

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

EXIT ORDER IN RESPECT OF:

INTER-CONNECTED STOCK EXCHANGE OF INDIA LIMITED.

1. Inter-connected Stock Exchange of India Ltd (hereinafter referred to as "ISE") was registered under the Companies Act, 1956, as a company limited by guarantee. The Securities and Exchange Board of India (hereinafter referred to as "SEBI") had granted recognition to ISE, as a stock exchange under the provisions of section 4 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the "SCRA") on November 18, 1998, which was subsequently renewed from time to time under rule 7 of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as the "SCRR").
2. The recognition of ISE was last renewed by SEBI for a period of one year commencing on November 18, 2013 and ending on November 17, 2014. The renewal was, however, subject to condition that ISE can commence trading only after complying with all the regulatory requirements imposed by SEBI.
3. SEBI, vide Circular No. MRD/DoP/SE/Cir - 36/2008 dated December 29, 2008, issued Guidelines and laid down the framework for exit by stock exchanges whose recognition is withdrawn and/or renewal of recognition is refused by SEBI and who may want to surrender their recognition. The said Guidelines were reviewed and modified vide Circular No. CIR/MRD/DSA/14/2012 dated May 30, 2012 (hereinafter referred to as "Exit Circular, 2012"). In terms of clause 2.2 of Exit Circular, 2012, a stock exchange, where the annual trading turnover on its platform is less than ₹1000 crore, can apply to SEBI for voluntary surrender of recognition and exit, at any time before the expiry of two years from the date of issuance of the said Circular. In terms of clause 2.3 of the said Circular, if any stock exchange failed to achieve a turnover of ₹1000 crore, it would be subject to compulsory exit process.
4. The Board of Directors of ISE in its meeting held on May 29, 2014 passed the resolution to apply to SEBI for exiting as a Stock Exchange through voluntary surrender of recognition, subject to the consent, approval and permission required from SEBI, Shareholders of ISE and other appropriate authorities to the extent applicable or necessary. In this regard, ISE made a request to SEBI for its exit as stock exchange vide letter dated May 29, 2014 thereby informing that the Shareholders of ISE at the Extraordinary General Meeting held on June 03, 2014, approved the resolution for exit through voluntary surrender of recognition as per the Exit Circular, 2012.

5. I note that as per the Exit Circular,2012, *inter alia*, the following conditions are required to be complied by the de-recognised/non-operational stock exchanges for seeking exit:
- a) Permission to distribute its assets would be subject to certain conditions laid down in the Circular as well as other guidelines that may be issued by SEBI, Government or any other statutory body from time to time.
 - b) For the purpose of valuation of the assets of the stock exchange, a valuation agency appointed by SEBI shall submit its report.
 - c) The quantum of assets for distribution will be available after payment of the following by the stock exchange:
 - i. Statutory dues including Income Tax;
 - ii. Transfer of Investor Protection Fund, Investor Services Fund, 1% security deposit available with the Exchange to SEBI Investor Protection and Education Fund (hereinafter referred to as the "IPEF");
 - iii. The exiting exchange shall pay the following dues to SEBI:-
 - Dues outstanding to SEBI including 10% of the listing fee and the annual regulatory fee;
 - The outstanding registration fees of brokers/trading members of such de-recognised stock exchanges as specified in the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992, till the date of such de-recognition;
 - In case of any shortfall in collection of dues of the brokers to SEBI, the exiting Stock Exchange will make good the shortfall;
 - iv. Refund of deposit (refundable) to the stock brokers including their initial contribution/ deposit to Settlement Guarantee Fund / Trade Guarantee Fund (SGF/ TGF).
 - d) Contribution of up to 20% of its assets (after tax) towards IPEF taking into account, *inter alia*, the governance standards of the stock exchange and estimation of future liabilities.
 - e) The companies exclusively listed on the stock exchange seeking exit shall list their securities on any other recognised stock exchange. If such exclusively listed companies fail to obtain listing on any other recognised stock exchange, they will cease to be listed companies and will be moved to the dissemination board by the exiting stock exchange. Such dissemination board would be provided by a stock exchange with nationwide trading terminals. The exiting stock exchange as well as exchange providing dissemination board will give wide publicity about the dissemination board in one leading national daily and one local daily.
 - f) The exiting stock exchange shall set aside sufficient funds in order to provide for settlement of any claims, pertaining to pending arbitration cases, arbitration awards, not implemented, if any, liabilities/claims of contingent nature, if any, and unresolved investor complaints / grievances lying with it.

g) The exiting exchange may provide trading opportunity to their trading members to trade on stock exchanges having nationwide terminals through their subsidiary company, which will function as a normal broking entity.

6. I have considered all relevant documents available on record for the purpose of considering the exit of ISE. With regard to the income tax obligation in respect of transfer of capital assets of a stock exchange, I note that section 47(xiii) of the Income Tax Act, 1961 provides as under:-

"Section 47 (xiii):

Nothing in Section 45 applies to any transfer of a capital asset or intangible asset by a firm to a company as a result of succession of the firm by a company in the business carried on by the firm, or any transfer of a capital asset to a company in the course of demutualisation or corporatisation of a recognised stock exchange in India as a result of which an association of persons or body of individuals is succeeded by such company:

Provided that –

(e) the demutualisation or corporatisation of a recognised stock exchange in India is carried out in accordance with a scheme for demutualisation or corporatisation which is approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);”

7. In respect of the tax treatment to a stock exchange post its corporatisation and demutualization, the following recommendation of Justice Kania Committee which was the basis for the amendment in section 47(xiii) of the Income Tax Act, 1961 to provide tax benefit to the corporatized and demutualised stock exchanges is worth mentioning:

“as corporatisation and demutualisation of a stock exchange is essentially a conversion from a not-for profit entity to a for-profit company, and would result in a distribution of assets, the Income Tax Act should be amended if necessary, so that the past profits of an stock exchange which were not taxed when it had the character of a not for profit entity should not be taxed when its character changes. In other words, the accumulated reserves of the stock exchange as on the day of corporatisation should not be taxed. However, there would be no objection to taxation of these reserves, in the hands of the shareholders when these are distributed to shareholders as dividend at the net applicable tax rate; equally all future profits of the stock exchange after it becomes a for profit company may be taxed”.

8. The corporatisation and demutualisation scheme of ISE was approved by SEBI vide notification F. No. SEBI/MRD/49408/ 2005 dated September 15, 2005 (hereinafter referred as "the scheme"). The scheme, *inter alia*, provided for the segregation of ownership and management from the trading rights of the members, restriction on voting rights of shareholders who are also trading members, composition of the Governing Board, etc. in accordance with the provisions of section 4B(6) of SCRA, utilization of

assets and reserves and other matters required for the purpose of and in connection with the corporatisation and demutualisation of ISE.

9. In terms of condition mentioned in para 5(b) above, SEBI in consultation with ISE appointed S K Patodia and Associates on July 28, 2014 as the Valuation Agency, for Verification and Valuation of Assets and Liabilities of ISE. The Valuation Agency submitted its report vide letter dated September 02, 2014
10. With respect to the compliance of conditions specified in the Exit Circular, 2012 by ISE and settlement of its liabilities observed by the Valuation Agency, it is important to note that following: -
 - (a) In compliance of condition mentioned in para 5(c) (ii) above, as advised by SEBI, ISE has transferred an amount of ₹21,78,029/-available in its "Investor Protection Fund" vide RTGS transaction dated September 24, 2014 and an amount of ₹25,64,697/-available in its "Investor Services Cell Fund" vide RTGS transaction dated September 24, 2014 to the IPEF. The Valuation agency has confirmed that 1% security deposit available with the Stock Exchange is NIL.
 - (b) In compliance of condition mentioned in para 5(c)(iii) above,
 - ISE has paid the necessary dues outstanding to SEBI including 10% of the listing fee vide NEFT transaction dated September 24, 2014 for an amount of ₹24,586/- and the annual regulatory fee vide NEFT transaction dated August 21, 2014 amounting to ₹1,00,000/-.
 - ISE has paid the outstanding registration fees amounting to ₹56,82,778/-of brokers dues as specified in the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 till the date of such de-recognition, vide RTGS transaction dated September 25, 2014.
 - (c) In compliance of condition mentioned in para 5(c)(iv) above, ISE has given an undertaking dated September 29, 2014 (hereinafter referred to as the "undertaking") that it will not distribute any assets before clearing the liabilities in that regard.
 - (d) In compliance of condition mentioned in Para 5(d) above, ISE has contributed an amount to ₹15,00,000/- vide Demand draft no. 456948 dated October 31, 2014 towards IPEF.
 - (e) In compliance of condition mentioned in para 5(e) above, ISE in its undertaking has stated that it has placed the exclusively listed company/(ies) in dissemination Board of Bombay Stock Exchange Limited. It has further undertaken that it will take adequate

measures to comply with the Exit Circular, 2012 and other circulars issued by SEBI on completion of exit.

- (f) In compliance of condition mentioned in para 5(f) above, ISE in its undertaking has stated that there are no arbitration disputes/investor complaints pending against it. ISE has also submitted that two claims are lodged against and in respect thereof, it has undertaken to assume complete responsibility for the financial implication of any claims against it that may at any future date arise as an outcome of the resolution/settlement of these cases.
- (g) With regard to other liabilities and contingent liabilities as pointed out by the Valuation Agency, ISE in its undertaking has stated the extent of discharge of liabilities and has further undertaken to clear the said liabilities before the distribution of its assets. It has also undertaken to clear any additional amount that may become liable to be paid on account of liabilities stated in the Undertaking.
- (h) In compliance of the condition mentioned in para 5(g) above, vide its undertaking, ISE has declared that ISE Securities and Services Limited, a functional subsidiary is a Corporate member of National Stock Exchange of India Limited and Bombay Stock Exchange Limited and is providing trading facilities to all ISE Members who opted for the same.
- (i) ISE in its undertaking has stated that the cases lodged against it, details whereof have been submitted to SEBI, are the only cases pending before various legal fora.

11. From the valuation report and undertaking of ISE, it is observed that all the known liabilities have been brought out and there is no other future liability that is known as on date. I note that ISE has substantially complied with the conditions contained in Exit Circular, 2012 subject to its undertakings. I, therefore, am of the view that it is a fit case to allow exit to ISE in terms of clause 8 of the Exit Circular, 2012.

12. I, therefore, in exercise of the powers conferred upon me by virtue of section 19 read with section 11(1), section 11(2)(j) of the Securities and Exchange Board of India Act, 1992 and sections 4, 5 and 12A of the SCRA, allow the exit of Inter-Connected Stock Exchange of India Limited as a stock exchange and hereby direct it to:-

- (a) Comply with its tax obligations under Income Tax Act, 1961;
- (b) Comply with the undertakings given by it to SEBI;
- (c) Comply with other consequential conditions of Exit Circular, 2012;
- (d) change its name and not to use the expression “Stock Exchange” or any variant of this expression in its name and to avoid any representation of present or past affiliation with the stock exchange, in all media;

(e) provide required information to Ministry of Corporate Affairs on identifying vanishing companies which were listed on Inter-Connected Stock Exchange of India Limited for inclusion in the list of vanishing companies maintained by Ministry of Corporate Affairs.

13. The order shall come into force with immediate effect. A copy of this order shall be forwarded to the Income Tax Authorities and the State Government of Maharashtra and Ministry of Corporate Affairs intimating the exit of ISE and for appropriate action at their end as per applicable laws.

Sd/-

DATE: December 08, 2014

PLACE: MUMBAI

**RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**