

GOVERNMENT OF PAKISTAN

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Islamabad, the 3rd October, 2016

NOTIFICATION

S.R.O. 935 (I)/2016.-In exercise of its powers under Section 23 of the Stock Exchanges (Corporatization, Demutualization and Integration) Act, 2012, (Act No. XV of 2012) the Securities and Exchange Commission of Pakistan hereby makes the following amendments to Stock Exchanges (Corporatization, Demutualization and Integration) Regulations, 2012, namely:-

In the aforesaid Regulations,-

1. The preamble shall be deleted and replaced with the following, namely,-

“Whereas it is expedient and necessary to provide for matters related to demutualization and integration of the stock exchanges pursuant to the Stock Exchanges (Corporatisation, Demutualization and Integration) Act, 2012 and further measures for transitional matter arising from the integration of the stock exchanges under the said Act and for the matters connected therewith or ancillary thereto.

AND whereas it is expedient and necessary to facilitate and complete the process of divestment in a transparent manner in the interest of the capital market.”

2. Clause (ab) of sub-regulation (1) of regulation (2) shall be deleted and replaced with the following, namely,-

“(ab) “anchor investor” means a financial institution eligible as per regulation 40 or a consortium of financial institutions and/or strategic investor, which acquires at least twenty five per cent shares of the Exchange and in case of a consortium the leading financial institution or Strategic Investor holds at all times at least sixty percent of shares acquired or held by the consortium and acts as an anchor investor eligible as per regulation 40:

Provided that the Commission may, in the interest of capital market, relax the shareholding limit on the leading financial institution or strategic investor of the consortium:

Provided further that a local financial institution can become an anchor investor only as part of a consortium subject to the condition that it can acquire directly or indirectly, not more than five per cent of total issued share capital of the Exchange.

Explanation: - For the purposes of these regulations a person shall be deemed to have acquired shares indirectly if these shares have been acquired by a connected person of such person.”

3. Part VII shall be deleted and replaced with the following, namely,-

“Part VII

DIVESTMENT OF SHARES UNDER THE DIRECTIONS OF THE COMMISSION UNDER SUB-SECTION (5) OF SECTION 12 OF THE ACT

23. Constitution of the divestment committee.- (1) The Commission shall constitute a divestment committee through notification, comprising of the following members,-

- (i) four elected directors of the Exchange;
- (ii) six initial shareholders of the Exchange or known market experts, nominated by the Commission;
- (iii) chairman of the board of directors of the Exchange.

the chairman of the divestment committee shall be elected in the first meeting from amongst the members of the divestment committee for chairing the proceedings of the divestment committee.

(2) The divestment committee immediately after its constitution under sub-regulation (1) shall, inter alia, take necessary steps under these regulations for the sale of not more than forty percent of total issued share capital out of the shares of the Exchange lying in the blocked account and may also perform such functions as provided in regulations 35, 36 and 37 for the sale of shares other than those lying in blocked account.

(3) The Exchange and the divestment committee shall complete the entire process regarding sale of shares of the Exchange within six months from the date of constitution of the divestment committee by the Commission:

Provided that the Commission may upon application by the divestment committee, setting out reasons for not being able to comply with six months period, grant one time four months extension for completion of the process.

(4) The divestment committee shall keep the Commission apprised of the progress being made for divestment and shall at least submit a monthly progress report to the Commission.

24. Fresh valuation of the Exchange.- (1) The divestment committee shall arrange for a fresh valuation of the Exchange for its core, non-core and consolidated operations based on the discounted cash flow or net asset value of the Exchange, or any other internationally accepted method of valuation undertaken by a valuer approved by the Commission and the cost of such valuation, including all ancillary costs, shall be borne by the Exchange.

(2) Fresh valuation of the Exchange under sub-regulation (1) shall be furnished to the Commission in a sealed envelope and the Commission shall keep the envelope sealed till the sale of shares to eligible investors, in which case it shall return the sealed envelope to the Exchange and where there is no sale of shares to eligible investors in the manner provided in these regulations, the Commission shall open the envelope in accordance with the provisions of these regulations.

25. Invitation of expressions of interest from potential investors.- (1) The divestment committee shall invite expressions of interest from potential investors through advertisement in newspapers of national and international coverage, engagement of financial consultants and/or approaching potential investors directly, for the purposes of purchase of either core or consolidated operations of the Exchange as determined by the divestment committee.

(2) The divestment committee shall furnish to the Commission details of interest expressed by potential investors along with its comments within five days of the cutoff date for submission of expression of interest as notified by the Exchange, following which the Commission will determine the eligibility of the investors.

26. **Determination of eligibility of investors by the Commission.-** The Commission, after due consideration and deliberation based on available information, being satisfied that the interested investor meets the concerned criteria under these regulations and taking into account interest of the capital market, may permit the divestment committee to proceed with invitation of bids from the eligible investors.

Explanation: For the purpose of this part, the expression 'eligible investor' means an anchor investor, a strategic investor, a financial institution or a consortium thereof.

27. **Due diligence by eligible investors and State Bank of Pakistan.-** The divestment committee shall ensure that the Exchange shall provide all assistance to the eligible investors and State Bank of Pakistan for carrying out due diligence of the Exchange for placing bids for acquiring shares of the Exchange and where required the Commission shall facilitate the due diligence process.

28. **Submission of bids by eligible investors for shares lying in the blocked account.-** Upon completion of due diligence, eligible investors shall submit two copies of their bids in sealed envelopes to the divestment committee and the divestment committee shall furnish a copy of the bids to the Commission and the Commission shall keep the envelope sealed till the sale of not more than forty percent of total share capital out of the shares lying in the blocked account to the eligible investors, in which case it shall return the sealed envelope to the divestment committee.

29. **Negotiation with eligible investors for the sale of shares lying in the blocked account.-** (1) On the basis of bids received, the divestment committee shall, where required, negotiate a price with the eligible investors for the sale of shares not more than forty percent of total share capital out of the shares lying in the blocked account.

(2) Where a bid or negotiated price, as the case may be, is equal to or above the valuation carried out under regulation 24, the divestment committee shall proceed to sell the shares to the eligible investors.

30. Decision where the bid or negotiated price is less than the valuation.- In case the bid or negotiated price for the sale of not more than forty percent of total issued share capital out of the shares lying in the blocked account is less than the valuation carried out under regulation 24, the divestment committee shall take such bid or negotiated price to the general body of shareholders of the Exchange and the decision to sell the shares to such potential investors shall be made in a meeting of the general body of shareholders of the Exchange through a majority vote.

31. Condition applicable on a foreign anchor investor.- (1) Where an anchor investor is a foreign entity, it shall not acquire or hold more than twenty five percent of the total issued share capital out of the shares of the Exchange lying in the blocked account:

Provided that the Commission may allow the foreign anchor investor to acquire up to thirty percent of the total issued share capital of the Exchange.

(2) Subject to sub-regulation (1), a foreign anchor investor may, by forming a consortium with local financial institutions, acquire or hold up to forty percent of total issued share capital out of the shares of the Exchange lying in the blocked account.

32. Conditions applicable on an anchor investor and consortium of anchor investor and local financial institutions.- (1) The anchor investor shall hold the shares of the Exchange acquired under these regulations for at least five years.

(2) After completion of the five years period, the anchor investor may sell all or part of the qualifying shares as acquired subject to requirements specified in clause (ab) of sub-regulation (1) of regulation 2 only to another anchor investor, subject to the condition that the incoming anchor investor shall maintain the minimum shareholding of twenty five percent in the manner provided under clause (ab) of sub-regulation (1) of regulation 2 and compliance with the criteria for anchor investor in these regulations and subject to compliance with requirements of the Act, prior written approval of and compliance with the disclosure requirements specified by the Commission.

(3) After three years of acquiring shares of the Exchange under regulation 29 or 30, the consortium of an anchor investor and local financial institutions formed after the submission of expression of interest, may acquire further shares from the market by making a public offer to increase its shareholding up to fifty one per cent of the total issued share capital of the Exchange subject to compliance with requirements of the Act and prior written approval of Commission.

33. Conditions on shareholding of a financial institution other than an anchor investor.- (1) At any time, a financial institution, whether local or foreign, whether singly or as a part of a consortium, shall not acquire or hold, directly or indirectly, more than five per cent of the total issued share capital of the Exchange unless it qualifies as an anchor investor and meets the concerned criteria specified in these regulations.

(2) A financial institution that acquires shares of the Exchange from amongst the forty percent shares of the total issued share capital lying in the blocked account shall sell these shares only to an anchor investor, strategic investor or financial institution, subject to the concerned criteria and conditions given in these regulations, with the prior written approval of the Commission, and all these conditions shall apply in perpetuity and also form part of the concerned share purchase agreement.

34. Failure to sell shares of the Exchange lying in the blocked account.- (1) Where the divestment committee and the Exchange fail to complete the process for sale of any or all shares in the blocked account within the time specified in these regulations, the Commission shall open the sealed envelopes containing the valuation of shares and the bids.

(2) Upon opening the sealed envelopes, the Commission may take such steps or give such directions as may be necessary for achieving the sale of shares, including but not limited to-

- (i) order sale of shares to eligible investors where the bid was equal to or more than the valuation of the shares contained in the sealed envelope;
or
- (ii) order fresh auction of the shares and selling to the highest bidding strategic investor, financial institution or anchor investor such number of shares and in such manner as the Commission may determine in consultation with the divestment committee. The manner of the fresh auction shall be determined by the Commission; or
- (iii) order revaluation of the Exchange at the cost of the Exchange in such manner as the Commission may specify.

(3) Any steps taken or directions issued by the Commission to determine and conclude the matters regarding divestment of shares under these regulations shall be final and binding on the Exchange, its shareholders including initial shareholders and the CDC.

35. Expression of interest to sell shares other than those lying in the blocked account - (1) The divestment committee may invite expressions of interest from shareholders of the Exchange for sale of all or part of the shares other than those lying in the blocked account to local financial institutions.

(2) Shareholders desirous of selling all or part of the shares not held in the blocked account to local financial institutions may deposit such shares in sub-accounts, opened under the CDC Participant account of the Exchange, in the names of the respective shareholders and irrevocably empower the divestment committee to negotiate and finalize the sale of such shares on their behalf, subject to the terms and conditions of the undertaking signed by the shareholders.

36. Sale of shares of the Exchange other than those lying in the blocked account.-

(1) After completing the negotiation for the sale of shares lying in the blocked account, the divestment committee may negotiate with local financial institutions for the sale of shares other than those lying in the blocked account under sub-regulation (2) of regulation 35.

(2) The local financial institutions which have submitted bids under regulation 28 shall have the first right to purchase the shares deposited under sub-regulation (2) of regulation 35 at a price negotiated with the divestment committee.

(3) Any local financial institution acquiring shares other than the share lying in the blocked account shall not acquire or hold more than five percent shares out of the total issued share capital of the Exchange and shall sell its shareholding only to another financial institution, subject to the criteria provided in these regulations, with the prior written approval of the Commission and all these conditions shall apply in perpetuity and also form part of the share purchase agreement:

(4) The Commission may, in exercise of powers under sub-section (4) of section 13 and sub-section (3) of section 14 of the Act, relax any one or all restrictions or allow amendment in the limit of holding of shares as provided under the Act and corresponding provisions of these regulations.

37. Sale of shares to the State Bank of Pakistan.- (1) Upon completion of the sale process under regulation 29 to an anchor investor, the local financial institutions may acquire any remaining shares from the forty percent of total issued share capital out of the shares of the Exchange lying in the blocked account at a price that has been agreed by the divestment committee with the anchor investor.

(2) In case there is no agreement for sale of shares with the local financial institutions under sub-regulation (1), the State Bank of Pakistan shall acquire any remaining shares from the forty percent of total issued share capital out of the shares of the Exchange lying in the blocked account at a price that has been agreed by the divestment committee with the anchor investor.

(3) In case there is no agreement for sale of shares with an anchor investor under regulation 29, the divestment committee may enter into an agreement with the State Bank of Pakistan to sell up to twenty five percent of the total issued share capital out of the shares of the Exchange lying in the blocked account at a negotiated price.

(4) If local financial institutions cannot acquire any remaining shares from the total issued share capital out of the shares of the Exchange lying in the blocked account, such shares may be acquired by the State Bank of Pakistan at a price negotiated with the divestment committee.

(5) Upon completion of the sale process under regulation 36, the divestment committee may enter into an agreement at a price negotiated with the State Bank of

Pakistan to sell any remaining shares from the shares other than those lying in the blocked account and proceeds from the sale of such shares shall be paid to the shareholders on pro-rata basis and any residual shares shall be returned to the shareholders.

38. Conditions in case of purchase of shares by State Bank of Pakistan.- Any purchase of shares of the Exchange by the State Bank of Pakistan under these regulations shall be subject to the following conditions which shall form part of the share purchase agreement-

- (a) State Bank of Pakistan shall purchase shares of the Exchange only with the prior written approval of the Federal Government;
- (b) State Bank of Pakistan shall only appoint directors on the board of directors of the Exchange from a panel constituted by the Commission;
- (c) State Bank of Pakistan shall avoid any regulatory overlap with the Commission with respect to the Exchange;

Explanation: For the purposes of this regulation, the term “regulatory overlap” mean any direct or indirect regulatory influence or exercise of such authority by the State Bank of Pakistan in connection with oversight and regulatory function of the Exchange.

- (d) State Bank of Pakistan shall not increase its shareholding directly or indirectly beyond the percentage of total issued share capital of Exchange acquired under regulation 37 except with the prior written approval of the Commission and the Federal Government;
- (e) State Bank of Pakistan shall not sell its shareholding, in full or in part, without prior approval of the Federal Government to any entity except as directed by the Commission in clause (f);

- (f) As and when suitable investor(s) are available to acquire shares held by State Bank of Pakistan, the Commission shall direct the State Bank of Pakistan to divest its shareholdings in the manner specified by the Commission after consultation with State Bank of Pakistan;
- (g) the right to receive dividends, bonus shares, rights shares and the proceeds of sale of shares held by the State Bank of Pakistan shall vest in the State Bank of Pakistan; and
- (h) the State Bank of Pakistan shall deposit in a blocked account shares allocated to it and hold these in the blocked account until such time as these shares are divested in accordance with clause (f) as directed by the Commission.

39. Criteria for Financial Institution.- A financial institution may be eligible to acquire issued share capital of the Exchange under these regulations if-

- (a) the financial institution or any of its sponsors or directors are not connected person(s) of a TREC holder or any of its sponsors or directors;
- (b) it complies with the capital requirements specified under the relevant provisions of applicable laws;
- (c) its sponsors and directors are in compliance with the "fit and proper" criteria as provided in Schedule-I of these regulations;
- (d) it has a minimum long-term credit rating, where applicable, not below A- or equivalent;

- (e) it has requisite approvals from relevant regulatory authorities and/or governments, where required under applicable laws, for acquiring issued share capital of the Exchange;
- (f) it has not been convicted in any criminal offence or directly involved in any settlement in civil or criminal proceedings in a court of law, particularly with regard to investments, financial or business misconduct, fraud/forgery, breach of trust, financial crime etc. or it has not been concluded by any regulatory authority, government body or agency or a court of law that it has been associated with any unauthorized financial activity;
- (g) it has not contravened any of the requirements or standards, other than minor corporate violations, of the Commission or the equivalent standards or requirements of any other regulatory authorities, whether inside or outside Pakistan, or government bodies or agencies;
- (h) its license for providing any financial services has not been suspended or cancelled by any regulatory authority during the last five years;
- (i) no investigation or enquiry has been concluded against it by the Commission, with any material adverse findings under section 29 of the Securities and Exchange Commission of Pakistan Act, 1997, section 139 of the Securities Act, 2015, section 21 of the Securities and Exchange Ordinance, 1969, section 263 or section 265 of the Companies Ordinance, 1984 or any investigation or inquiry is pending against it initiated by the Commission;

- (j) no investigation or enquiry conducted under the relevant laws has been concluded against it by the State Bank of Pakistan, National Accountability Bureau, Federal Investigation Agency or any other regulatory or government body, with any material adverse findings;
- (k) an order restraining, prohibiting or debarring it from providing any financial services has not been passed by any regulatory authority, government body or agency or a court of law;
- (l) it has not provided false or misleading information to the Commission;
- (m) it has not been adjudged as insolvent or suspended payment of debts or has compounded with its creditors;
- (n) it has not been convicted by a court of competent jurisdiction as a defaulter in payment of any loan to any other financial institution; and
- (o) it has not defaulted in payment of taxes.

40. Criteria for Anchor Investor.- A financial institution may be eligible to acquire issued share capital of the Exchange as an anchor investor under these regulations if-

- (a) it complies with all the conditions of eligibility in regulation 39;
- (b) it has a minimum long-term credit rating, where applicable, not below A- or equivalent;

- (c) the Commission is satisfied with its past track record for successfully managing business ventures and growth achieved therein;
- (d) it has requisite approvals from relevant regulatory authorities and/or governments, where applicable, for acquiring issued share capital of the Exchange;
- (e) in the opinion of the Commission it has adequate knowledge of matters relating to a stock exchange;
- (f) it intends and assures to actively take interest in management and development of the Exchange;
- (g) in the opinion of the Commission its existing scale of operations and investments in other companies would not hinder or seem to hinder its active engagement in management of the Exchange or result in significant conflict of interest;

41. **Power to relax regulations.-** The Commission may, if it is in the interest of the Exchange and the capital market, relax any one or more requirements of the regulations in this part."

4. The text "[See regulation 24(c)]" appearing after the title Schedule-I shall be reworded as the following, namely,-

"[See regulation 39(c)]".

Bushra
3/10/16

(Bushra Aslam)
Secretary to the Commission

