

**Warehousing Development and Regulatory Authority  
Government of India**

**Guidelines on Corporate Governance for the Repositories registered for Creation and  
Management of Electronic Negotiable Warehouse Receipts**

**23<sup>rd</sup> April, 2019**

**D-32011/1/2019-A and F:-** Pursuant to clause 29 of the Guidelines on Repositories and Creation and Management of Electronic Negotiable Warehouse Receipts issued by Warehousing Development and Regulatory Authority (hereinafter referred to as 'Authority') on 20<sup>th</sup> October 2016, the Authority hereby makes the following guidelines for effective Corporate Governance of the Repositories:-

**1. Short title and commencement.** – (1) These guidelines may be called the "Guidelines on Corporate Governance for the Repositories registered for Creation and Management of Electronic Negotiable Warehouse Receipts".

(2) They shall come into force from the date of issue.

**2. Application.** - These guidelines shall apply to the Repositories registered by the Authority for Creation and Management of Electronic Negotiable Warehouse Receipts.

**3. Definitions:-**

(1) In these regulations, unless the context otherwise requires,-

(a) "Governing Board" means the Board of Directors of the Repository

(b) "Independent Director" means a Director representing the interests of stakeholders in the commodity market and who is not having any association, directly or indirectly, with the shareholders, which in the opinion of the Board, is in conflict with his role

(c) "Shareholder Director" means a Director who represents the interest of shareholders, and elected or nominated by such shareholders who are not trading members or clearing members, as the case may be, or their associates and agents

(2) The words and expressions used herein not defined in these guidelines but defined in the Guidelines on Repositories and Creation and Management of Electronic Negotiable Warehouse Receipts issued by the Authority on 20<sup>th</sup> October 2016, or as defined in the Companies Act, 2013, shall *mutatis mutandis* have the same meaning as assigned to them therein.

**4. Composition of the governing Board:-**

(1) The governing Board of the Repository shall include:

(a) Shareholder Directors;

(b) Independent Directors; and a

(c) Managing Director.

(2) Subject to the prior approval of the Authority, the non-executive Chairperson shall be appointed by the governing Board from amongst the Independent Directors.

(3) The number of Independent Directors shall preferably be not less than the number of Shareholder Directors on the governing Board of a Repository, subject to a minimum number of three Independent Directors.

(4) The Managing Director shall be included in the category of Shareholder Directors.

(5) Any employee of a Repository may be appointed on the governing Board in addition to the Managing Director and such Director shall be deemed to be a Shareholder Director.

(6) No Repository Participant (RP) or their associates and agents irrespective of the Repository of which they are RP, can be on the governing Board of any Repository and vice versa.

Provided that Repository Participant – Pledgee are exempted under this.

(7) The appointment of Director shall be subject to the fulfillment of other requirements and satisfaction of the Authority.

(8) At least one Independent Director shall be present to constitute the quorum for the meeting of the governing Board.

(9) The casting vote in the meetings of the governing Board of a Repository shall be with the Chairperson of the governing Board.

(10) No foreign portfolio investor can have any representation in the governing Board of a Repository.

## **5. Conditions of appointment of Directors:-**

(1) The Repository shall ensure that all its Directors and Key Management Personnel are fit and proper persons at all times.

(2) The appointment and re-appointment of all Shareholder Directors on the governing Board of a Repository shall be with the approval of the Authority.

(3) The appointment of Independent Directors on the governing Board of a Repository shall be with the approval of the Authority.

(4) Independent Directors shall be appointed for a term of three years, extendable by another term of three years (maximum two terms), subject to performance review:

Provided that post the expiry of term(s) at a Repository, an Independent Director may be appointed for a further term of three years in another Repository, only after a cooling-off period of one year:

Provided further that a person may be appointed as an Independent Director for a maximum of three terms across Repositories, subject to a maximum age limit of seventy five years:

Provided further that the applicability of this guideline shall be determined post the completion of the existing term and the prior term(s) completed by a Director shall also be considered while determining the eligibility.

(5) An Independent Director on the board of a Repository shall keep its governing Board apprised of any conflict of interest, which may arise as a result of the Independent Director providing services, either directly or indirectly, to any Repository Participants or their associates and agents.

(6) No Independent Director shall become a Shareholder Director of any Repository unless there is a cooling-off period of three years after ceasing to be an Independent Director.

(7) An Independent Director on the board of a Repository shall not act simultaneously as a member on more than five statutory committees of that Repository.

(8) Independent Directors shall be remunerated only by way of sitting fees as admissible to Independent Directors as per the Companies Act, 2013.

(9) If any issue arises as to whether an assignment or position of an Independent Director is in conflict with his role, the decision of the Authority shall be final.

#### **6. Conditions for Appointment of Managing Director:-**

(1) The appointment, renewal of appointment and termination of service of the Managing Director of a Repository shall be subject to the approval of the Authority.

(2) Every Repository shall, subject to the guidelines issued by the Authority from time to time, determine the qualification, manner of appointment, terms and conditions of appointment and other procedural formalities associated with the selection/ appointment of the Managing Director.

(3) The appointment of the Managing Director shall be for a term not exceeding five years:

Provided further that a person may be appointed as the Managing Director by the Repository for a maximum of two terms not exceeding five years each through a fresh appointment process, subject to a maximum age limit of sixty five years.

(4) The Managing Director of a Repository shall not—

(a) be a shareholder or an associate of a shareholder of a Repository;

(b) be a Repository Participants or his associate and agent or shareholder of Repository Participants or shareholder of an associate and agent of Repository Participants; or

(5) The Managing Director shall be liable for removal or termination of service by the governing Board of the Repository with the prior approval of the Authority for failure to give effect to the directions, guidelines and other orders issued by the Authority or the rules, the articles of association, bye-laws and regulations of Repository.

(6) The Authority may *suo moto* direct the Repository to remove or terminate the appointment of the Managing Director, if deemed fit, in the interest of warehousing ecosystem:

Provided that no Managing Director shall be removed unless he has been given a reasonable opportunity of being heard.

(7) The conditions specified under these guidelines for appointment of Directors shall be applicable to a person holding position as Managing Director in a Repository on the date of commencement of these guidelines.

(8) The applicability of guidelines shall be determined post the completion of the existing term and the prior term(s) completed by a Managing Director on the governing Board of a Repository shall also be considered while determining the eligibility.

## **7. Procedure for Appointment of Directors, Managing Director / Executive Director, Independent Directors, Shareholder Directors.**

### **(1) Appointment of Directors**

(i) Repository, while seeking approval of the Authority for appointment of any Director, shall submit to the Authority the following details:-

(a) Name

(b) Address

(c) Educational qualification

(d) Details of employment/ Occupation, past and present

(e) Details of other directorships

(f) DIN No.

(g) Declaration regarding the fulfillment of requirements specified for fit and proper criteria.

(h) Declaration confirming compliance of Guidelines 4 of these Guidelines, in respect of non-association with Repository Participants.

(i) Details of regulatory action taken against by any statutory authority in India.

(j) Details of activities that may in the opinion of the director, lead to his disqualification.

(k) Association with Repository Participants.

(l) Disclosure of the names of his dependents associated with the Repository or Repository Participants.

(m) An undertaking that he/she shall abide by the code of conduct and code of ethics prescribed in these Guidelines.

(n) In the case of Independent Directors, consent letters for acting as an Independent Director.

(o) Criminal cases completed / pending before any authority in India or abroad, if any.

(ii) The Repository shall evaluate and submit its committee report to the Authority while recommending their names along with the minutes of the governing Board meeting where

their name(s) were approved, copy of the shareholder's resolution (wherever applicable), a confirmation by the Repository that they are fit and proper persons in terms of their fit and proper criteria and are not associated with any Repository Participants as specified in these guidelines.

**(2) Appointment of Managing Director / Executive Director:-**

(i) The Nomination and Remuneration Committee of the Repository shall be responsible for selection of CEO /Managing Director / Executive Director, as the case may be. The Managing Director shall be selected through open advertisement issued in all editions of atleast one national daily from amongst persons qualified in the fields of Capital Market/ Finance/ Banking/ Insurance/ Management/ Agriculture and possessing sufficient experience.

(ii) The Repository shall submit a panel of two names for approval of the Authority along with the report of the Nomination and Remuneration Committee, Minutes of the meeting of the Board where these two names have been recommended, confirmation of the Repository about their meeting the fit and proper criteria and a declaration that they are not associated with any RP as specified in these guidelines.

(iii) In case of re-appointment, or extension of appointment, the Repository shall apply to the Authority two months before the last working day of such Managing Director.

(iv) In case a vacancy of Managing Director arises due to unforeseen reasons, Repository shall forward to the Authority within a period of 10 days, a panel of two names from among the existing Directors to function as interim Managing Director. However, the process of appointment of new Managing Director shall be completed within a period of 60 days of fall of a vacancy after following the process stipulated in (i) & (ii) above.

**(3) Independent Directors:-**

(i) The names of the individuals for appointment as Independent Directors shall be forwarded to the Authority after the approval of the Board of Directors of Repository. Shareholders approval shall not be necessary. A minimum of two names shall be submitted to the Authority for each vacancy of Independent Director.

(ii) The Repository shall ensure that the panel is selected from amongst individuals having expertise in the relevant field of work. While deciding to propose a particular person as an Independent Director, the Repository shall also take into account the following factors:

- (a) Qualification in the area of law, finance, banking, insurance, accounting, economics, management, administration, agriculture, biological science or any other area relevant to the financial or commodity markets.
- (b) Atleast one person shall be inducted having experience and background in finance / accounts who may preferably be inducted in the audit committee.
- (c) Persons currently holding positions of trust and responsibility in reputed organisations or person who have retired from such positions.

- (d) Persons who are likely to have interested positions in commercial contracts and financial affairs of Repository shall be excluded. Persons who are regular traders/speculators in the market or are Independent Director in the Board of the promoter entity of the Repository, shall be excluded.
- (iii) Independent Directors shall peruse the relevant laws bye-laws, business rules, code of conduct, code of ethics, etc and submit an undertaking to the Repository that they are aware of their role, responsibilities and obligations. The Repository shall provide at least seven days of training to every an independent director each year.
- (iv) In case of extension of the term of the independent director or appointment of a new independent director, the Repository shall apply to the Authority two months before the expiry of the term. In addition to the other requirements prescribed herein, the application for extension of term of the independent director shall be accompanied with performance review and the reasons for extension of term.

#### **(4) Share Holder Directors**

- (i) The names of persons to be appointed as Shareholder Directors shall first be approved by the governing board of the Repository, followed by shareholders' approval before submitting the same to the Authority for approval.
- (ii) The manner of election, appointment, tenure, resignation, vacation, etc. of Shareholder Directors shall be governed by the Companies Act, 2013 save as otherwise specifically provided under the these Guidelines or the circulars issued thereunder.

#### **(5) General conditions on appointment of Directors:-**

- (i) The Repository shall complete the appointment process within 30 days from nomination/approval for Director by the Authority and submit a compliance report within one week from the date of appointment.
- (ii) In case any other official of the Repository is appointed on the governing board in addition to the Managing Director, the same shall be subject to the approval of shareholders and the Authority, in that order.

### **8. Code of Conduct for the Directors on the governing Board of Repository**

#### **(1) Meetings and minutes.**

Every Director of a Repository shall:—

- (a) not participate in discussions on any subject matter in which any conflict of interest exists or arises, whether pecuniary or otherwise, and in such cases the same shall be disclosed and recorded in the minutes of the meeting;
- (b) not encourage the circulation of agenda papers during the meeting, unless circumstances so require;
- (c) offer his/her comments on the draft minutes and ensure that the same are incorporated in the final minutes;

(d) insist on the minutes of the previous meeting being placed for confirmation in the next meeting;

(e) endeavour to ensure that in case all the items of the agenda of a meeting were not covered for want of time, the next meeting is held within fifteen days for considering the remaining items.

**(2) Code of Conduct for the Independent Directors.**

(a) In addition to the conditions stated in clause (1) above of this guideline, an Independent Directors of a Repository shall, endeavour to attend all the governing Board meetings and he/she shall be liable to vacate office if he/she remain absent for three consecutive meetings of the governing Board or do not attend seventy five percent of the total meetings of the governing board in a calendar year.

(b) All Independent Directors shall meet separately, at least once in a year to exchange views on critical issues.

(c) The Independent Directors shall identify important issues which may involve conflict of interest for the Repository, or may have significant impact on the functioning of the Repository, or may not be in the interest of clients. The same shall be reported to the Authority.

**(3) Strategic planning.**

Every Director of the Repository shall:—

(a) participate in the formulation and execution of strategic plan in the best interest of the Repository and contribute towards pro-active decision making at the governing Board level;

(b) give benefit of their experience and expertise to the Repository and provide assistance in strategic planning and execution of decisions.

**(4) Regulatory compliances.**

Every Director of the Repository shall:—

(a) ensure that the Repository abides by all the applicable Act/Laws including the provisions of the Warehousing (Development and Regulation) Act, 2007, rules and regulations framed thereunder and the guidelines, circulars and directions issued by the Authority from time to time;

(b) ensure compliance at all levels so that the regulatory system does not suffer any breaches;

(c) ensure that the Repository takes steps commensurate to honour the time limit stipulated by the Authority for corrective action;

(d) not support any decision in the meeting of the governing Board and Committees, which may adversely affect the interest of the clients and shall report forthwith any such decision to the Authority.

## **(5) General responsibility.**

Every Director of the Repository shall:—

- (a) place priority for redressing client grievances and encouraging fair practice so that the Repository becomes an engine for the growth of the clients and its business;
- (b) endeavour to analyse and administer the Repository issues with professional competence, fairness, impartiality, efficiency and effectiveness;
- (c) submit necessary disclosures/statements as required by the Repository from time to time as per their Rules or Articles of Association;
- (d) unless otherwise required by law, maintain confidentiality and shall not divulge/disclose any information obtained in the discharge of their duty and no such information shall be used for personal gains;
- (e) maintain the highest standards of personal integrity, truthfulness, honesty and fortitude in discharge of duties in order to inspire public confidence and shall not engage in acts discreditable to his/her responsibilities;
- (f) perform duties in an independent and objective manner and avoid activities that may impair, or may appear to impair, their independence or objectivity or official duties;
- (g) perform duties with a positive attitude and constructively support open communication, creativity, dedication, and compassion;
- (h) not engage in any act involving moral turpitude, dishonesty, fraud, deceit, or misrepresentation or any other act prejudicial to the functioning of the Repository.

## **9. Code of Ethics for Directors and Key Management Personnel of Repository**

### **(1) Objectives and underlying principles.**

The Code of Ethics seeks to establish a minimum level of business/ professional ethics to be followed by these directors and key management personnel of Repository, towards improving the professional and ethical standards in the functioning of Repository thereby creating better depositor confidence. The Code of Ethics is based on the following fundamental principles:

- (a) Fairness and transparency in dealing with matters relating to the Repository and the depositors.
- (b) Compliance with all laws/ rules/ regulations laid down by regulatory agencies/ Repository.
- (c) Exercising due diligence in the performance of duties.
- (d) Avoidance of conflict of interest between self interest of directors/ key management personnel and interests of Repository and depositors.



## **(2) Regulatory oversight committee.**

For overseeing implementation of this Code, a Regulatory Oversight Committee shall be constituted by the Repository under its governing Board.

## **(3) General standards.**

(a) Directors and Key Management Personnel shall endeavour to promote greater awareness and understanding of ethical responsibilities.

(b) Directors and Key Management Personnel, in the conduct of their business, shall observe high standards of commercial honour and just and equitable principles of trade.

(c) The conduct of Directors and Key Management Personnel in business life should be exemplary which will set a standard for other members of the Repository.

(d) Directors and Key Management Personnel shall not use their position to give/get favours to/from the executive or administrative staff of Repository, technology or service providers and vendors of the Repository or any Repository Participant or their associates/agents..

(e) Directors and Key Management Personnel shall not commit any act which will put the reputation of the Repository in jeopardy.

(f) Directors, Committee members and Key Management Personnel of the Repository, shall comply with the provisions of all applicable laws in force at all times.

## **(4) Disclosure of dealings in eNWRs by Key Management Personnel of the Repository.**

(a) No Key Management Personnel of the Repository shall have any dealing in warehouses or eNWRs and shall submit the declaration to the Repository accordingly.

## **(5) Avoidance of conflict of interest.**

a) No Director of the governing Board or member of any Committee of the Repository shall participate in any decision making/adjudication in respect of any person /matter in which he/she is in any way, directly or indirectly, concerned or interested.

b) In case of doubt, whether there is any conflict of interest or not in a matter, the same shall be decided by the governing Board.

## **(6) Disclosures of beneficial interest.**

All Directors and Key Management Personnel shall disclose to the governing Board, upon assuming office and during their tenure in office, whenever the following arises:—

(a) any fiduciary relationship of self and family members and directorship/partnership of self and family members in any Repository Participant;

(b) shareholding, in cases where the shareholding of the director/key management personnel, directly or through his family in any company or in other entities related to the commodity markets;

(c) any other business interests.

**(7) Role of the non-executive Chairperson and Directors in the day to day functioning of the Repository.**

(a) The non-executive Chairperson and Directors shall not interfere in the day to day functioning of the Repository and shall limit their role to decision making on policy issues and to issues as the governing Board may decide.

(b) The non-executive Chairperson and Directors shall abstain from influencing the employees of the Repository in conducting their day to day activities.

(c) The non-executive Chairperson and Directors shall not be directly involved in the function of appointment and promotion of employees unless specifically so decided by the governing Board as a member of the Selection Committee.

**(8) Access to information.**

(a) Directors shall call for information only as part of specific committees or as may be authorised by the governing Board.

(b) There shall be prescribed channels through which information shall move and further there shall be audit trail of the same. Any retrieval of confidential documents/ information shall be properly recorded.

(c) All such information, especially which is non-public and price sensitive, shall be kept confidential and not be used for any personal consideration/ gain.

(d) Any information relating to the business/operations of Repository, which may come to the knowledge of directors/ key management personnel during performance of their duties shall be held in strict confidence, shall not be divulged to any third party and shall not be used in any manner except for the performance of their duties.

**(9) Misuse of position.**

Directors/ committee members shall not use their position to obtain business or any pecuniary benefit in the organization for themselves or family members.

**(10) Regulatory Oversight committee to lay down procedures.**

(a) The regulatory oversight committee shall lay down procedures for the implementation of the code and prescribe reporting formats for the disclosures required under the code.

(b) The Compliance Officer shall execute the requirements laid down by the regulatory oversight committee.

**10. Compensation and Tenure of Key Management Personnel:-**

(1) Repository shall constitute a Nomination and Remuneration Committee comprising of a majority of independent directors and chaired by an Independent Director.

(2) The Nomination and Remuneration Committee shall determine the compensation of Key Management Personnel in terms of a compensation policy.

(3) The compensation payable to the Managing Director and the terms and conditions of the compensation of the Managing Director shall be with prior information to the Authority.


(4) The compensation given to the Key Management Personnel shall be disclosed in the Annual Report of the Repository as per the Companies Act, 2013.

**11. Statutory committees:-**

- (1) Every Repository shall constitute the committees as per clause (2) and clause (3) below.
- (2) Functional committee, comprising of:
  - (a) Repository Participant selection committee;
  - (b) Depositors/Clients grievance redressal committee; and
- (3) Oversight committees, comprising of:
  - (a) Committee on technology;
  - (b) Advisory Committee;
  - (c) Nomination and Remuneration Committee.
  - (d) Regulatory Oversight Committee; and
  - (e) Risk Management Committee.
- (4) The composition, quorum and functions of the committees shall be in the manner as specified in bye-laws of the Repository from time to time.

**12. Disclosure and Corporate Governance norms:-**

- (1) The disclosure requirements and Corporate Governance norms as specified for companies in Companies Act, 2013 shall *mutatis mutandis* apply to the Repository.
- (2) The governing Board of the Repository shall confirm compliance of clause (1) above in writing on annual basis.
- (3) Repository shall disclose resources committed towards strengthening regulatory functions and towards ensuring compliance with regulatory requirements applicable to the Repository, as the case may be, in the report under section 134 of the Companies Act, 2013.
- (4) The fees and charges levied by the Repository shall be placed for review before the Regulatory Oversight Committee of such Repository.

  
23/4/2019

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