

**Government of Pakistan
Securities and Exchange Commission of Pakistan**

Islamabad, the 15th April, 2016

NOTIFICATION

S. R. O. 338 (I)/2016. - In exercise of powers conferred by sub-section (4) of section 169 read with sections 23, 24, 35, 36, 37 and 151 of the Securities Act, 2015 the draft Clearing Houses (Licensing and Operations) Regulations, 2016 are hereby published by the Securities and Exchange Commission of Pakistan for information of all persons likely to be affected by these Regulations and notice is hereby given that objections and suggestions, if any, received within the next fifteen days will be taken into consideration.

**CHAPTER I
PRELIMINARY**

1. Short title and commencement,- (1) These Regulations shall be called the Clearing Houses (Licensing and Operations) Regulations, 2016.

(2) They shall come into force at once.

2. Definitions,- (1) In these Regulations, unless there is anything repugnant in the subject or context, —

- (a) "Act" means the Securities Act, 2015 (III of 2015);
- (b) "fund" means settlement guarantee fund established by the clearing house;
- (c) "senior management officer" for the purposes of these regulations in addition to the persons mentioned in clause (lviii) of section (2) of the Act include the following, by whatever name called:
 - (i) company secretary
 - (ii) chief financial officer
 - (iii) head of internal audit
 - (iv) Head of IT, IT security or technology
 - (v) chief risk officer
- (d) "trust" means the trust constituted by the trust deed under the Trust Act, 1882 (II of 1882); and
- (e) "Ordinance" means the Companies Ordinance, 1984 (XLVII of 1984).

(2) Words and expressions used but not defined in these Regulations shall have the same meaning as assigned to them in the Act, the Ordinance, the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997) or Central Depositories Act, 1997 (XIX of 1997) or any rules or regulations made thereunder.

CHAPTER II
LICENSING OF CLEARING HOUSE

3. Application for grant of license.

- (1) Subject to compliance with the requirements of sections 22 and 23 of the Act and these regulations, an application for grant of license as a clearing house shall be submitted to the Commission in **Form A**.
- (2) An applicant seeking a license as clearing house shall pay an amount of rupees one million as license fee and submit the following documents along-with its application:
 - (i) copy of challan evidencing payment of license fee;
 - (ii) copies of memorandum of association and articles of association;
 - (iii) proposed regulations under section 26 of the Act; and
 - (iv) copies of agreements entered into by the applicant with securities exchange(s) and central depository for performing functions allowed by the Commission.
- (3) The Commission, while considering the application for license, may require the applicant to furnish such further information or clarification as it deems appropriate.
- (4) The applicant shall, if so required, appear before the Commission for a representation through an officer duly authorized for this purpose in writing by the board of directors of the applicant.
- (5) Any subsequent change in the information provided to the Commission at the time of filing of application under sub-regulation (2) and (3) above or any new agreement entered into by the clearing house relating to functions allowed by the Commission shall immediately be intimated to the Commission but not later than five working days from the date of such change or agreement.
- (6) No application for grant of license made under sub-regulation (1) above shall be refused except after giving the applicant an opportunity of being heard.

4. Grant of license. (1) The Commission, while considering the application made under regulation 3, shall *inter-alia* take into account the following matters, -

- (a) the eligibility requirements of the Act and these regulations have been complied with;
 - (b) the applicant has demonstrated its ability to perform its duties in accordance with the provisions of the Act and any rules and regulations made or codes, guidelines, directions and circulars issued thereunder;
 - (c) the applicant has shareholding and governance structure as provided in these regulations; and
 - (d) the applicant has the necessary infrastructure including but not limited to adequate office space, equipment, experienced human resources and technical capabilities, financial resources, policies, procedures, systems and controls to effectively and efficiently discharge its responsibilities as a clearing house.
- (2) The Commission may inspect the premises of the applicant to determine whether it fulfills the eligibility criteria and may also require the applicant to submit reports from experts in the manner specified by the Commission to confirm compliance with the Act and these

regulations including the existence of adequate infrastructure, technical capacity, financial standing and other requisite benchmarks.

(3) The Commission after conducting such inquiries and after obtaining such further information as it deems appropriate, and upon being satisfied,-

- (a) that the applicant is eligible for a licence;
- (b) the applicant is in compliance with the provisions of the Act and these regulations;
- (c) its memorandum of association specifically allow it to act as a clearing house; and
- (d) it is in the public and capital market interest;

may grant a license to the applicant in **Form-B** under the sub-section (4) of section 24 of the Act subject to the conditions as provided in regulation 5.

(4) A clearing house shall pay an annual renewal fee of rupees one million.

5. Conditions of licensing,- A clearing house shall, in addition to the requirements of the Act, comply with the following conditions on ongoing basis:-

- (a) ensure availability and maintenance of necessary infrastructure for timely clearing and settlement of trades and risk management;
- (b) obtain default insurance cover of an appropriate amount to contribute towards the obligations of the clearing house as central counter party;
- (c) ensure establishment, maintenance and operation of settlement guarantee fund in accordance with the provisions of the Act and any rules and regulations made thereunder, for guaranteeing to its clearing members the performance of market contracts;
- (d) put in place robust risk management system, efficient settlement procedures and necessary capabilities to have a network of clearing members;
- (e) put in place adequate monitoring, inspection and enforcement mechanism for clearing members;
- (f) establish and maintain connectivity with the central depository, clearing banks, securities exchanges and clearing members and enter into service level agreements with the securities exchanges and the central depository;
- (g) have documented business continuity plan including a disaster recovery site;
- (h) continuously improve the quality and efficiency of its systems and procedures, including the attainment of relevant internationally recognized certifications;
- (i) put in place necessary controls and safeguards to ensure cyber security, unauthorized access to confidential information and alteration, destruction, disclosure or dissemination of records and data without authority;
- (j) obtain certification from a chartered accountant firm or consultancy firm of excellent reputation and sufficient prior experience for appropriateness of controls and safeguards mentioned at clause (i) above on annual basis;
- (k) put in place necessary arrangements for resolving disputes and redressal of grievances arising out of clearing and settlement of trades;
- (l) comply with the code of corporate governance for listed companies or other requirements as may be specified by the Commission from time to time unless otherwise provided in the Act or these regulations;
- (m) ensure that its memorandum and articles of association contains no provision

inconsistent with the provisions of the Act and these regulations and that no change is made in its memorandum and articles of association except with the prior written approval of the Commission;

- (n) ensure that its directors shall not register the transfer of any of its shares without prior written approval of the Commission;
- (o) shall facilitate access to its clearing functions by securities exchange, central depository or other clearing house;
- (p) shall not carry on any activity other than that of a clearing house unless the activity is incidental to the functions of the clearing house;

Provided that a clearing house may carry-out such activity which is not incidental to functions of a clearing house, as may be assigned or allowed by the Commission and subject to such conditions as may be imposed.;

Provided further that a clearing house may carry-out such activity which is not incidental functions of a clearing house, by forming subsidiary(ies) subject to the approval of the Commission. A clearing house registered with the Commission on the date of commencement of these regulations shall be required to transfer any such activity which is not incidental to its functions as a clearing house to its subsidiary company(ies) within one year; and

- (q) any other conditions as may be specified by the Commission.

CHAPTER III OBLIGATIONS OF CLEARING HOUSE

6. Application of fit and proper criteria,- The substantial shareholder, directors and senior management officers of a clearing house shall at all times be fit and proper persons as per the criteria specified as Annexure-I.

Provided that while evaluating fit and proper criteria in respect of substantial shareholders, the past track record of such shareholders shall also be considered including history of regulatory compliance, any disciplinary action taken and any adverse comment provided by the relevant regulatory authority.

7. Financial resource requirements,-(1) An applicant seeking license under regulation 4 shall have an initial paid-up capital and net-worth of rupees one billion or such higher amount as may be notified by the Commission as a licensing condition. Provided that Commission may allow the applicant to increase its paid-up capital to the higher amount within the time frame specified by the Commission as a licensing condition.

Provided that an existing clearing house shall, within such time as may be specified by the Commission, submit a report by an independent expert to evaluate current and projected risks associated with clearing house operations and recommend optimal levels of capital for the clearing house. The Commission will determine paid-up capital and net-worth requirements for the clearing house to be complied with in a progressive manner after review of the report of the expert.

Explanation: For the purpose of these regulations, net worth shall be calculated as total assets less total liabilities less surplus on revaluation, if any, created upon revaluation of fixed assets.

8. Shareholding requirements,- (1) No person other than the following shall, directly or indirectly, acquire or hold shares of a clearing house:

- (a) A securities exchange or a connected company or the majority shareholder of such securities exchange, or an associate of the majority shareholder of such securities exchange;
- (b) A futures exchange or any connected company or the majority shareholder of such futures exchange or an associate of the majority shareholder of such futures exchange;
- (c) A public financial institution operating as a development finance institution, an insurance company and a non-banking finance company ;
- (d) A licensed local or a foreign bank operating in Pakistan;
- (e) A local or foreign body corporate constituted or recognized for providing trading, custodial, clearing or settlement services in the securities market as may approved by the Commission;
- (f) An institution engaged in providing financial services established outside Pakistan as may approved by the Commission; or
- (g) Any other institution as may be notified by the Commission from time to time.

(2) Shareholding in a clearing house shall be subject to the following limits;

- (a) collective shareholding of all shareholders other than the securities exchange(s) and the future exchange(s), directly or indirectly, shall not exceed forty nine percent;
- (b) collective shareholding of persons residing outside Pakistan, directly or indirectly, shall not exceed twenty percent;
- (c) a single shareholder, other than a securities exchange or a futures exchange, directly or indirectly, shall not hold more than fifteen percent shares in a clearing house.

Provided that any person holding shares in an existing clearing house in excess of the above limits on the date of commencement of these regulations, shall bring its holding in accordance with the above specified limits within a time period of three years from the date of commencement of these regulations.

9. Composition of board of directors and related matters.- (1) The board of directors of a clearing house shall have following categories of directors:

- (a) Independent directors;
- (b) Shareholder directors; and
- (c) Chief executive officer.

Explanation:- For the purposes of this clause the term "independent director" means a director who is not connected or does not have any other relationship, whether pecuniary or otherwise, with the clearing house, its associated companies, subsidiaries, holding company or directors. The test of independence principally emanates from the fact whether such person can be reasonably perceived as being able to exercise independent business judgment without being subservient to any form of conflict of interest:

Provided that without prejudice to the generality of this explanation no director shall be considered independent if one or more of the following circumstances exist:

- (a) he/she has been an employee of the clearing house, any of its subsidiaries or holding company within the last three years;
- (b) he/she is or has been the chief executive officer of subsidiaries, associated company, associated undertaking or holding company of the clearing house in the last three years;

- (c) he/she has, or has had within the last three years, a material business relationship with the clearing house either directly, or indirectly as a partner, substantial shareholder or director of a body that has such a relationship with the clearing house:
 - (d) he/she has received remuneration in the three years preceding his/her appointment as a director or receives additional remuneration, excluding retirement benefits from the applicant apart from a director's fee or has participated in the clearing house's share option or a performance-related pay scheme;
 - (e) he/she is a close relative of the applicant's promoters, directors or major shareholders:
Explanation: close relative means spouse(s), lineal ascendants and descendants and siblings;
 - (f) he/she holds cross-directorships or has significant links with other directors through involvement in other companies or bodies; or
 - (g) he/she has served on the board for more than three consecutive terms from the date of his first appointment provided that such person shall be deemed "independent director" after a lapse of one term.
- Provided that any person nominated as a director under sections 182 and 183 of the Ordinance shall not be taken to be an "independent director" for the above-mentioned purposes.
- Provided further that in case of any ambiguity in determining independence of a person for the purposes of these regulations, the decision of the Commission shall be final and binding upon the clearing house.
- (2) The clearing house shall not have more than one TRE certificate holder on its board of directors and shall have independent directors not less than one third of its total directors.
 - (3) An independent director shall be appointed in the following manner:
 - (a) A clearing house shall forward to the Commission the names of persons to be appointed as independent directors. A minimum of two names shall be submitted to the Commission for each vacancy, for its approval.
 - (b) The Commission may, if satisfied that the person is suitable for appointment as independent director grant its approval for the appointment of the selected person as independent director on the board of the clearing house. Provided that if the Commission is not satisfied about the suitability of the proposed persons for appointment as a director, it may refer the matter back to the clearing house for proposing other names after following the due process.
 - (c) The clearing house shall ensure that independent directors are selected from diverse field of work with appropriate qualification and experience.
 - 4) At least one independent director shall be present in the meeting of board of directors of a clearing house to constitute the quorum.
 - (5) The chairman of the board of directors of a clearing house shall be from amongst the independent directors.
 - (6) Every director and senior management officer of a clearing house shall abide by the code of conduct to be formulated by the clearing house in accordance with the guidelines specified at Annexure-II.

(7) An existing clearing house shall ensure compliance with the provisions of this regulation within six months from the commencement of these regulations.

10. Appointment of chief executive officer,- (1) The appointment, renewal of appointment and termination of services of the chief executive officer shall be made with the prior approval of the Commission and for this purpose the term "removal and/or termination" shall include "non-renewal of his contract.

(2) The board of directors of a clearing house shall determine the manner of appointment, terms and conditions of appointment and other procedural formalities associated with the selection/ appointment of the chief executive officer.

(3) A chief executive officer shall be appointed in the following manner:

(a) A clearing house shall forward to the Commission names of three suitable persons meeting fit and proper criteria provided in these regulations selection and approval of one of them as chief executive officer. The clearing house may recommend name of one of the candidates for consideration of the Commission.

(b) The Commission may, if satisfied that the person is suitable for appointment as chief executive officer of the clearing house, grant its approval for the appointment of a person from the three candidates as chief executive officer of the clearing house.

Provided that, if the Commission is not satisfied about the suitability of the proposed persons for appointment as chief executive officer, it may refer the matter back to the clearing house for proposing other names after following the due process.

(4) The appointment of the chief executive officer shall be made for a period of three years subject to renewal with prior approval of the Commission.

11. Appointment and functions of chief regulatory officer, - (1) A clearing house shall appoint a chief regulatory officer with prior written approval of the Commission.

(2) A chief regulatory officer shall be appointed in the following manner:

(a) A clearing house shall forward to the Commission names of three suitable persons meeting fit and proper criteria provided in these regulations for selection and approval of one of them as chief regulatory officer. The clearing house may recommend name of one of the candidates for consideration of the Commission.

(b) The Commission may, if satisfied that the person is suitable for appointment as chief regulatory officer of the clearing house, grant its approval for the appointment of a person from the three candidates as chief regulatory officer of the clearing house.

Provided that, if the Commission is not satisfied about the suitability of the proposed persons as chief regulatory officer, it may refer the matter back to the clearing house for proposing other names after following the due process.

(3) The chief regulatory officer shall be a dedicated position and must not have other responsibilities except as listed below or any ancillary responsibility;

(a) monitor compliance of the clearing house with applicable legal and regulatory framework;

(b) monitor compliance of the clearing members with applicable legal and regulatory

framework;

- (c) supervise or conduct any investigation, inspection or enquiry required to be conducted by a clearing house;
 - (d) monitor the redressal of disputes, complaints or grievances arising out of clearing and settlement of trades in a timely manner;
 - (e) monitor appropriate utilization of settlement guarantee fund in accordance with the applicable legal framework;
 - (f) monitor on regular basis the adequacy and efficiency of risk management system and its adherence with the risk management policies and procedures
 - (g) handle matters relating to the regulations of the clearing house, including regular review of the same to ensure their suitability and finalizing proposals for amendments in the regulations; and
 - (h) perform any other related function as may be assigned by the clearing house or the Commission.
- (4) In order to discharge its responsibilities, the chief regulatory officer shall independently report to the board of directors of the clearing house any non-compliance of the applicable legal and regulatory framework .

Provided that where a chief regulatory officer is convinced that the matter needs immediate attention of the Commission, it may simultaneously report to the Commission stating the reasons thereof.

- (5) In case no action is taken by the board of directors within a reasonable time period or the chief regulatory officer is of the view that the action taken by the board of directors is insufficient, he/she shall forthwith report the matter to the Commission.
- (6) The chief regulatory officer shall, submit a comprehensive report on quarterly basis to the board of directors regarding the matters reported during the respective quarter, the corrective actions taken and their status.

12. Constitution of risk committee - (1) A clearing house shall constitute a risk committee comprising of independent directors, industry experts, chief executive officer and senior management of clearing house. The risk committee shall report to the board of directors of the clearing house.

(2) The risk committee shall be responsible for formulating risk management policies in line with international best practices with approval of the board of directors of clearing house;

13. Chief Risk Officer, - (1) The clearing house shall appoint a chief risk officer which shall head the risk management department of the clearing house and will have a direct reporting line to the risk committee.

(2) The chief risk officer shall be responsible for implementing the risk management policies and procedures in an effective manner.

14. Manner of outsourcing of important functions, - (1) A clearing house shall not outsource any of its functions without prior written approval of the Commission.

(2) The board of directors of a clearing house shall be responsible for formulation and approval of outsourcing policy describing activities or the nature of activities that can be outsourced, the authority for approving outsourcing of such activities, and the selection of third party to

whom it can be outsourced.

(3) The records relating to all activities outsourced shall be preserved centrally by the clearing house so that the same is readily accessible for review by the board of directors, the Commission or any other authorized person.

(4) The clearing house shall be fully liable and accountable for the activities that are being outsourced to the same extent as if the service were provided in-house.

(5) The clearing house shall take appropriate steps to ensure that third parties protect confidential information of both the clearing house, its customers and other parties involved from intentional or inadvertent disclosure to unauthorized persons.

(6) The clearing house desirous of outsourcing its activities shall not, however, outsource its core business activities and compliance functions.

15. Setting up of Fund,- (1) A clearing house licensed under the Act shall establish and maintain a fund under irrevocable trust by constituting a trust deed not inconsistent with the provisions of the Act and rules or regulations made thereunder, for guaranteeing to its clearing members the performance of market contracts.

(2) The clearing house while managing the fund shall provide requisite resources for efficient management of the fund. The clearing house may recover from the fund any actual expenditure incurred by it for this purpose.

(3) The clearing house shall, inter alia, make adequate provisions in its regulation in respect of size of the fund, contribution into the fund, utilization of the fund, mode of replenishment of the fund, mode and manner of periodic review of the fund, mode and manner of appointment of trustees and their duties and obligations.

CHAPTER V AUDIT AND ACCOUNTS

16. General,- These obligations and duties of clearing house under these regulations with respect to audit and accounts are in addition to the requirements of the Ordinance, the rules and regulations made thereunder and any directives issued thereunder.

17. Maintenance of accounting records,- (1) A clearing house shall keep accounting and other records which shall sufficiently explain its business and transaction entered into and shall be such as to,-

- (a) disclose with accuracy the financial position at that time;
- (b) enable the clearing house to prepare financial statements at any time and which comply with requirements of the law;
- (c) demonstrate whether the clearing house is maintaining adequate financial resources to meet its business commitments;
- (d) demonstrate capacity of the clearing house with respect to its duties, functions and operations under the Act and these regulations; and
- (e) demonstrate its preparedness to manage any risk arising out of its duties, functions and operations.

(2) The clearing house shall ensure that all requirements with respect to accounting and audit under these regulations are updated in timely manner.

(3) The clearing house shall ensure that information which is required to be recorded under the Act and these regulations shall be recorded in such a way as to enable a particular transaction to be identified at any time and traced from initiation of the order to final settlement.

(4) All records required to be maintained under the Act and these regulations shall be arranged, filed, indexed and cross- referenced so as to permit prompt access to any particular record.

(5) The clearing house shall preserve the records required under these regulations for a period of ten years from the date on which they are made and should seek clearance from the Commission before destruction of any of its records.

18. Appointment of auditor and related matters,- (1) A clearing house shall ensure that it has appointed an auditor who inter-alia has the powers and duties prescribed under sub-regulation 3 and , –

- (a) those powers and duties are set out in an engagement letter;
- (b) the engagement letter is signed by the clearing house and the auditor; and
- (c) the clearing house retains a copy of the engagement letter.

(2) A clearing house shall, within seven days, give written notice to the Commission of the appointment, removal or resignation of an auditor.

(3) The auditor appointed by a clearing house shall have a right to, –

- (a) access to its accounting and other records and all other documents relating to its business including the documents required to be maintained under the Act and these regulations; and
- (b) require from it such information and explanations as the auditor considers necessary for the performance of duties.

(4) In preparing an auditor report of a clearing house, the auditor shall carry out such relevant audit procedures as will enable him to form an opinion as to the matters required to be stated in the audit report.

(5) The auditor's report shall state all the matters as are required to be stated in accordance with the requirements of the Ordinance and additionally must state whether in the opinion of the auditor;

- (a) an adequate internal control system commensurate with the size and nature of services performed by the clearing house was implemented during the period; and
- (b) the regulatory function had appropriate resources including the human resource and had implemented effective procedures and reporting mechanism which can be reasonably expected to detect and report any non-compliance in a timely manner.

(6) Where an auditor resigns or is removed by the clearing house, a notice to that effect shall be sent to the Commission containing a statement signed by the auditor to the effect that there are no circumstances connected with his resignation or removal which the auditor considers should be brought to the attention of the Commission.

(7) A clearing house shall appoint an auditor with the prior approval of the commission to carry out an annual operational and regulatory audit in accordance with the terms of reference specified in **Annexure III**.

(8) The Commission may appoint an auditor to carry out a special audit of the clearing house at the expense of the clearing house, in respect of all or any specific matter as specified in **Annexure III** or any matter specified by the Commission at the time of appointment of the auditor. The audit shall be carried out for such period as Commission may direct at the time of appointing the auditor.

19. Submission of annual report,- (1) A clearing house shall submit an annual report to the Commission within three months of the close of financial year, inter alia, containing the following information in addition to the requirements of section 37 of the Act;

- (a) audited financial statements containing information as required under the Act and these regulations;
- (b) report of directors to shareholders;
- (c) statement of compliance with the code of corporate governance;
- (d) month-wise settlement volume and value in each market segment;
- (e) total number of clearing members, eligible securities and other elements along-with information with respect to addition or deletion during the period;
- (f) summary of properties deposited as market collateral by the clearing members with the clearing house;
- (g) names and brief profiles of members of board of directors and senior management officers;
- (h) names of clearing member defaulted during the year along with nature and amount of default and subsequent action(s) taken by the clearing house;
- (i) details of disciplinary actions taken, fines and penalties imposed and recovered,
- (j) pattern of shareholding, and all changes in shareholding during the review period;
- (k) Opening balance, amounts contributed, amounts utilized and closing balance of each of the fund being maintained by the clearing house; and
- (l) any other information that may be deemed material by the clearing house for disclosure in the annual report.

(2) In addition to the submission of annual report to the Commission, the clearing house shall also place the annual report on its official website within one month of publication.

20. Submission of information and returns,-(1) The clearing house, with approval of its board of directors, shall submit to the Commission, within one month of the close of its financial year, a yearly performance report of the clearing house against the approved targets and plans, highlighting in particular performance of the board of directors, chief executive officer and chief regulatory officer of the clearing house.

(2) The Commission may by written notice require a clearing house to submit to it such periodic returns as it may direct.

(3) In addition to any periodic returns required under sub-regulation (1), the Commission may by written notice require a clearing house, either generally or in a particular case or class of case, to submit to it such exceptional returns as it may direct.

APPLICATION FOR GRANT OF LICENSE AS A CLEARING HOUSE UNDER REGULATION 4

Securities and Exchange Commission of Pakistan

Islamabad

Subject: Application for grant of license under regulation 4 of the Clearing Houses (Licensing and Operations) Regulations, 2016

Dear Sir,

We/I on behalf of (name and address of applicant) hereby apply for grant of license as clearing house for the purposes of the Securities Act, 2015 and the Clearing Houses (Licensing and Operations) Regulations, 2016.

All the necessary information required under the laws is enclosed. Any additional information will be furnished as and when called for by the Commission.

We/I, on behalf of the applicant, hereby undertake to comply with the requirements of the laws and such other conditions and terms as may be communicated while granting the license or imposed subsequently.

Bank Challan No.....dated.....evidencing payment of license fee of rupees one million and collection charges into the designated bank account of the Securities and Exchange Commission of Pakistan is also enclosed

Yours sincerely,

Authorised signatory

The Securities and Exchange Commission of Pakistan

License of a Clearing House under section 24 of the Securities Act, 2015

The Securities and Exchange Commission of Pakistan, having considered the application for grant of license under regulation 4 of the Clearing Houses (Licensing and Operations) Regulations, 2016 by..... (name and address of clearing house) and being satisfied that it would be in the interest of the securities market and also in the public interest so to do, hereby grants license, in exercise of the powers conferred by section 24 of the Securities Act, 2015, to the said clearing house on the day of 20.... subject to the condition of payment of annual renewal of rupees one million and any other conditions as stated in the attached letter or as may be imposed hereafter.

Seal of the Commission
Islamabad

Signature of Officer

**FIT AND PROPER CRITERIA FOR SUBSTANTIAL SHAREHOLDERS, DIRECTORS AND SENIOR
MANAGEMENT OFFICERS OF A CLEARING HOUSE**

APPLICATION AND SCOPE

This Fit and Proper Criteria is perpetual in nature and its compliance is mandatory.

All persons subject to Fit and Proper Criteria must submit any change in the submitted information through the company secretary of the clearing house to the Commission.

In addition to the substantial shareholders of the applicant, eligibility of any person desiring to act as director on the board of directors or senior management officers of a clearing house shall be judged on the basis of following criteria, which in case of directors, shall be in addition to meeting requirements of the Ordinance relating to eligibility of a director:

(a) The Financial Status or Solvency

- (i) The person should not have been adjudged as an insolvent or he should not have suspended payment of debts or compounded liabilities with his creditors.
- (ii) The person should not have been convicted by a court of competent jurisdiction as a defaulter in payment of any loan to a financial institution including banking company, a Development Financial Institution or an Non- Banking Financial Company.
- (iii) The person, in his individual capacity or as director of a company, has not been in default of payment of dues owed to any investor, financial institution, or securities exchange, commodity exchange, clearing company, depository company and / or defaulted in payment of any taxes in the individual capacity or as a proprietary concern or any partnership firm or as director in any private unlisted and listed company.
- (iv) The person should not have been a director and/or chief executive of any company or body corporate which has defaulted in payment of Government duties/taxes/cess or has misused customer/investor assets.
- (v) The person should be a tax payer and his name should be borne on the Active Tax Payers List regularly published by FBR.

(b) Educational Qualification and Experience

- (i) In case of director, the person should:
 - a) be a member of a recognized body of professional accountants or possess a graduate degree in finance, accountancy, law, business management, commerce, economics, capital market, information technology and financial services or related disciplines from a university recognized by the Higher Education Commission of Pakistan, or equivalent; and
 - b) have a management or business experience including directorships, of at least seven years at a senior level preferably in the regulated financial services sector and other

fields such as law, information technology etc.

Provided that where a person possesses more than 15 years of experience and knowledge of the capital markets, clearing houses, central depositories, commodities market, or in the areas relating to finance, corporate governance, audit, information technology etc. the minimum qualification requirement may be relaxed on case to case basis by the clearing house, with prior approval of the Commission.

Provided further that in case of independent director, such relaxation may be granted only by the Commission.

(ii) In case of chief executive officer, the person should:

- a) be a member of a recognized body of professional accountants or possess a post-graduate degree in finance, accountancy, business management, commerce, economics, capital market and financial services or other related disciplines from a university recognized by the Higher Education Commission of Pakistan, or equivalent; and
- b) have a minimum experience of seven years in a senior level managerial position at the clearing house or has served at a senior management position preferably as chief executive officer for a period of five years in any other company of a substantial size in the regulated financial services sector; and
- c) have demonstrated, through his qualification and experience, the capacity to successfully undertake the cognate responsibilities of the position.

(iii) In case of chief regulatory officer, the person should:

- a) be a member of a recognized body of professional accountants or a recognized body of corporate or chartered secretaries; or be a law graduate or possess a post-graduate degree in finance, accountancy, business management, commerce, economics, capital market and financial services or related disciplines from a university recognized by the Higher Education Commission of Pakistan, or equivalent; and
- b) have preferably served as chief regulatory officer for a period of three years in any other company; or have:
 - i) a minimum experience of five years in related functions at the clearing house; or
 - ii) served as head of finance, audit, compliance or other corporate functions for a period of four years in any other company.

(iv) In case of chief operating officer, the person should:

- a) be a member of a recognized body of professional accountants or possess a post-graduate degree in finance, accountancy, business management, commerce, economics, capital market and financial services or other related disciplines from a university recognized by the Higher Education Commission of Pakistan, or equivalent; and
- b) have a minimum experience of seven years in a senior level managerial position at the clearing house or has served at a senior management position preferably as chief

operating officer for a period of five years, in any other company of a substantial size in the regulated financial services sector; and

- c) have demonstrated, through his qualification and experience, the capacity to successfully undertake the cognate responsibilities of the position.

(v) In case of chief financial officer, the person should:

- a) be a member of a recognized body of professional accountants or possess a postgraduate degree in finance, accountancy, business management, commerce, economics, capital market and financial services or related disciplines from a university recognized by the Higher Education Commission of Pakistan, or equivalent; and
- b) have preferably served as chief financial officer for a period of three years in any other company; or have:
 - i) a minimum experience of five years in related functions at the clearing house; or
 - ii) served as head of finance, audit, compliance or other corporate functions for a period of four years in any other company.

(vi) In case of chief risk officer and head of internal audit, the person should:

- a) be a member of a recognized body of professional accountants, or a Certified Internal Auditor, or a Certified Fraud Examiner; and
- b) have preferably served as chief risk officer and/or head of internal audit for a period of three years in any other company; or have:
 - i) a minimum experience of five years in related functions at the clearing house; or
 - ii) served as head of finance, audit, compliance or other corporate functions for a period of four years in any other company.

(vii) In case of company secretary the person should:

- a) be a member of a recognized body of professional accountants or a recognized body of corporate or chartered secretaries; or be a law graduate or possess a post-graduate degree in finance, accountancy, business management, commerce, economics, capital market and financial services or related disciplines from a university recognized by the Higher Education Commission of Pakistan, or equivalent; and
- b) have preferably served as company secretary and/or compliance officer for a period of three years in any other company; or have:
 - i) a minimum experience of five years in related functions at the clearing house; or
 - ii) served as head of finance, audit, compliance or other corporate functions for a period of four years in any other company.

(viii) In case of head of IT, IT security or technology the person should:

- a) possess a post-graduate degree in information technology or computer sciences or

related disciplines from a university recognized by the Higher Education Commission of Pakistan, or equivalent; and

- b) have a minimum relevant experience of five years in IT related functions at the clearing house or has served as head of IT related services for a period of three years in any other company.

Provided that upon request of a securities exchange supported by cogent reasons, the Commission may consider allowing continuation of service of an existing senior management officer who does not fulfil the requirements prescribed above, on a case to case basis.

(viii) Commission may grant relaxation from the requirements for prior experience for senior management officers on case to case basis upon the request of securities exchange and submission of relevant information for the satisfaction of the Commission that the person possesses sufficient expertise for the position or to remove any practical difficulty arising in complying with the requirements.

In case of sponsors of a securities exchange, such person should have an established and proven track record of successfully running a business enterprise for 3 to 5 years.

(ix) The person must be fully conversant with the duties of director or senior management officer, as the case may be, as specified under the statutes, rules and regulations, memorandum and articles of association and the code of corporate governance.

(c) Competency

(i) Membership or registration of the person or any company in which he was a director during the last five years has not been suspended/ cancelled by the Commission, any other regulatory authority, any professional body, association or relevant entity.

Provided that eligibility of a person may be considered on the basis of prior clearance obtained from any such organization that suspended/ cancelled the membership or registration.

(ii) The person should not been disqualified/ removed from the post of a key executive position of a company by the Commission or any other regulatory authority.

(d) Integrity, Honesty and Reputation

(i) The person should not have been convicted in any criminal offence or directly involved in any settlement in civil/ criminal proceedings in a court of law, particularly with regard to moral turpitude, investments, financial/business misconduct, fraud/ forgery, breach of trust, financial crime etc. and/ or it has not been concluded by any regulatory authority that he has been associated with any unauthorized financial activity including illegal brokerage business.

(ii) No investigation/ enquiry, conducted under Section 139 of the Act, Section 29 of the Securities and Exchange Commission of Pakistan Act, 1997, Section 21 of the Securities and Exchange Ordinance, 1969, Section 263 or Section 265 of the Ordinance, has been concluded against him by the Commission with adverse findings.

(iii) An order restraining, prohibiting or debarring him from dealing in securities market or from accessing the capital market has not been passed; or penalty of Rs.500,000/- or more has not been imposed on him by the Commission in the last three years, in respect of any laws

administered by the Commission.

Provided that a person may be considered eligible in case a period of at least three years from the date of expiry of the period specified in the order for which such person has been restrained/ prohibited/ debarred has elapsed.

(iv) The person should not have provided false or misleading information either to the Commission or to any of the regulatory body, securities exchange, central depository or a clearing house.

(v) The person should not have been actively involved in the management of a company whose registration or license has been revoked or cancelled or which has gone into liquidation or other similar proceedings due to financial irregularities or malpractices;

(vi) The person must not be ineligible, under the Ordinance or any other legislation from acting as a director; or

(vii) The person should not have entered into a plea bargain arrangement with the National Accountability Bureau.

(e) Additional Criteria for Independent Directors

(i) He has no relationship with the clearing house that would interfere with him exercising independent professional judgment as a director and he can be reasonably perceived as being able to exercise independent business judgment without being subservient to any apparent form of interference.

(ii) The person should not be a TRE certificate holder of any securities exchange in Pakistan or a director, officer, sponsor or direct shareholder of any TRE certificate holder of a securities exchange or any of holding or subsidiary company of such TRE certificate holder.

(iii) The person's immediate family member is also not a TRE certificate holder or director, officer or sponsor of any TRE certificate holder of any securities exchange in Pakistan and/ or the combined shareholding of the immediate family members in any brokerage house does not exceed twenty percent.

(iv) It shall be mandatory to disclose any holding in a listed security in such person's name or in the name of his immediate family member or in the name of an entity being managed or controlled by him or his immediate family member, or any change in such holding to the clearing house and the Commission;

a. at the time of submission of initial information; and

b. on quarterly basis for the respective period.

Further, the clearing house shall, during the tenure of independent director, disseminate any change in holding of such independent director to the securities exchange for public disclosure.

(v) The person shall have no personal services contract(s) and shall not be currently serving as an employee and has not been employed at any position of the clearing house within the past two years.

(vi) The person shall not simultaneously be serving as a director on the board of more than seven listed companies.

EXPLANATION: Immediate family member wherever referred in these criteria means spouse, children and parents.

Note:

- All directors must inform the clearing house of any change in the submitted information that may potentially affect their status of directorship, within 48 hours of knowledge of such change.
- In case of any ambiguity in determination of fitness and propriety of a person in terms of this criteria, the decision of the Commission shall be final and binding upon the clearing house.
- Any person desiring to act as director on the board of directors or appointed as senior management officer of the clearing house shall submit duly filled attached form and undertaking given below.

Form of information to be provided by persons desiring prospective directorship on the board or a senior management officer of the clearing house

1.	Curriculum Vitae/Resume containing:		
(a)	Name:		
(b)	Father's or Husband Name:		
(c)	C.N.I.C # (attach copy)		
(d)	Latest photograph		
(e)	Nationality:		
(f)	Age:		
(g)	Contact details:		
	i) Residential address:		
	ii) Business address:		
	iii) Tel:		
	iv) Mobile:		
	v) Fax:		
	vi) E-mail:		
(h)	National Tax Number:		
(i)	Present occupation:		
(j)	Qualification(s):		
	i) Academic:		
	ii) Professional:		
(k)	Experience: (Positions held during the last 10 years along with name and address of company/ institution) Information to be provided on the following sample format:		
	Sr#	Name of Organization	Designation
	1	Company A	dd/mm/yy - dd/mm/yy
	2	Company B	dd/mm/yy - dd/mm/yy

2.	In case of proposed director, 1. Nature of directorship: Executive Non-executive 2. Status of directorship: Independent director Shareholder director Number of shares subscribed or held _____ Nominated by (name of shareholder) _____		
3.	In case of proposed director, Names of companies, firms and other organizations of which the proposed person is presently a director, partner, office holder or major shareholder (Information to be provided on the following sample format)		
	Sr#	Name of Organization	Designation Period dd/mm/yy - dd/mm/yy
	1	Company A	
	2	Company B	
4.	In the case of nomination of director by a corporate member the date of board of directors' meeting in which the nomination of proposed director was approved. (Attach copy of the minutes of the meeting of the board of directors.)		
5.	Names of any persons on the board of the clearing house who are related to the applicant.		

Signature _____

*use additional sheets if required

Affidavit to be provided by persons desiring prospective directorship on the board of the clearing house or a senior management officer of a clearing house

(On Stamp Paper of Appropriate Value)

AFFIDAVIT

(name of clearing house)

I, _____ son/daughter/wife of _____ adult, resident of _____ and holding CNIC/ Passport No. _____ do hereby state on solemn affirmation as under:-

1. That I am eligible for the position of director/senior management officer according to the Fit and Proper Criteria specified for the position of directors/senior management officers of a clearing house, as per the Clearing Houses (Licensing and Operations) Regulations 2016.
2. That I hereby confirm that the statements made and the information given by me are correct and that there are no facts which have been concealed.
3. That I have no objection if the clearing house or the Commission requests or obtains information about me from any third party.
4. That I undertake to bring to the attention of the clearing house any matter which may potentially affect my status for the position of director/senior management officer as per the fit and proper criteria specified in the Clearing Houses (Licensing and Operations) Regulations 2016.
5. That all the documents provided to the clearing house, are true copies of the originals and I have compared the copies with their respective originals and certify them to be true copies thereof.

DEPONENT

The Deponent is identified by me

Signature _____
ADVOCATE
(Name and Seal)

Solemnly affirmed before me on this _____ day of _____ at _____ by the Deponent above named who is identified to me by _____, Advocate, who is known to me personally.

Signature _____
OATH COMMISSIONER FOR TAKING AFFIDAVIT

GUIDELINES FOR FORMULATION OF CODE OF CONDUCT FOR DIRECTORS AND SENIOR MANAGEMENT OFFICERS OF A CLEARING HOUSE

While formulating the code of conduct as required under the code of corporate governance, the board of directors of the clearing house shall ensure that the following areas are covered and duties and responsibilities of directors and senior management officers are accordingly defined in the said code of conduct:

1. Duties and Responsibilities of Directors and Senior Management Officers:

Every director and senior management officer shall:

- a) participate in the formulation and execution of strategies in the best interest of the clearing house and contribute towards pro-active decision making;
- b) give benefit of their experience and expertise to the clearing house and provide assistance in strategic planning and execution of decisions;
- c) endeavor to ensure that the clearing house abides by all the provisions of the Act, the Ordinance, these regulations and other applicable rules, regulations, codes, guidelines, circulars and directions issued by the Commission from time to time;
- d) endeavor to ensure that the clearing house takes steps commensurate to honor the time limit stipulated by the Commission for corrective action;
- e) not support any decision in the meeting of the board which may adversely affect the interest of investors and shall report forthwith any such decision to the Commission;
- f) place priority for redressing investor grievances and encouraging fair business practice so that the clearing house becomes an engine for the growth of the securities market;
- g) endeavor to analyze and administer the clearing house issues with professional competence, fairness, impartiality, efficiency and effectiveness;
- h) submit the necessary disclosures/statement of holdings/ dealings in securities as required by the clearing house or the Commission from time to time as per their regulations or Articles of Association or any directives of the Commission;
- i) 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;
- j) maintain the highest standards of personal integrity, truthfulness, honesty and fortitude in discharge of their duties in order to inspire public confidence and shall not engage in acts discreditable to their responsibilities;
- k) perform their 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;
- l) not engage in any act involving moral turpitude, dishonesty, fraud, deceit, or misrepresentation or any other act prejudicial to the administration of the clearing house
- m) not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the board of directors or required by law;

2. Meetings of the Board

Every Director of the clearing house shall -

- a) endeavor 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 reasonable timeframe as the board of

- directors may determine for considering the remaining items; and
- b) endeavor to have the date of next meeting fixed at each board meeting in consultation with other members of the board.

3. Guidelines for conduct of independent directors

- a) In addition to the conditions stated above, independent directors shall endeavor to attend all the board meetings and they shall be liable to vacate office if they do not attend fifty percent of the total meetings of the board of directors in a calendar year.
- b) Independent directors shall endeavor to meet separately to review the critical issues of the clearing house.

Further, the independent directors shall:

- c) participate constructively and actively in the committees of the board in which they are chairpersons or members;
- d) strive to attend the general meetings of the clearing house;
- e) where they have concerns about the running of the clearing house or a proposed action, ensure that these are addressed by the board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the board meeting;
- f) keep themselves well informed about the affairs and matters of the clearing house and the external environment in which it operates;
- g) pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the clearing house;
- h) ascertain and ensure that the clearing house has an adequate and functional grievance resolution mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;
- i) report concerns about unethical behavior, actual or suspected fraud or violation of the code of conduct of the clearing house; and
- j) acting within its authority, assist in protecting the legitimate interests of the clearing house, shareholders and its employees.

Annexure III

TERMS OF REFERENCE OF OPERATIONAL AND REGULATORY AUDIT OF CLEARING HOUSE UNDER REGULATION 18(7) AND SPECIAL AUDIT UNDER REGULATION 18(8)

- (1) A clearing house shall require an independent auditor to conduct operational audit in accordance with any or all of the following:
 - (i) reviewing the information processing facilities of the clearing house and the integrity of its clearing house systems including:
 - (a) maintenance of security and confidentiality over the data of its elements;
 - (b) security over the physical operation of the clearing house systems;
 - (c) backup and disaster control and recovery procedures for clearing house systems; and
 - (d) access controls for clearing house systems; and
 - (ii) assessing the integrity and accuracy of information generated by the clearing house

systems including, without limitation:

- (a) internal controls over data input by the clearing house; and
- (b) processing and reporting of transaction data.

(iii) performing any other function or conducting audit of any other area as may be assigned by the Commission or clearing house at the time of appointment of such auditor.

(2) A clearing house shall require an independent auditor to conduct regulatory audit in accordance with any or all of the following:

- (i) ensure compliance with the relevant regulatory framework, including but not limited to:
 - (a) Securities Act, 2015;
 - (b) Central Depositories Act, 1997;
 - (c) The Companies Ordinance, 1984;
 - (d) Clearing house (Licensing and Operations) Regulations, 2016;
 - (e) The regulations of the clearing house as approved by the Commission under the Securities Act, 2015;
 - (f) The policies, procedures, directives, guidelines, circulars issued/approved by the Commission or the board of directors of a clearing house.
 - (ii) ensure compliance with the Memorandum of Association and Articles of Association of the clearing house;
 - (iii) ensure existence of and compliance with Standard Operating Procedures relating to all major operational processes;
 - (iv) ensure that policies and procedures are formulated to identify and prevent conflict of interest of directors with the interest of capital market, investors and clearing house and are complied with; and
 - (v) ensure that clearing house system and related functionalities operate in compliance with the requirements of approved regulations and procedures of the clearing house.
 - (vi) evaluate any other aspect of clearing house functions that may be required by the Commission
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15/4/16

(Bushra Aslam)

Secretary to the Commission