) the details and value of all his commitments, obligations and liabilities to other members arising out of contracts or transactions made subject to the Rules, Bye-Laws and Regulations of the Clearing Corporation/Exchange;
- (c) the extent to which he will be able to discharge and meet such commitments and obligations out of his own funds and/or out of funds obtained by him from others; and
- (d) all the facts and circumstances which have caused or contributed to the apprehended failure to meet such commitments and obligations.

#### **12.13. Utilisation For Failure To Meet Obligations**

- (a) The terms and conditions specified by the Relevant Authority may include, inter alia, terms and conditions as to interest, repayment, suspension of membership rights and reduction of exposure limits of the concerned Clearing Member.
- (c) The concerned Clearing Member shall be obliged to repay the amount so utilised from the Fund within such period as the Relevant Authority may specify together with interest thereon at the rate specified by the Relevant Authority. If a Clearing Member fails to repay the amount so utilized from the Fund or a part thereof or any interest thereon within the period specified by the Relevant Authority, the Clearing Member, may be declared a defaulter.

#### **12.14. Payment Under Settlement Guarantee**

Upon a Clearing Member being declared a defaulter, if the settlement which has not been completed by reason of the default by the defaulter, the Relevant Authority shall:

- (a) pay from the Fund before the pay-out of the relevant settlement the unpaid settlement dues payable by the defaulter to the Clearing Corporation; and

- (b) within such time as may be determined by the Relevant Authority from the date of Pay-Out deliver the securities to be delivered by the defaulter, in respect of the settlement in which the defaulter has been declared a defaulter.

### **12.15. Certain claims not to be entertained**

Notwithstanding Anything Stated In Bye-Law 12.14,

- (I) the Relevant Authority shall pay only such amounts as are payable by the defaulter to the other Clearing Member and into the Clearing Corporation in respect of the dealings entered into by the defaulter in respect of the settlement in which he has been declared a defaulter.
- (II) in case of the defaulter having failed to deliver any security into the Clearing Corporation in respect of the settlement in which he has been declared a defaulter, the Relevant Authority may deliver the security into the Clearing Corporation or directly to the concerned member, within such time as may be determined by the Relevant Authority, by acquiring the same from the market or otherwise, failing which the provisions of closing-out of contracts will apply.
- (III) Notwithstanding anything stated elsewhere in the Rules, Bye-Laws and Regulations, the Relevant Authority shall not pay from the Fund to a Clearing Member, if it has reason to believe that any transaction:
  - a) is not bona fide;
  - b) is disallowed under any Bye-Law; or
  - c) is connected with payment or repayment of a deposit or loan (other than a deposit or loan under or pursuant to an Approved Scheme), then:
- (IV) For the purpose of determining whether or not a clearing member is entitled for the payment from Fund, the Relevant Authority shall be entitled to consider, inter alia, the surrounding circumstances, the usual course of dealings on the Clearing Corporation, the relationship between the defaulter and the claimant, the quantity and price of the securities involved in the transaction, other transactions in the same scrip and such other matters as the Relevant Authority thinks fit;

### **12.16. Outstanding Contracts In Other Settlements**

- (a) In respect of any settlement or settlements which is or are incomplete at the time when a Clearing Member is declared a defaulter, the Relevant Authority may at the risk and cost of the defaulter, square up all or any of the defaulters' outstanding sales and purchase positions by entering into corresponding purchase and sale contracts in the market. The profit or loss on such squaring up shall, in the first place, be paid to or by the Fund and credited or debited by the Fund to the defaulter's account with the Fund;

- (b) Upon a member being declared a defaulter, in addition to the provisions of clause (a) of this Bye-Law, the provisions of Bye-Laws 12.14 and 12.15 and other applicable Bye-Laws shall apply mutatis mutandis to any settlement or settlements other than the settlement in which the defaulter has been declared a defaulter unless the Relevant Authority, for reasons to be recorded, passes a resolution determining otherwise, in which case no payment shall be made from the Fund in respect of such settlement or settlements (other than the settlement in which the defaulter has been declared a defaulter) as the Relevant Authority may specify.

#### **12.17. Repayment By Payee Disentitled To Receive**

If the Relevant Authority has paid any sum under these Bye-Laws and it is subsequently found that the payee was for any reason not entitled to receive such amount then the payee shall forthwith repay the same to the Relevant Authority together with interest thereon at the rate of 2.5% per month (or such other rate as the Relevant Authority may specify) for the period commencing on the date on which the payment was received by the payee and ending on the date on which such amount is repaid by the payee.

#### **12.18. Money And Property Of Defaulter**

All money (including margin money and Contribution, securities and other property) whatsoever of the defaulter with the Clearing Corporation or the Clearing House (save and except those which may be at any time excluded by the Relevant Authority from the provisions of this Bye-Law) and all securities and money delivered or paid by the Clearing Members into the Clearing Corporation to the credit of the defaulter shall be handed over to the Relevant Authority or held by the Clearing Corporation subject to these Rules, Bye-Laws and Regulations of Clearing Corporation and the directions of the Relevant Authority.

#### **12.19. Utilisation Of Money And Property For Payment And Order Of Priority**

The default waterfall of CC for any segment shall generally follow the following order –

- I. monies of defaulting member (including defaulting member's primary contribution to Core SGF(s) and excess monies of defaulter in other segments).
- II. Insurance, if any.
- III. CC resources (equal to 5% of the segment MRC).
- IV. Core SGF of the segment in the following order:
  - i. Penalties
  - ii. CC contribution to the extent of at least 25% of the segment MRC
  - iii. Remaining Core SGF: CC contribution, Stock Exchange contribution and non-defaulting members' primary contribution to Core SGF on pro-rata basis.

V. Proportion of remaining CC resources (excluding CC contribution to core SGFs of other segments and INR 100 Crore) equal to ratio of segment MRC to sum of MRCs of all segments.\*

VI. CC/SE contribution to Core SGFs of other segments (after meeting obligations of those segments) and remaining CC resources to that extent as approved by SEBI.

VII. Capped additional contribution by non-defaulting members of the segment.\*\*

VIII. Any remaining loss to be covered by way of pro-rata haircut to payouts.\*\*\*

\* INR 100 Crore to be excluded only when remaining CC resources (excluding CC contribution to core SGFs of other segments) are more than INR 100 Crore.

\*\*CC shall limit the liability of non-defaulting members towards additional contribution to a multiple of their required primary contribution to Core SGF and the framework regarding the same should be disclosed. In case of shortfall in recovery of assessed amounts from non-defaulting members, further loss can be allocated to layer 'VI' with approval of SEBI.

\*\*\*In case loss allocation is effected through haircut to payouts, any subsequent usage of funds shall be with prior SEBI approval. Further, any exit by CC post using this layer shall be as per the terms decided by SEBI in public interest.

#### **12.20. Repayment And Payment Of Interest By Defaulter**

If on account of the default of a Clearing Member any amount is paid by the Relevant Authority out of the money or property referred to at Bye-Law 12.20 then the defaulter shall be liable to forthwith repay the same to the Clearing Corporation or to the Relevant Authority to the credit of the Fund together with such interest as may be determined by the Relevant Authority from time to time commencing on the date of payment by the Relevant Authority and ending on the date of repayment; and, for the purposes of the Rules, Bye-Laws and Regulations of the Clearing Corporation, such interest shall be deemed to be an amount paid out of/due to the Fund.

#### **12.21. Application Of Defaulters' Assets And Other Amounts**

- (1) The Relevant Authority shall realise and apply all the money, rights and assets of the defaulter which have vested in or which have been received by the Relevant Authority and all other assets and money of the defaulter in the Clearing Corporation including the money and securities receivable by him from any other Clearing Member, money and securities of the defaulter lying with the Clearing Corporation or credit balances lying in the Clearing Corporation, security deposits, any bank guarantees furnished on behalf of the defaulter, fixed deposit receipts discharged or assigned to or in favour of the Clearing Corporation, Clearing Member's Contribution deposited with the Clearing Corporation by the defaulter, any security created or agreed to be created by the defaulter or any other person in favour of the Clearing Corporation or the Relevant Authority for the

obligations of the defaulter to the following purposes and in the following order of priority, viz.:

- (a) First - to make any payments made from the Fund;
  - (b) Second - the payment of such subscriptions, debts, fines, fees, charges and other money as shall have been determined by the Relevant Authority to be due to the Clearing Corporation or to Securities and Exchange Board of India, or to the Specified Exchange or to the Exchange, in the order of priority as mentioned hereinabove;
  - (c) Third - the rectification or replacement of or compensation for any bad deliveries made by or on behalf of the defaulter to any other Clearing Member in the settlement in which the defaulter has been declared a defaulter or in any prior or subsequent settlement (unless the Relevant Authority has otherwise determined in respect of such settlement or settlements );
  - (d) Fourth - subject to the Rules, Bye-Laws and Regulation of the Clearing Corporation, the balance, if any, shall be applied by the Relevant Authority for the payment of such unpaid outstandings, debts, liabilities, obligations and claims to or of Clearing Members of the Clearing Corporation arising out of any contracts made by the defaulter with such Clearing Members subject to the Rules, Bye-Laws and Regulations of the Clearing Corporation as shall have been admitted by the Relevant Authority; provided that if the amount available be insufficient to pay and satisfy all such debts, liabilities, obligations and claims in full they shall be paid and satisfied pro rata and provided further that a claim of one defaulter against another defaulter shall not have any priority over the claims of other creditor members and shall rank pari passu with other claims;
  - (e) Fifth - subject to the Rules, Bye-Laws and Regulation of the Clearing Corporation, the balance, if any, shall be applied by the Relevant Authority for the payment of such unpaid debts, liabilities, obligations and claims to or of the defaulter's constituents arising out of any contracts made by such defaulter subject to the Rules, Bye-Laws and Regulations of the Clearing Corporation as shall have been admitted by the Relevant Authority; provided that if the amount available be insufficient to pay and satisfy all such debts, liabilities, obligations and claims in full they shall be paid and satisfied pro rata;
  - (f) Sixth - the balance, if any, shall be applied by the Relevant Authority if it deems fit and in accordance with the Securities Laws, for the payment of any claim/s of an investor protection fund on account of the defaulter.
  - (g) Seventh - the surplus, if any, shall be paid to the defaulter.
- (2) Any amounts determined and payable on a pro-rata basis to the persons referred to under sub-clause (d) and (e) hereinabove, shall be distributed/ paid either by crediting his account with the Clearing Corporation or in such other manner as the Relevant Authority directs. If any such amounts which have been determined on a pro-rata basis referred to in sub-clause (d) and



(e) hereinabove remain unclaimed for such period as may be determined by the Relevant Authority, the same shall be dealt with or disposed of by the Relevant Authority as it deems fit. If any person(s) referred to under sub-clause (d) and (e) hereinabove who are entitled to receive the amounts which have been determined on a pro-rata basis, be dead, all such amounts due to such person(s) shall be paid to his legal representative or heirs.

#### **12.22. Charge On Members'/Defaulters' Assets**

Upon payment being made from the Fund by the Relevant Authority for and on account of the defaulting Member,, the Clearing Corporation and the Relevant Authority shall each have a first charge on all assets and property of the member/defaulters wheresoever situated and of whatsoever nature as security for the repayment of such money and the payment of interest thereon subject only to any and all charges, mortgages and other encumbrances created thereon by the member/defaulters bona fide for valuable consideration prior to the day such payment was made by the Relevant Authority.

#### **12.23. Proceedings by Relevant Authority and Exchange**

Upon payment being made from the Fund by the Relevant Authority for and on account of the defaulting Member, the Clearing Corporation shall have the first charge on all assets and property of the member/defaulters wheresoever situated and of whatsoever nature as security for the repayment of such money and the payment of interest thereon subject only to any and all charges, mortgages and other encumbrances created thereon by the member/defaulters bona fide for valuable consideration prior to the day such payment was made by the Relevant Authority

#### **12.24. Borrowings**

For the purpose of making any payments referred to at Bye-Law 12.14 and/or Bye-Law 12.16 or for making any payment pursuant to Bye-Law 12.13 and/or 12.15, the Relevant Authority may borrow money without security and/or against the security of any property of the Fund and/or any property offered to it as security by the defaulter or any member.

#### **12.25. Protection For Acts Done In Good Faith And Indemnity**

Save and except in the case of willful default and fraud, the Relevant Authority shall not be liable for any acts or omissions on its or his part in the exercise of its or his duties and functions.

Without prejudice to the above, the Fund shall bear all costs, charges and expenses for all suits, actions, proceedings and claims filed or made against the Relevant Authority or any member of the Relevant Authority except those arising out of their willful default or fraud and the members of the Relevant Authority shall be indemnified by the Fund from and against all actions, proceedings, losses, damage, claims, liabilities, costs, charges and expenses in connection with the

Fund or the creation, management and administration thereof or any dealings therewith except those arising by reason of their willful default or fraud.

**12.26. Meetings Of Relevant Authority**

The Relevant Authority shall meet for such number of times during every calendar year as it may decide from time to time

**12.27. Meetings How Convened**

The Relevant Authority shall convene its meetings in accordance with the procedure that it may decide from time to time.

**12.28. Confidentiality**

All minutes and proceedings of all the meetings of the Relevant Authority, Clearing Corporation and the Relevant Authority shall be deemed confidential.

**12.29. Minutes**

Minutes of the proceedings of the Relevant Authority shall be maintained under the authority such person as may be designated by the Relevant Authority. Such minutes shall be deemed to be confidential.

**12.30. Correspondence**

The Relevant Authority shall not be obliged to recognise or act upon any communication unless it is in writing, discloses the identity and address of the person addressing the communication and is signed by the person addressing the communication.

**12.31. Arbitration**

Any claim, dispute or difference between the Clearing Corporation or the Relevant Authority and a Clearing Member or a defaulter in connection with any amount payable or alleged by the Clearing Corporation or the Relevant Authority as being payable by the Clearing Member or the defaulter to the Clearing Corporation, the Relevant Authority or The Fund shall be referred to the arbitration of the Managing Director of the Clearing Corporation or to the arbitration of such person as the Managing Director may nominate in this behalf. The Managing Director shall determine the procedure to be followed to hear and decide all claims, dispute or differences referred to in this bye-law.

## CHAPTER – XIII

### MISCELLANEOUS

13.1 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.

13.2 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.

#### 13.3 **Securities Lending and Borrowing**

- (a) Clearing Members shall be entitled to lend and borrow securities and otherwise participate in such securities borrowing and lending schemes or sub-schemes of the Clearing Corporation under the Securities Lending Scheme, 1997, as may be from time to time approved by the Relevant Authority (hereinafter collectively referred to as “Approved Schemes”). The Relevant Authority may at any time in its discretion withdraw approval to a securities borrowing and lending scheme or sub-scheme previously approved by it.
- (b) All contracts entered into by or with a Clearing Member under or pursuant to an Approved Scheme shall be deemed to have been made subject to the Rules, Bye-Laws and Regulations of the Clearing Corporation.
- (c) Members shall issue confirmation memos to their constituents in respect of borrowing and lending transactions entered into by them with their constituents or on behalf of their constituents under any Approved Scheme.
- (d) Unless repugnant to or inconsistent with the context or the provisions of an Approved Scheme, the Rules, Bye-Laws and Regulations of the Clearing Corporation, the Good/Bad delivery Guidelines issued by SEBI and other notices, circulars, rules, regulations, guidelines and directions of SEBI and the Clearing Corporation shall apply mutatis mutandis to:-
  - (i) a contract by a Clearing Member to lend securities under an Approved Scheme in the same manner as they apply to a contract by a Clearing Member to sell securities;
  - (ii) a contract by a Clearing Member to borrow securities under an Approved Scheme in the same manner as they apply to a contract by a Clearing Member to purchase securities;

- (iii) a contract by a Clearing Member to return securities previously borrowed by him under an Approved Scheme in the same manner as they apply to a contract by a Clearing Member to sell securities;
  - (iv) a contract by a Clearing Member to receive back securities previously lent by him under an Approved Scheme in the same manner as they apply to a contract by a Clearing Member to purchase securities;
  - (v) an obligation by a Clearing Member to pay any amount or deliver any security under an Approved Scheme in the same manner as they apply to an obligation by a Clearing Member to pay an amount or deliver a security pursuant to a bargain made subject to the Rules, Bye-Laws and Regulations of the Clearing Corporation;
  - (vi) the failure by a Clearing Member to fulfill an obligation under an Approved Scheme or pursuant to a transaction made under an Approved Scheme in the same manner as they apply to failure by a Clearing Member to fulfill an obligation under the Rules, Bye-Laws and Regulations of the Clearing Corporation or pursuant to a bargain made subject to the Rules, Bye-Laws and Regulations of the Clearing Corporation;
  - (vii) the contract between, and the rights and obligations of, Clearing Members and their clients in relation to lending, borrowing and other transactions under an Approved Scheme in the same manner as they apply to contracts between, and rights and obligations of, Clearing Members and their clients in relation to contracts for and transactions of the sale and purchase of securities made subject to the Rules, Bye-Laws and Regulations of the Clearing Corporation.
- (e) A breach by a Clearing Member of the provisions of an Approved Scheme or of any rules, procedures, notices, circulars, directions, guidelines or provisions issued or made by the concerned approved intermediary shall be deemed to be a violation by the Clearing Member of the Rules, Bye-Laws and Regulations of the Clearing Corporation or of rules, procedures, notices, circulars, directions, guidelines or provisions issued or made by the Clearing Corporation, and the Clearing Corporation shall be entitled to take proceedings and action against the Member accordingly including suspension of his membership rights, expulsion or declaration of default. "Approved Intermediary" means the Indian Clearing Corporation Limited registered with Securities and Exchange Board of India as such under the Securities Lending Scheme, 1997.
- (f) If the rules or procedures (by whatever name called) of an Approved Scheme provide that a Clearing Member's membership rights shall stand suspended or a Clearing Member shall stand declared as a defaulter in the event of occurrence of a specified event then the Clearing Member's membership rights shall stand suspended or the Clearing Member shall

stand declared as a defaulter under the Clearing Corporation's Rules, Bye-Laws and Regulations in the event of occurrence of such event.

- (g) All claims (whether admitted or not), disputes and differences between a Clearing Member and a non-Clearing Member arising out of or in relation to borrowing, lending, contracts, dealings or transactions under or pursuant to an Approved Scheme or with reference to anything incidental thereto or in pursuance thereof or relating to their construction, fulfillment or validity shall be referred to and decided by arbitration as provided in the Rules, Bye-Laws and Regulations of the Clearing Corporation relating to Arbitration Other Than Between Clearing Members.

All claims (whether admitted or not), disputes and differences between Clearing Members arising out of or in relation to borrowing, lending, contracts, dealings or transactions under or pursuant to an Approved Scheme or with reference to anything incidental thereto (including claims, complaints, differences, and disputes relating to errors or alleged errors in inputting any data or command in either the Exchange's computerised trading system or the Clearing Corporation's computerized system or in execution of any orders or transactions on or by such trading system) or in pursuance thereof or relating to their construction, fulfillment or validity and any question or dispute whether such borrowing, lending, contracts, dealings or transactions has or have been done or entered into or not shall be referred to and decided by arbitration as provided in the Rules, Bye-Laws and Regulations of the Clearing Corporation relating to Arbitration Between Clearing Members."