

Regulatory Hotline

August 20, 2021

AMENDMENT TO SECC REGULATIONS, 2018

The Amendment Regulations has done away with:

- the 'fit and proper' pre-requisite for any person holding, directly or indirectly, less than 2% equity shares or voting rights of any recognized stock exchange; and
- the SEBI approval requirement for investor(s) desirous to exercise voting rights in the range of 2-5%, directly or indirectly, in a recognized stock exchange or clearing corporation.

INTRODUCTION

The Securities Contracts (Regulations) (Stock Exchanges and Clearing Corporations) Regulations, 2018 ("SECC Regulations") were introduced by the Securities and Exchange Board of India ("SEBI") for the purposes of regulating recognition, ownership and governance in stock exchanges and clearing corporations. Accordingly, all the investments into the National Stock Exchange ("NSE"), the Bombay Stock Exchange ("BSE") and the Multi Commodity Exchange ("MCX") are governed by the SECC Regulations.

SEBI vide a notification dated August 13, 2021, has issued Securities Contracts (Regulations) (Stock Exchanges and Clearing Corporations) (Second Amendment) Regulations, 2021 ("Amendment Regulations") for the purposes of amending the SECC Regulations.

AMENDMENT

No prior approval of SEBI for holding up to 5%

The Amendment Regulations amends Regulation 19 of the SECC Regulations which stipulate the eligibility conditions for a person to acquire or hold shares or voting rights in a recognized stock exchange or recognized clearing corporation. Prior to the amendment, any person, individually or together with persons acting in concert, acquiring such equity shares or voting rights, directly or indirectly, was required to obtain an approval from SEBI within 15 days of such acquisition, provided that such acquisition resulted in the acquirer exercising any voting rights in the range of 2-5% of the aggregate voting rights of such recognized stock exchange or clearing corporation. However, the amendment removes such post-facto approval requirement and consequently, does away with the obligation on the investor to divest its entire shareholding if such post-facto approval was not granted by SEBI.

Non-applicability of Fit & Proper criteria for holding of <2%

Further, as per Regulation 19(1) of the SECC Regulations, a key eligibility criterion for persons desirous of holding or acquiring shares or voting rights in a recognized stock exchange or clearing corporation is that such person must satisfy the 'fit and proper person' parameter prescribed under Regulation 20(2)¹ of the SECC Regulations. However, second proviso to Regulation 19(1) provides an exemption from satisfying such requirement to a person holding or acquiring, directly or indirectly, less than 2% equity shares or voting rights of a 'listed' recognized stock exchange. Vide this amendment, SEBI has expanded the scope of the exemption even to an 'unlisted' stock exchange.

CONCLUSION

The removal of the erstwhile post-facto regulatory approval on crossing 2% voting rights threshold and divestment in cases of failure to acquire such approval is a welcome move by SEBI. The investors will now be able to acquire up to 5% in the recognized stock exchanges, including NSE and BSE, without seeking SEBI approval.

With the recent surge in the share of retail investors in total turnover of the stock exchanges, this move would further make the stock market more accessible and attractive to retail investors in India.

Further, the amendment to include unlisted stock exchanges in the 'fit and proper person' exemption bracket would benefit the investors interested in becoming the shareholders of NSE (BSE and MCX already being the listed recognized stock exchanges of India).

— Mohak Kapoor, Prakhar Dua & Kishore Joshi

You can direct your queries or comments to the authors

¹ Regulation 20(2): For the purposes of these regulations, a person shall be deemed to be a fit and proper person if—
(a) such person has a general reputation and record of fairness and integrity, including but not limited to—

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- (i) financial integrity;
- (ii) good reputation and character; and
- (iii) honesty;
- (b) such person has not incurred any of the following disqualifications—
- (i) the person or any of its whole time directors or managing partners, has been convicted by a court for any offence involving moral turpitude or any economic offence or any offence against the securities laws;
- (ii) an order for winding up has been passed against the person;
- (iii) the person, or any of its whole time directors or managing partners, has been declared insolvent and has not been discharged;
- (iv) an order, restraining, prohibiting or debarring the person or any of its whole time directors or managing partners, from dealing in securities or from accessing the securities market, has been passed by the Board or any other regulatory authority and a period of three years from the date of the expiry of the period specified in the order has not elapsed;
- (v) any other order against the person, or any of its whole time directors or managing partners, which has a bearing on the securities market, has been passed by the Board or any other regulatory authority, and a period of three years from the date of the order has not elapsed;
- (vi) the Board has initiated recovery proceedings under the SEBI Act, 1992 and are pending;
- (vii) the person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;
- (viii) the person is financially not sound or has been categorized as a willful defaulter; and
- (ix) any other disqualification as specified by the Board.

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