

## NSE CLEARING LIMITED

**Registered Office:** Exchange Plaza, Plot no. C-1, Block G, Bandra-Kurla Complex,  
Bandra (East), Mumbai 400 051

The provisions of the Byelaws of the NSE Clearing Limited (Commodity Derivative Segment) are as following:

### NSE CLEARING LIMITED (COMMODITY DERIVATIVE SEGMENT)

#### BYELAWS ARRANGEMENT OF CHAPTERS

#### **Chapter Description**

- I. Definitions
- II. Clearing Segments
- III. Committee(s)
- IV. Regulations
- V. Clearing Members
- VI. Clearing and Settlement of Deals
- VII. Dealings by Clearing Members
- VIII. Margins
- IX. Rights and Liabilities of Clearing Members and Constituents
- X. Arbitration
- XI. Default
- XII. Core Settlement Guarantee Fund
- XIII. Miscellaneous

## **CHAPTER I: DEFINITIONS**

### **1. BOARD**

“Board” means Board of Directors of the Clearing Corporation.

### **2. BYELAWS**

Unless the context indicates otherwise, Byelaws means the Byelaws of the Commodity Derivative Segment of the Clearing Corporation for the time being in force.

### **3. CLEARING AND SETTLEMENT**

"Clearing and Settlement" means clearing or settlement or clearing and settlement of deals in respect of Commodity Derivative Segment such manner and subject to such conditions as may be specified by the Relevant Authority from time to time, unless the context indicates otherwise.

### **4. CLEARING BANK(S)**

Clearing Bank(s) is/are such bank(s) as the Clearing Corporation may appoint to act as a funds settling agency, for the collection of margin money for all deals cleared through Clearing Corporation and any other funds movement between clearing members and the Clearing Corporation and between clearing members as may be directed by the Clearing Corporation from time to time.

### **5. CLEARING CORPORATION**

Clearing Corporation means NSE Clearing Limited.

### **6. CLEARING MEMBER**

"Clearing Member" means a member of the Clearing Corporation and includes all categories of clearing members as may be admitted as such by the Clearing Corporation but does not denote the shareholders of the Clearing Corporation.

### **7. COMMODITIES**

“Commodities” means such goods with respect to which derivative contracts are permitted by SEBI for dealings in Commodity Derivatives Segment.

### **8. COMMODITY DERIVATIVE**

“Commodity Derivative” means “commodity derivative” as defined under section 2 (bc) of Securities Contracts (Regulation) Act, 1956 or as amended from time to time and includes such other contract as may be permitted by SEBI to trade under ‘Commodity Derivatives Segment’

### **9. CONSTITUENT/ CLIENT**

A client/Constituent means a person, on whose instructions and on whose account the Clearing Member clears and settles deals. For this purpose, the term “Client” shall include all registered constituents of trading members of Specified Exchange.

Explanation 1: The terms 'Constituent' and 'Client' are used interchangeably in the Byelaws, Rules & Regulations and shall have the same meaning assigned herein.

Explanation 2: For the purpose of Chapters IX, X & XI, The term 'Constituent' in relation to trades shall also include a trading member where such trades done on the Specified Exchange are cleared and settled on his behalf by a Clearing Member.

#### 10. COMMODITY DERIVATIVE SEGMENT

"Commodity Derivative Segment" means Commodity Derivative Segment of Clearing Corporation and also includes the different clearing sub-segments or divisions thereof for clearing and settlement of deals as may be classified by the relevant authority from time to time.

#### 11. CORE SETTLEMENT GUARANTEE FUND

Core Settlement Guarantee Fund means a fund established and maintained in accordance with the relevant provisions of the Bye Laws.

#### 12. DEAL

"Deal" means, unless the context indicates otherwise, trades executed on a Specified Exchange which are admitted to be cleared and settled through the Clearing Corporation.

#### 13. DELIVERING MEMBER

"Delivering Member" means a clearing member who has to or has delivered commodities or documents of title or other relevant documents of commodities in fulfilment of contract to which these Rules, Bye Laws and Regulations apply unless the context indicates otherwise.

#### 14. FINAL SETTLEMENT PRICE

"Final Settlement Price" in respect of a contract means Due Date Rate (DDR) determined by the Clearing Corporation for settling that contract in accordance with the method specified in the contract specification or such other method as may be notified by the Relevant Authority.

#### 15. NETTING

"Netting" means the determination by Clearing Corporations of net payment or delivery obligations of the clearing members of a recognised clearing corporation by setting off or adjustment of the inter se obligations or claims arising out of buying and selling of securities, including the claims and obligations arising out of the determination by the Clearing Corporation or stock exchange, on the insolvency, winding-up, liquidation or resolution of any clearing member or trading member or client or such other circumstances as the Clearing Corporation may specify in its Byelaws, of the transactions admitted for settlement at a future date, so that only a net claim be demanded, or a net obligation be owed.

#### 16. NOVATION

"Novation" means the act of one or more recognised clearing corporations interposing between the parties of every trade, so as to be a legal counterparty.

## 17. RECEIVING MEMBER

"Receiving Member" means a clearing member who has to receive or has received commodities or documents of title or other relevant documents of commodities in fulfilment of contracts to which these Rules, Bye Laws and Regulations apply unless the context indicates otherwise.

## 18. REGULATIONS

"Regulations" means Regulations of the Clearing Corporation for the time being in force and includes business rules, code of conduct and such other procedures and regulations, circulars, directives and orders as issued by the relevant authority from time to time for the operations of the Commodity Derivatives Segment. .

## 19. RELEVANT AUTHORITY

"Relevant Authority" means the Board, or such other authority as specified by the Board from time to time as relevant for a specified purpose.

## 20. RULES

Unless the context indicates otherwise, "Rules" means the Rules of the Clearing Corporation for the time being in force.

## 21. SEBI

"SEBI" means the Securities and Exchange Board of India.

## 22. SECURITIES

"Securities" shall have the meaning assigned to it in the Securities Contracts (Regulation) Act, 1956 and shall also include such other class of instruments or products, monetary or non-monetary, scrip-less or otherwise, as may be admitted to be cleared and settled through the Clearing Corporation.

## 23. SPECIFIED EXCHANGE

"Specified Exchange" or "specified exchange" or "Concerned Exchange" means a recognised stock exchange under the Securities Contracts (Regulation) Act, 1956 dealings on which may be admitted to be cleared and settled by the Clearing Corporation in its Commodity Derivative Segment subject to such terms and conditions as may be specified from time to time by the relevant authority.

## 24. TRADING MEMBER

"Trading Member" means any person admitted as a member in any Specified Exchange in accordance with the Rules, Bye Laws and Regulations of that Exchange.

**25. VAULT SERVICE PROVIDER (VSP)**

‘Vault Service Provider’ means an agency approved and accredited by the Clearing Corporation for the storage and preservation of commodities such as precious metals, gems etc.

**26. WAREHOUSE**

“Warehouse” means and includes any place of storage, godown, tank, silos, store house, vault, etc. where commodities are capable of being received and stored.

**27. WAREHOUSE/ VAULT RECEIPT**

“Warehouse/ Vault Receipt” means a document, whether in physical or electronic form evidencing a commodity being held in an approved or accredited warehouse.

**28. WAREHOUSE SERVICE PROVIDER**

‘Warehouse Service Provider’ means an agency approved and accredited by the Clearing Corporation for the storage and preservation of commodities.

Note : The terms defined above shall mean the same when used in lower case in the Rules, Bye Laws and Regulations, unless the context indicates otherwise.

**29. RELEVANT COMMITTEE**

‘Relevant Committee’ shall mean the Member and Core Settlement Guarantee Fund Committee or such other committee as stipulated by SEBI from time to time.

## **CHAPTER II: CLEARING SEGMENTS**

1. There may be more than one clearing segment as may be specified by the relevant authority under these Byelaws from time to time.
2. Without affecting the generality of the foregoing, the Clearing Corporation shall have the following clearing segments under these Byelaws:

### Commodity Derivative segment

Derivatives contracts approved by SEBI may be admitted for clearing and settlement on the Commodity Derivative clearing segment.

3. The Clearing Corporation may establish more than one clearing sub-segment or division in the Commodity Derivative Segment as may be specified by the relevant authority from time to time. Deals which may be admitted to the different clearing sub-segments or divisions of Commodity Derivative Segment for the purpose of clearing and settlement will be specified by the relevant authority from time to time.
4. These Byelaws shall apply to the Commodity Derivative clearing segment and to the sub-segments, if any, thereof.

### **CHAPTER III: COMMITTEE(S)**

1. Committee(s) may be appointed by the Board for the purposes of managing the day to day affairs of the Commodity Derivative Segment of the Clearing Corporation in such manner as laid down in the Rules.
2. The Committee(s) shall have such responsibilities and powers as may be delegated to it by the Board.
3. The Committee(s) shall not have any representation from the Clearing Members and Trading Members. The composition of such Committee(s) shall be subject to the prior approval of Securities and Exchange Board of India (SEBI).

## CHAPTER IV: REGULATIONS

The Board may prescribe Regulations from time to time for the functioning and operations of the Clearing Corporation and to regulate the functioning and operations of the clearing members of the Commodity Derivative Segment.

Without prejudice to the generality of the above, the Board may prescribe regulations from time to time, inter alia, with respect to:

- (1) forms, procedures, terms and conditions for admission of Exchanges;
- (2) norms, procedures, terms and conditions to be complied with for admission of deals for clearing and settlement in the Commodity Derivative Segment by the Clearing Corporation;
- (3) norms, procedures, terms and conditions for clearing and settlement of deals in the Commodity Derivative Segment ;
- (4) forms and conditions of deals to be entered into, and the time, mode and manner for performance of deals between clearing members inter se or between clearing members and their constituents;
- (5) norms, procedures, terms and conditions for guaranteed settlement by the Clearing Corporation.
- (6) prescription, from time to time, and administration of penalties, fines and other consequences, including suspension/expulsion of clearing members from the Clearing corporation for defaults;
- (7) norms, procedures, terms and conditions for imposition and administration of different types of margins and other charges and restrictions that may be imposed by the Clearing Corporation from time to time.
- (8) determination from time to time, of fees, system usage charges, deposits, margins and other monies payable to the Clearing Corporation by clearing members of the Clearing corporation and the scale of clearing and other charges that may be collected by such clearing members;
- (9) supervision of the clearing operations and promulgation of such Business Rules and Codes of Conduct as it may deem fit;
- (10) inspection and audit of records and books of accounts;
- (11) settlement of disputes, complaints, claims arising between clearing members inter se as well as between clearing members and persons who are not clearing members relating to any deal in Commodity Derivatives cleared and settled through Clearing Corporation including settlement by arbitration;
- (12) norms, procedures, terms and conditions for arbitration;
- (13) administration, maintenance and investment of the corpus of the Fund(s) set up by the Clearing Corporation including Core Settlement Guarantee Fund(s);
- (14) establishment, norms, terms and conditions, functioning and procedures of clearing house, clearing through depository or other arrangements including custodial services for clearing and settlement;
- (15) norms, procedures, terms and conditions in respect of, incidental to or consequential to closing out of deals;
- (16) dissemination of information and announcements;
- (17) norms, procedures, terms and conditions for vault service provider (VSP) or warehouse service provider (WSP) for the purpose of providing warehouse related services.
- (18) norms, procedures, terms and conditions for assayers and refiners
- (19) any other matter as maybe decided by the Board.



## **CHAPTER V: CLEARING MEMBERS**

1. The relevant authority is empowered to admit Clearing Members in accordance with Rules and Regulations subject to the minimum financial requirements prescribed by SEBI. Such Clearing Members shall pay such fees, security deposits and other monies as may be specified by the Board or the relevant authority from time to time, on admission as Clearing Members and for continued admission.
2. The fees, security deposits, other monies and any additional deposits paid, whether in the form of cash, bank guarantee, securities or otherwise, with the Clearing Corporation, by a Clearing Member from time to time, shall be subject to a first and paramount lien for any sum due to the Clearing Corporation in any Clearing Segment and all other claims against the Clearing Member for due fulfilment of engagements, obligations and liabilities of Clearing Members arising out of or incidental to any dealings made subject to the Byelaws, Rules and Regulations of the Clearing Corporation in any Clearing Segment. The Clearing Corporation shall be entitled to adjust or appropriate such fees, deposits and other monies for such dues and claims, to the exclusion of the other claims against the Clearing Member, without any reference to the Clearing Member.  
The proceeds arising out of invocation of the bank guarantees furnished by the Clearing Member in lieu of security deposits or additional deposits on being invoked by the Clearing Corporation shall not be reckoned as part of the Clearing Member's deposits for the purpose of enablement or exposure, etc.
3. The Clearing Corporation may utilise the proceeds of the bank guarantee so invoked for the purpose of settlement of claims / dues of clients, Clearing Corporation, the stock exchange or SEBI against the Clearing Member. The surplus, if any, shall be refunded to the Clearing Member. Clearing Member of any sub-segment may clear and settle deals through the Clearing Corporation pertinent to that sub-segment in such manner and mode and subject to such terms and conditions and procedures as may be specified for the Clearing Member.
4. Clearing Members may clear and settle deals either on their own account or on behalf of their clients unless otherwise specified by the relevant authority and subject to such terms and conditions which the relevant authority may prescribe from time to time.

## **CHAPTER VI: CLEARING AND SETTLEMENT OF DEALS**

### **A. DEALS FOR CLEARING AND SETTLEMENT**

#### **1. CLEARING AND SETTLEMENT OF DEALS**

- (1) The Clearing Corporation shall clear and settle such deals as provided in the Bye Laws and Regulations and save as so provided, no other deals shall be cleared and settled.
- (2) Without prejudice to the generality of the above, the relevant authority may in its discretion and subject to such conditions as it may deem fit admit any other deals.

#### **2. ADMISSION OF DEALS**

- (1) Clearing and settlement shall be permitted on the Clearing Corporation in deals which are from time to time admitted on the Commodity Derivative Segment by the relevant authority in accordance with the provisions of the Bye Laws and Regulations.
- (2) The relevant authority may specify Derivative Contracts from time to time dealings on which may be admitted in accordance with the provisions of the Bye Laws and Regulations in that regard.
- (3) The relevant authority may specify stock exchanges from time to time dealings on which may be admitted for clearing and settlement by the Clearing Corporation in accordance with the provisions of the Bye Laws and Regulations.

#### **3. CONDITIONS AND REQUIREMENTS OF CLEARING AND SETTLEMENT**

The relevant authority may grant admission of deals dealt in the Exchange provided all the conditions and requirements specified in the Bye Laws and Regulations and such other conditions and requirements as the relevant authority may prescribe from time to time are complied with.

#### **4. REFUSAL OF ADMISSION OF DEALS**

The relevant authority may, in its discretion, approve admission of deals or defer, or reject admission of deals for clearing and settlement on the Commodity Derivative Segment, subject to such terms as it deems fit.

#### **5. SPECIFIC DEALS**

The relevant authority may permit in appropriate cases as it may at its discretion decide from time to time specific deals to be cleared and settled through the Clearing Corporation in case of commodity derivatives which are not admitted or are for the time being prohibited or suspended.

#### **6. SUSPENSION OF ADMISSION OF DEALS**

The relevant authority may suspend at any time the admission of deals including of any derivative contract of specified exchange on Commodity Derivative Segment for such period as it may determine and reinstate such deals subject to such conditions as it may deem fit.

## 7. WITHDRAWAL OF ADMISSION OF DEALS

The relevant authority may where it deems necessary withdraw the admission to dealings of a specified exchange either for breach of or non-compliance with any of the conditions or requirements of admission of dealings or for any other reason whatsoever

## 8. READMISSION OF DEALS

The relevant authority in its discretion may readmit deals of a specified exchange which has been previously withdrawn.

## **B. CLEARING AND SETTLEMENT OF DEALS**

### 9. CLEARING AND SETTLEMENT

Settlement shall be effected by clearing members giving and receiving delivery and paying and receiving funds on the basis of the Final Settlement Price as may be specified by the relevant authority from time to time in the Bye Laws and Regulations.

#### 9(A). Settlement Finality

- (1) The payment and settlement in respect of a deal shall be determined in accordance with the netting or gross procedure as specified by the relevant authority with the prior approval of SEBI in the circulars issued from time to time.
- (2) Payment and settlement in respect of a deal shall be final, irrevocable and binding on the Clearing Members.
- (3) When a settlement has become final and irrevocable, the right of the Clearing Corporation to appropriate any collaterals or deposits or margins contributed by the clearing member towards its settlement or other obligations in accordance with these Byelaws shall take priority over any other liability of or claim against the said clearing member.
- (4) For removal of doubts, it is hereby declared that the settlement, whether gross or net, referred to in Clause (i) above is final and irrevocable as soon as the money, securities or other transactions payable as a result of such settlement is determined, whether or not such money, securities or other transactions is actually paid.
- (5) For the purpose of Clause (i) above, "netting" means the determination by Clearing Corporations of net payment or delivery obligations of the clearing members of a recognised clearing corporation by setting off or adjustment of the inter se obligations or claims arising out of buying and selling of securities, including the claims and obligations arising out of the determination by the Clearing Corporation or stock exchange, on the insolvency, winding up, liquidation or resolution of any clearing member or trading member or client or such other circumstances as the Clearing Corporation may specify in its Byelaws, of the transactions admitted for settlement at a future date, so that only a net claim be demanded, or a net obligation be owed.
- (6) For removal of doubts, it is hereby declared that claims and obligations arising out of the termination by the Clearing Corporation referred to in clause (v) above shall mean claims and obligations arising out of deals closed out in accordance with these Byelaws.

9 (B). Right of Clearing Corporation

The right of clearing corporation to recover the dues from its clearing members, arising from the discharge of their clearing and settlement functions, from the collaterals, deposits and the assets of the clearing members, shall have priority over any other liability of or claim against the clearing members.

10. PRIVACY OF CONTRACT

- (1) Except as provided herein, clearing members giving and receiving delivery as provided in the Bye Laws and Regulations shall be deemed, notwithstanding that no direct contract may exist between them, to have made a contract with each other as sellers and buyers. However the rights and liabilities of delivering and receiving member in relation to their immediate contracting party shall not be deemed to be affected thereby except that the selling member (unless he be himself the delivering member) shall be released from all responsibility in regard to the title, ownership, genuineness, regularity and validity of the documents received by the receiving member and in regard to the loss and damages arising therefrom, which shall be dealt with in accordance with the provisions of Bye Laws and Regulations thereof.
- (2) In cases where the Clearing Corporation may specify either generally or specifically, clearing members giving and receiving delivery and paying and receiving funds as provided in the Bye Laws and Regulations shall be deemed, notwithstanding that no direct contract exists between them, to have made a contract with the Clearing Corporation through full novation as sellers and buyers and between themselves as delivering and receiving members; provided further however that in such event the rights and liabilities of delivering and receiving member with the Clearing Corporation shall not be deemed to be affected thereby except that the Clearing Corporation shall not be responsible in respect of the title, ownership, genuineness, regularity and validity of the documents delivered or received and in regard to the loss and damages arising therefrom, which shall be dealt with in accordance with the provisions of Bye Laws and Regulations.
- (3) Notwithstanding anything contained above, the Clearing Corporation may specify either generally or specifically, where Clearing Members clearing and settling deals as provided in the Bye laws and Regulations shall be deemed, notwithstanding that no direct contract exists between them, to have made a contract between themselves as buyers and sellers and where such contract shall be submitted with the Clearing Corporation as the buyer to the seller and as the seller to the buyer.
- (4) The responsibility of the Clearing Corporation under novation shall be for guarantee of funds pay-out till marking of delivery (date of delivery) and for guarantee of financial compensation to the extent as specified by the Clearing Corporation (to make good losses of non-defaulting party) in case of default (in goods or funds pay-in) after marking of delivery. In case of dispute pertaining to quality or quantity/ any damage arising after the delivery shall be addressed through the complaint redressal mechanism, including arbitration mechanism of the Clearing Corporation and can be settled in terms of financial compensation.
- (5) The nature of the guarantee by the Clearing Corporation is strictly financial, that is, in case of buyer default or seller default, the Clearing Corporation shall guarantee financial compensation to the extent as specified by the Clearing Corporation to make good any monetary loss to non-defaulting party.

## 11. ARRANGEMENT FOR CLEARING AND SETTLEMENT

- (1) Clearing and settlement of deals shall be effected by clearing members by adopting and using such arrangements, systems, agencies or procedures as may be specified by the relevant authority from time to time. Without prejudice to the generality of the above, the relevant authority may prescribe or specify from time to time such custodial, depository and other services for adoption and use by clearing members and their constituents to facilitate smooth operation of the clearing and settlement arrangement or system.
- (2) The clearing and settlement function may be performed by the Clearing Corporation or it may take assistance of any agency identified by the relevant authority for the purpose.
- (3) Save as otherwise expressly provided in the Bye Laws and Regulations, when funds and Commodity Derivative Contracts are cleared and/or settled under a specified arrangement, the settlement responsibility shall rest wholly and solely upon the counter parties to the contract and/or the concerned clearing members as the case may be and the Clearing Corporation shall act as the common agent of the clearing members for receiving or giving delivery of Commodity and for receiving and paying funds, without incurring any liability or obligation as a principal.

## 12. OPERATIONAL PARAMETERS FOR CLEARING

- (1) The relevant authority may determine and announce from time to time operational parameters regarding clearing of deals through the Clearing Corporation Commodity Derivative Segment which the clearing members shall adhere to.
- (2) The operational parameters may, inter alia, include:
  - (a) clearing/exposure limits allowed which may include clearing/exposure limits with reference to net worth and capital adequacy norms;
  - (b) clearing volumes and limits at which it will be incumbent for clearing members to intimate the Clearing Corporation ;
  - (c) fixation of delivery lots for different settlement types;
  - (d) other matters which may affect smooth operation of clearing of deals keeping in view larger interest of the public;
  - (e) determining types of deals permitted for a clearing member and for a Derivative contract;
  - (f) determining functional details of the clearing and settlement system including the system design, user infrastructure and system operation.

## 13. CLEARING HOURS

- (1) The hours for clearing and settling of Commodity Derivative Segment of the Clearing Corporation shall be during such time as may be decided by the relevant authority from time to time. The relevant authority may, from time to time, specify clearing hours for different types of deals and different clearing sub- segments or divisions of the Commodity Derivative Segment. .
- (2) The relevant authority may declare a list of holidays in a calendar year. The relevant authority may from time to time alter or cancel any of the holidays fixed in accordance with these provisions. It may, for reasons to be recorded, suspend clearing and settlement operations in the Commodity Derivative Segment on days other than or in addition to holidays.

#### 14. DELIVERY OF COMMODITIES

- (1) Delivery and settlement of all commodities, documents and papers including Warehouse/ Vault Receipt and payment in respect of all deals in Commodity Derivative Segment shall be in such manner and such place(s) as may be specified by the relevant authority from time to time.
- (2) The relevant authority shall specify from time to time, the commodities, documents and papers including Warehouse/ Vault Receipt which, when delivered in specified manner, shall constitute good delivery. Where circumstances so warrant, the relevant authority may determine, for reasons to be recorded, whether or not a delivery constitutes a good delivery, and such findings shall be binding on parties concerned. Where the relevant authority determines that a delivery does not constitute a good delivery, the delivering party shall be required to substitute good delivery instead within such time as may be specified.
- (3) The norms and procedures for delivery with respect to market lot, odd lot, minimum lot, part delivery etc., shall be as specified by the relevant authority from time to time.
- (4) The requirements and procedures for determining disputed deliveries or defective deliveries, and measures, procedures and system of resolving the dispute or defect in deliveries or of consequences of such deliveries or their resolution shall, subject to these Bye Laws, be as specified by the relevant authority from time to time.
- (5) Notwithstanding anything contained in the Bye-laws, the Clearing Corporation shall ensure guarantee for settlement of trades including good delivery.  
Explanation: For the purpose of this clause, good delivery shall mean the delivery of goods that is in proper form to transfer title and is of the quality and quantity as per the contract specifications of the Specified Exchange.

#### 15. TRANSFER OF POSITION

A deal admitted for clearing and settlement may be transferred to another clearing member with his consent on the failure of a clearing member to comply with any of the provisions relating to delivery, payment and settlement of deals or on any failure to fulfil the terms and conditions subject to which the deal has been made, or such other circumstances as the relevant authority may specify from time to time. The deal may be transferred to another clearing member by the Clearing Corporation in such manner, within such time frame, and subject to such conditions and procedures as the relevant authority may prescribe from time to time

#### 16. CLOSE OUT

- (1) A deal admitted for clearing and settlement may be closed out on failure of a clearing member to comply with any of the provisions relating to delivery, payment and settlement of deals or on any failure to fulfil the terms and conditions subject to which the deal has been made, or such other circumstances as the relevant authority may specify from time to time. The deal may be closed out by the Clearing Corporation in such manner, within such time frame and subject to such conditions and procedures as the relevant authority may prescribe from time to time.
- (2) Without prejudice to the generality of the foregoing, the relevant authority may close out deals, inter alia, by buying in or selling out against a clearing member as follows:-
  - (a) in case of the selling clearing members, on failure to complete delivery on the due date; and

- (b) in case of the buying clearing members, on failure to pay the amount due on the due date,
  - (c) and any loss, damage or shortfall sustained or suffered as result of such closing out shall be payable by the clearing members who failed to give due delivery or to pay amount due.
- (3) In case of default by a clearing member to the Clearing Corporation arising out of the positions in one or more clearing segments, the relevant authority shall be entitled to close-out the positions of a clearing member in any or all clearing segments.
- (4) The Clearing Corporation shall be entitled to hold the positions in its own name, either fully or part thereof in the above clause till expiry at its discretion subject to such terms and conditions as it may deem fit.

#### 17. FAILURE TO MEET OBLIGATIONS

In the event a clearing member fails to meet obligations to the Clearing Corporation arising out of clearing and settlement operations of admitted deals, the relevant authority may charge such interest, impose such penalties and fines and take such disciplinary action against the clearing member as it may determine from time to time. Any disciplinary action which the relevant authority takes pursuant to the above shall not affect the obligations of the clearing member to the Clearing Corporation or any remedy to which the Clearing Corporation may be entitled under applicable law.

## **CHAPTER VII: DEALINGS BY CLEARING MEMBERS**

### **1. JURISDICTION**

- (1) All deals admitted by the Clearing Corporation in its Commodity Derivative Segment for clearing and settlement shall be deemed to have been entered into in the city of Mumbai unless provided otherwise expressly by the relevant authority.
- (2) The relevant authority may, from time to time, specify deals as subject to a particular jurisdiction, having regard to the type or nature of the deal, the exchange on which the deal was struck and other relevant factors.

### **2. RECORD FOR EVIDENCE**

The record of the Commodity Derivative Segment as maintained by a central processing unit or a cluster of processing units or computer processing units, whether maintained in any other manner shall constitute the agreed and authentic record in relation to any deals cleared and settled through the Clearing Corporation. For the purposes of any disputes regarding clearing and settlement of deals, the records as maintained by the Clearing Corporation shall constitute valid evidence in any dispute or claim between the constituents and the clearing member or between the clearing members inter-se or between the clearing members and the Clearing Corporation.

### **3. CLEARING MEMBER ONLY PARTIES TO DEALS**

The Clearing Corporation in its Commodity Derivative Segment does not recognise as parties to deals any persons other than its own clearing members, and every clearing member is directly and wholly liable in accordance with whom such clearing member has any deal for due fulfilment of the deal or to the Clearing Corporation as may be specified by the relevant authority, whether such deal be for account of the clearing member effecting it or for account of a constituent.

### **4. ALL DEALS SUBJECT TO RULES, BYE LAWS AND REGULATIONS**

All deals shall be made subject to the Rules, Bye Laws and Regulations and this shall be a part of the terms and conditions of all such deals and the deals shall be subject to the exercise by the relevant authority of the powers with respect thereto vested in it by the Bye Laws, Rules and Regulations.

### **5. INVIOABILITY OF ADMITTED DEALS**

- (1) All the dealings in the Commodities Derivative Segment of the Clearing Corporation made subject to the Byelaws, Rules and Regulations shall be in- violable and shall be cleared and settled in accordance with the Bye Laws , Rules and Regulations. However, the Clearing Corporation may by a notice annul the deal(s) on an application by a Clearing Member in that behalf, if the relevant authority is satisfied after hearing the other party/parties to the deal(s) that the deal(s) is /are fit for annulment on account of fraud or wilful misrepresentation or material mistake in the deal.
- (2) Notwithstanding anything contained in clause (1) above, the Clearing Corporation may, to protect the interest of investors in securities and for proper regulation of the securities



market, suo motu annul deal(s) at any time if the relevant authority is satisfied for reasons to be recorded in writing that such deal(s) is/ are vitiated by fraud, material mistake, misrepresentation or market or price manipulation and the like.

- (3) Any annulment made pursuant to clauses (1) and (2) above, shall be final and binding upon the parties to deal(s). In such an event, the Clearing Member shall be entitled to cancel the relevant deal(s) with its constituents.

#### 6. DEALS BY REPRESENTATIVE CLEARING MEMBERS

A clearing member may authorise another clearing member to act as his representative for a specified period with the prior permission of the relevant authority.

#### 7. INDEMNITY

The Clearing Corporation shall not be liable for any activity of the Clearing member or any person acting in the name of the clearing member whether authorised or unauthorised including deals cleared and settled through the Clearing Corporation in the Commodity Derivative save and except as and to the extent provided in the Bye laws and Regulations.

#### 8. POTENTIAL DEFAULT BY CLEARING MEMBER

- (1) The Clearing Corporation shall act in accordance with the circulars issued by SEBI from time to time with respect to Standard Operating Procedure in cases of Clearing Member leading to default.

(2) In accordance with the Circular(s) issued by SEBI under the above Byelaw, the Clearing Corporation shall issue instructions to the bank(s) concerned to freeze the bank account(s) maintained by a Clearing Member, for all debits / withdrawal by the Clearing Member in the event of potential default by such a Clearing Member in meeting its obligations to a recognised stock exchange / Clearing Member / Clearing Corporation and / or repayment of funds / securities to his / its clients.

## **CHAPTER VIII: MARGINS**

### **1. MARGIN REQUIREMENTS**

- (1) The relevant authority may from time to time prescribe requirements of margins for deals cleared and settled through the Clearing Corporation in the Commodity Derivative Segment and the clearing member shall furnish such margin as a condition precedent.
- (2) Without prejudice to clause (1) above, the relevant authority may provide cross margin benefit for deals cleared and settled through the Clearing Corporation for such positions in one or more clearing segments subject to such terms and conditions as may be prescribed from time to time.
- (3) Every Clearing Member has a continuing obligation to maintain margins at such levels and during such periods as may be stipulated by the Clearing Corporation from time to time.

### **2. FORM OF MARGIN**

The margins to be provided by a clearing member under the Bye Laws and Regulations in the Commodity Derivative Segment shall be in cash. The relevant authority may at its discretion accept deposit receipts, guarantee of a bank(s) approved by the relevant authority or securities approved by it or such other mode as may be approved and subject to such terms and conditions as the relevant authority may impose from time to time. Any such substitute like deposit receipt, securities approved by it or any other mode duly approved shall be deemed to have been pledged and/or hypothecated as the case may be in favour of the Clearing Corporation in respect of Commodity Derivative Segment

### **3. QUANTUM OF MARGIN**

The Clearing Member depositing margins, in the form of securities or commodities by way of pledge or otherwise or in such other mode as may be specified by the relevant authority from time to time, shall always maintain the value thereof at not less than the quantum of margin required for the time being covered by them by providing further security to the satisfaction of the relevant authority which shall determine the said value and whose valuation shall conclusively fix the amount of any deficiency to be made up from time to time.

### **4. MARGIN TO BE HELD BY THE CLEARING CORPORATION IN RESPECT OF COMMODITY DERIVATIVE SEGMENT**

The margins shall be held by the Clearing Corporation in respect of Commodity Derivative Segment and when they are in the form of bank deposit receipts, securities, commodities such receipts, securities, commodities may be transferred to such persons or to the name of a custodian or such other entity approved by the Clearing Corporation. All margin deposits shall be held by the Clearing Corporation and/or by the approved persons and/or by the approved custodian in such form and on such account as the Clearing Corporation may deem fit without any right whatsoever on the part of the depositing clearing member or those in its right to call in question the exercise of such discretion.

## 5. LIEN ON MARGINS

The monies paid by way of margin or bank deposit receipts or other securities or assets pledged or hypothecated by a clearing member in lieu of margin under the provisions of the Bye Laws and Regulations shall be subject to a first and paramount lien for all sums due to the Clearing Corporation in respect of Commodity Derivative Segment Margin shall be available in preference to all other claims against the clearing member for the due fulfilment of his obligations and liabilities arising out of or incidental to any deals made subject to the Bye Laws, Rules and Regulations or anything done in pursuance thereof.

## 6. UTILISATION FOR FAILURE TO MEET OBLIGATIONS

- (1) In the event a clearing member fails to meet obligations to the Clearing Corporation arising out of clearing and settlement operations of such deals on Commodity Derivative Segment as provided in the Bye Laws and Regulations, the relevant authority shall be entitled to utilise any amount paid by the said clearing member in the form of margin or any other payment retained by the Clearing Corporation for the purpose of clearing and settlement on the Commodity Derivative Segment
- (2) In case of default by a clearing member to the Clearing Corporation arising out of the positions in one or more clearing segments, the relevant authority shall be entitled to utilise the margins or any other monies of such a clearing member in any other clearing segment in order to meet the obligations arising out of such positions.

## 7. EVASION OF MARGIN REQUIRMENTS FORBIDDEN

A clearing member shall not directly or indirectly enter into any arrangement or adopt any procedure for the purpose of evading or assisting in the evasion of the margin requirements specified under the Bye Laws and Regulations.

## 8. SUSPENSION ON FAILURE TO PAY MARGIN

If a clearing member fails to pay margin as required in the Bye Laws and Regulations, the relevant authority may take such action as it may deem fit and specify from time to time including suspension.

## 9. CLEARING FEES

The relevant authority may prescribe from time to time fees, charges and recoveries to be levied on the clearing members in respect of clearing and settlement of deals.

## **CHAPTER IX: RIGHTS AND LIABILITIES OF CLEARING MEMBERS AND CONSTITUENTS**

### **1. MARGIN FROM CONSTITUENTS**

A clearing member shall demand from his constituent the margin he has to provide under the Rules, Bye Laws and Regulations in respect of the business done by him for such constituent. A clearing member shall also demand and collect an initial margin in cash, securities or commodities from his constituent before undertaking to clear his obligations and to stipulate that the constituent shall pay a margin or furnish additional margin as may be specified by the Clearing Corporation from time to time. The constituent shall when from time to time called upon to do so forthwith pay margins and furnish additional margins as required under the Rules, Bye Laws and Regulations in respect of his obligations and as agreed upon by him with the clearing member concerned.

### **2. CONSTITUENT IN DEFAULT**

- (1) A clearing member shall not transact business directly or indirectly for a constituent who to his knowledge is in default to another clearing member unless such constituent shall have made a satisfactory arrangement with the clearing member who is his creditor.
- (2) On the application of a creditor clearing member who refers or has referred to arbitration his claim against the defaulting constituent as provided in the Rules, Bye Laws and Regulations, the relevant authority shall issue orders against any clearing members restraining them from paying or delivering to the defaulting constituent any monies or securities up to an amount or value not exceeding the creditor member's claim payable or deliverable by him to the defaulting constituent in respect of deals subject to the Bye Laws, Rules and Regulations, which moneys and securities shall be deposited with the clearing corporation. The moneys and securities deposited shall be disposed of in terms of the award in arbitration and pending a decree shall be deposited with the concerned Court when filing the award unless the creditor clearing member and the defaulting constituent mutually agree otherwise.

### **3. CLOSING-OUT OF CONSTITUENT'S ACCOUNT**

Unless otherwise specified by the relevant authority from time to time, when closing-out the account of a constituent a clearing member may assume or take over such deals to his own account as a principal at prices which are fair and justified by the condition of the market or he may close-out in the open market and any expense incurred or any loss arising therefrom shall be borne by the constituent.

### **4. CLOSING-OUT BY CONSTITUENT ON FAILURE TO PERFORM A DEAL**

If a clearing member fails to complete the performance of a deal by delivery or payment in accordance with provisions of the Rules, Bye Laws and Regulations, the constituent shall, after giving notice in writing to the clearing member, close out such deal through any other clearing member as soon as possible and any loss or damages sustained as a result of such closing out shall be immediately payable by the defaulting clearing member to the constituent. If the closing out be not effected as provided herein, the damages between the parties shall be determined on such basis as may be specified by the relevant authority from

time to time and the constituent and the clearing member shall forfeit all further rights of recourse against each other.

#### 5. COMPLAINT BY CONSTITUENT

When a complaint has been lodged by a constituent with the relevant authority that any clearing member has failed to perform his dealings, the relevant authority shall investigate the complaint and if it is satisfied that the complaint is justified it may take such disciplinary action as it deems fit in accordance with the provisions contained in Chapter V of the Rules of the Commodity Derivative Segment of the Clearing Corporation.

6. RELATIONSHIP BETWEEN CLEARING MEMBER AND CONSTITUENT Without prejudice to any other law for the time being in force and subject to these Bye laws, the mutual rights and obligations inter se between the clearing members and their constituents shall be such as may be specified by the relevant authority from time to time.

7. When a complaint has been lodged by a constituent, or on its behalf by the relevant authority, against a clearing member that such clearing member has failed to satisfactorily perform in its dealings or for meeting its obligations, then such complaint shall be taken up with the clearing member and upon -the complaint remaining unresolved within 7 days or within such time as specified by SEBI from time to time, the complaint shall be placed before the Grievance Redressal Committee or such other Committee for redressal of the grievance in accordance with such procedure as specified by SEBI from time to time;

Explanation(1):

For the purpose of this clause, the term “Constituent” shall mean Custodial Participant or a Trading Member on whose instructions and/or on whose account the Clearing Member clears and settles deals.

Explanation(2):

For the purpose of this clause, the term “Custodial Participant” shall mean a direct constituent/client of a Clearing Member.

## **CHAPTER X: ARBITRATION**

1. All claims, disputes, differences, arising between Clearing Members and Constituents or between Clearing Members inter se arising out of or related to deals admitted for clearing and settlement by the Clearing Corporation in respect of Commodity Derivative Segment or with reference to anything done in respect thereto or in pursuance of such deals shall be referred to and decided by arbitration as provided in the Rules, Byelaws and Regulations of the National Stock Exchange of India Limited if the deal originated from it or in pursuance thereof.

2. All claims, disputes, differences, arising between Clearing Members and Constituents or between Clearing Members inter se arising out of or related to deals admitted for clearing and settlement by the Clearing Corporation in respect of Commodity Derivative Segment or with reference to anything done in respect thereto or in pursuance of such deals shall be referred to and decided by arbitration as provided in the Rules, Byelaws and Regulations of the Clearing Corporation if the deal originated from any Specified Exchange other than the National Stock Exchange of India Limited or in pursuance thereof. The provisions of these Byelaws providing for such arbitration are as hereunder:

(1) Definitions

(a) 'arbitrator' shall mean a sole arbitrator or a panel of arbitrators.

(b) 'Act' shall mean the Arbitration and Conciliation Act, 1996 and includes any statutory modification, replacement or re-enactment thereof, for the time being in force.

### Reference to Arbitration

(2) All claims, differences or disputes between the Clearing Members inter se and between Clearing Members and Constituents arising out of or in relation to dealings, contracts and transactions admitted for clearing and settlement on the Clearing Corporation subject to the Bye-Laws, Rules and Regulations or with reference to anything incidental thereto or in pursuance thereof or relating to their validity, construction, interpretation, fulfillment or the rights, obligations and liabilities of the parties thereto shall be submitted to arbitration in accordance with the provisions of these Byelaws and Regulations.

### Provisions of these Byelaws and Regulations deemed to form part of all dealings, contracts and transactions

(3) In all dealings, contracts and transactions, which are admitted for clearing and settlement on the Clearing Corporation subject to the Byelaws, Rules and Regulations, the provisions relating to arbitration as provided in these Byelaws and Regulations shall form and shall be deemed to form part of the dealings, contracts and transactions and the parties shall be deemed to have entered into an arbitration agreement in writing by which all claims, differences or disputes of the nature referred to in Byelaw (2) above shall be submitted to arbitration as per the provisions of these Byelaws and Regulations.

#### Limitation period for reference of claims, differences or disputes for arbitration

- (4) All claims, differences or disputes referred to in Byelaw (2) above shall be submitted to arbitration within six months from the date on which the claim, difference or dispute arose or shall be deemed to have arisen. The time taken in conciliation proceedings, if any, initiated and conducted as per the provisions of the Act and the time taken by the relevant authority to administratively resolve the claims, differences or disputes shall be excluded for the purpose of determining the period of six months.

#### Power of the relevant authority to prescribe Regulations

- (5) (a) The relevant authority may, from time to time prescribe Regulations for the following:

- (i) the procedure to be followed by the parties in arbitral proceedings. In particular, and without prejudice to the generality of the foregoing power, such procedure may, inter alia, provide for the following:
- (a) the forms to be used;
  - (b) the fees to be paid;
  - (c) the mode, manner and time period for submission of all pleadings by both the parties;
  - (d) matters relating to requests from the parties for amending or supplementing the pleadings; and
  - (e) the consequences upon failure to submit such pleadings by the parties.
- (ii) the procedure to be followed by the arbitrator in conducting the arbitral proceedings. In particular, and without prejudice to the generality of the foregoing power, such procedure may, inter alia, provide for
- (a) adjournment of hearings; and
  - (b) terms and conditions subject to which the arbitrator may appoint experts to report on specific issues and the procedure to be followed in arbitral proceedings upon such an appointment.
  - (c) passing interim orders / directions if deemed fit.
- (iii) Different set of arbitration procedures for different claims, differences or disputes after taking into consideration such circumstances and facts as the relevant authority may deem fit which circumstances and facts may include the value of the subject matter and the persons who are involved as parties to such claims, differences or disputes.
- (iv) creation of seats of arbitration for different regions or prescribing geographical locations for conducting arbitrations and prescribing the courts which shall have jurisdiction for the purpose of the Act.
- (v) The claims, differences or disputes which may be referred to a sole arbitrator and the claims, differences or disputes which may be referred to a panel of arbitrators.
- (vi) The procedure for selection of persons eligible to act as arbitrators.
- (vii) The procedure for appointment of arbitrator.
- (viii) The terms, conditions and qualifications subject to which any arbitrator may be appointed.

- (ix) determination of the number of arbitrators in the case of a panel of arbitrators.
- (x) the time period within which a substitute arbitrator has to be appointed in case the office of the arbitrator falls vacant for any reason whatsoever.
- (xi) The matters to be disclosed by any person who is approached in connection with his possible appointment as an arbitrator.
- (xii) The procedure to be adopted by the parties for challenging the appointment of an arbitrator.
- (xiii) (a) The claims, differences or disputes which, may be decided by the arbitrator without a hearing unless either party in writing requests the relevant authority for a hearing and the time period within which such a request shall be made.  
(b) The claims, differences or disputes which, may be decided by the arbitrator only by hearing the parties unless both the parties jointly waive the right to such hearing and the time period within which such a waiver shall be made.
- (xiv) The place of arbitration for each reference and the places where the arbitrator can meet for consultation, for hearing witnesses, experts, or the parties, or for inspection of documents, goods or other property.
- (xv) The making of the arbitral award including the manner in which a decision is to be taken in the case of panel of arbitrators and the form and contents of the arbitral award.
- (xvi) The term arbitral award shall also include an arbitral award on agreed terms. Prescriptions as to the contents of the arbitral award may include provisions for costs and where the arbitral award is for the payment of money, may include interest payable on principal sum due.
- (xvii) The amount of deposit or supplementary deposit, as the case may be, as an advance for the costs which it expects will be incurred in respect of the claim, difference or dispute; provided where a counter-claim is submitted to the arbitrator, a separate amount of deposit for the counter-claim may also be specified.
- (xviii) The administrative assistance which the Clearing Corporation may render in order to facilitate the conduct of arbitral proceedings.
- (xix) All matters regarding the mode and the manner of service of notices and communications by the parties including communication addressed to arbitrator.
- (xx) Any other matter which in the opinion of the relevant authority is required to be dealt with in the Regulations to facilitate arbitration.

(5) (b) The relevant authority from time to time may amend, modify, alter, repeal, or add to the provisions of the Regulations.

#### Disclosure by persons to be appointed as arbitrators

- (6) Every person who is approached in connection with his possible appointment as an arbitrator, shall disclose to the relevant authority in writing any circumstances likely to give rise to justifiable doubts as to his independence and impartiality. If the person discloses any circumstances which in the opinion of the relevant authority are likely to give rise to justifiable doubts as to his independence and impartiality, then he shall not be appointed as an arbitrator.



#### Disclosure by persons appointed as arbitrators

- (7) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the relevant authority in writing any circumstances referred to in Byelaw (6) above which have come to his knowledge after his appointment as an arbitrator.

#### Termination of mandate of the arbitrator

- (8) The mandate of the arbitrator shall terminate if
- (a) the arbitrator withdraws from office for any reason; or
  - (b) in the opinion of the relevant authority, the arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay including failure to make the arbitral award within the time period specified by the relevant authority. Such a decision of the relevant authority shall be final and binding on the parties; or
  - (c) the mandate of the arbitrator is terminated by the relevant authority upon receipt of written request for the termination of the mandate of the arbitrator from both the parties to arbitration; or
  - (d) the arbitrator discloses any circumstances referred to in Byelaws (6) and (7) which in the opinion of the relevant authority are likely to give rise to justifiable doubts as to his independence and impartiality; or
  - (e) the arbitral proceedings are terminated as provided for herein.

#### Supplying of vacancy to the office of the arbitrator

- (9) At any time before the making of the arbitral award should the office of the arbitrator fall vacant for any reason whatsoever including any vacancy due to the illness or death of the arbitrator or termination of the mandate of the arbitrator by the relevant authority or otherwise, the vacancy shall be supplied by the relevant authority by following the same procedure as specified by it for appointment of the arbitrator.

#### Consideration of recorded proceedings and evidence

- (10) Unless otherwise agreed by parties, any arbitrator who has been appointed by the relevant authority to supply a vacancy to the office of the arbitrator may repeat any hearings previously held.

#### Order or ruling of previous arbitrator not invalid

- (11) An order or ruling of the arbitrator made prior to the termination of his mandate shall not be invalid solely because his mandate has been terminated; provided that when the termination has been effected pursuant to Byelaw (7)(d), the order or ruling of the arbitrator made prior to termination of his mandate shall become invalid unless otherwise agreed upon by the parties.

#### Interim arbitral award and interim measures ordered by the arbitrator

- (12) The arbitrator may be empowered to make an interim arbitral award as well as to provide interim measures of protection. An arbitrator may require a party to provide appropriate security in connection with an interim measure.

#### Appearance in arbitral proceedings by counsel, attorney or advocate

- (13) In arbitral proceedings where both the parties are Clearing Members, the parties shall not be permitted to appear by counsel, attorney or advocate but where one of the parties is a Constituent, then the Constituent shall be permitted to appear by counsel, attorney or advocate. If the Constituent chooses to appear by counsel, attorney or advocate, then the Clearing Member shall be granted a similar privilege.

#### Arbitral award by arbitrator

- (14) The arbitrator shall make the arbitral award within one month from the date of entering upon the reference and the time to make the award may be extended from time to time by the relevant authority on an application by either of the parties or the arbitrator as the case might be.

For the purpose of this Byelaw the arbitrator shall be deemed to have entered upon a reference on the date on which the arbitrator has or is deemed to have applied his mind.

#### Arbitration proceedings subject to the provisions of the Act

- (15) The arbitration proceedings as provided for by the provisions of these Byelaws and Regulations shall be subject to the provisions of the Act to the extent not provided for in these Byelaws or the Regulations.

#### Construction of references

- (16) For the purposes of section 2(6) of the Act, in all claims, differences or disputes which are required to be submitted to arbitration as per the provisions of these Byelaws and the Regulations, wherever Part A of the Act leaves the parties free to determine a certain issue, the parties shall be deemed to have authorised the relevant authority to determine that issue.

#### Administrative assistance

- (17) For the purpose of section 6 of the Act, in all claims, differences or disputes which are required to be submitted to arbitration as per the provisions of these Byelaws and Regulations, the parties shall be deemed to have arranged for administrative assistance of the relevant authority in order to facilitate the conduct of the arbitral proceedings.

#### Jurisdiction

- (18) All parties to a reference to arbitration under these Byelaws and Regulations and the persons, if any, claiming under them, shall be deemed to have submitted to the

exclusive jurisdiction of the courts in Mumbai or any other court as may be specified by the relevant authority for the purpose of giving effect to the provisions of the Act.

3. The provisions of Byelaws (1) & (2) shall become applicable to all claims, differences, disputes between the parties mentioned therein for all dealings, contracts and transactions admitted for clearing and settlement on the Clearing Corporation in respect of Commodity Derivative Segment and made subject to the byelaws, rules and regulations provided such dealings, contracts and transactions had been entered into between the parties mentioned therein prior to or to the date on which the Clearing Member was either declared a defaulter or expelled or has surrendered his trading membership.

## **CHAPTER XI: DEFAULT**

### **1. DECLARATION OF DEFAULT**

A clearing member may be declared a defaulter by direction/circular/notification of the relevant authority of the Clearing Corporation if:

- 1) he is unable to fulfil his clearing or settlement obligations; or
- 2) he admits or discloses his inability to fulfil or discharge his duties, obligations and liabilities; or
- 3) he fails or is unable to pay within the specified time the damages and the money difference due on a closing-out effected against him under the Rules, Bye Laws and Regulations; or
- 4) he fails to pay any sum due to the Clearing Corporation as the relevant authority may from time to time prescribe; or
- 5) if he fails to pay or deliver all moneys, securities, commodities and other assets due to a clearing member who has been declared a defaulter within such time of declaration of default of such clearing member in such manner and to such person as the relevant authority may direct; or
- 6) if he fails to abide by the arbitration award as laid down under the Rules, Bye Laws and Regulations; or
- 7) if he has been adjudicated as an insolvent by a court of competent jurisdiction in the petition filed by any of his creditors, he shall ipso facto be declared a defaulter though he may not have at the same time defaulted on any of his obligations on the Clearing Corporation; or
- 8) if he files a petition before a court of competent jurisdiction for adjudication of himself as an insolvent; or
- 9) under any other circumstances as may be decided by the relevant authority from time to time.

1A. Without prejudice to the foregoing provisions contained in Byelaw (1) of this chapter, where a clearing member, who is also a member/ trading member of any of the recognised Stock Exchanges, is declared a defaulter by such Stock Exchange, the said clearing member shall ipso facto stand declared a defaulter by the Relevant Authority.

1B. Notwithstanding anything contained in the Byelaws and Rules of Clearing Corporation, if a clearing member is an Associate of a member/ trading member declared a defaulter by any recognised stock exchange, the said clearing member shall render itself liable to be declared a defaulter by the Relevant Authority.

Explanation:

The expression “Associate” for the purpose of the above Byelaw shall have the meaning as maybe defined by SEBI from time to time.

### **2. CLEARING MEMBER’S DUTY TO INFORM**

A clearing member shall be bound to notify the Clearing Corporation immediately if there be a failure by any clearing member to discharge his liabilities in full.

### 3. COMPROMISE FORBIDDEN

A clearing member shall not accept from any clearing member anything less than a full and bona fide money payment in settlement of a debt arising out of a deal cleared through the Clearing Corporation.

### 4. NOTICE OF DECLARATION OF DEFAULT

On a clearing member being declared a defaulter, a notice shall be forthwith issued to all the clearing members of the Clearing Corporation

### 5. NOTICE TO THE STOCK EXCHANGE

On a clearing member being declared a defaulter, a notice shall be forthwith issued to the Specified Exchange if the clearing member is also a trading member of that Exchange.

### 6. DEFAULTER'S BOOKS AND DOCUMENTS

When a clearing member has been declared a defaulter, the relevant authority shall take charge of all his books of accounts, documents, papers and vouchers to ascertain the state of his affairs and the defaulter shall hand over such books, documents, papers and vouchers to the relevant authority.

### 7. LIST OF DEBTORS AND CREDITORS

The defaulter shall file with the relevant authority within such time of the declaration of his default as the relevant authority may direct, a written statement containing the complete list of his debtors and creditors and the sum owing by and to each.

### 8. DEFAULTER TO GIVE INFORMATION

The defaulter shall submit to the relevant authority such statement of accounts, information and particulars of his affairs as the relevant authority may from time to time require and if so desired shall appear before the relevant authority at its meetings held in connection with his default.

### 9. INQUIRY

The relevant authority may conduct a strict inquiry into the accounts and dealings of the defaulter in the market and shall report anything improper, un-business like or unbecoming a clearing member in connection therewith which may come to its knowledge.

### 10. DEFAULTER'S ASSETS

The Relevant Authority shall call in and realise the security deposits in any form, margin money, other amounts lying to the credit of and commodities and securities deposited by the defaulter and recover all moneys, commodities, securities and other assets due, payable or deliverable to the defaulter by any other Clearing Member in respect of any deal or dealing made subject to the Bye-laws, Rules and Regulations of the Clearing Corporation

and such assets shall vest ipso facto, on declaration of any Clearing Member as a defaulter, in the Clearing Corporation for the benefit of and on account of the Clearing Corporation, the relevant Specified Exchange, Securities and Exchange Board of India, Constituents of the defaulter, approved banks and any other persons as may be approved by the Relevant Authority and other recognised stock exchanges / clearing corporations.

#### 11. PAYMENT TO RELEVANT AUTHORITY

- (1) All monies, commodities, securities and other assets due, payable or deliverable to the defaulter must be paid or delivered to the relevant authority within such time of the declaration of default as the relevant authority may direct. A clearing member violating this provision may be declared a defaulter.
- (2) A clearing member who shall have received a difference on account or shall have received any consideration in any deal prior to the date fixed for settling such account or deal shall, in the event of the clearing member from whom he received such difference or consideration being declared a defaulter, refund the same to the relevant authority for the benefit and on account of the creditor members. Any clearing member who shall have paid or given such difference or consideration to any other clearing member prior to such settlement day shall again pay or give the same to the relevant authority for the benefit and on account of the creditor member in the event of the default of such other member.
- (3) A clearing member who receives from another clearing member during any clearing a claim note or credit note representing a sum other than difference due to him or due to his constituent which amount is to be received by him on behalf and for the account of that constituent shall refund such sum if such other clearing member be declared a defaulter within such number of days as specified by the relevant authority after the settling day. Such refunds shall be made to the relevant authority for the benefit and on account of the creditor members and it shall be applied in liquidation of the claims of such creditor members whose claims are admitted in accordance with the Rules, Bye Laws and Regulations.

#### 12. DISTRIBUTION

The relevant authority shall at the risk and cost of the creditor members pay all assets received in the course of realisation into such bank and/or keep them with the Clearing Corporation in such names as the relevant authority may from time to time direct and shall distribute the same in accordance with the Rules, Bye Laws and Regulations.

#### 13. CLOSING-OUT

- (1) Clearing members having open deals with the defaulter shall close out such deals after declaration of default. Such closing out shall be in such manner as may be specified by the relevant authority from time to time. Subject to the regulations in this regard specified by the relevant authority, when in the opinion of the relevant authority, circumstances so warrant, such closing out shall be deemed to have taken place in such manner as may be determined by the relevant authority.
- (2) Differences arising from the above adjustments of closing out shall be claimed from the defaulter or paid to the relevant authority for the benefit of creditor clearing members of the defaulter.

#### 14. CLAIMS AGAINST DEFAULTER

Within such time of the declaration of default as the relevant authority may direct every clearing member carrying on business on the Clearing corporation shall, as it may be required to do, either compare with the relevant authority his accounts with the defaulter duly adjusted and made up as provided in the Rules, Bye-Laws and Regulations or furnish a statement of such accounts with the defaulter in such form or forms as the relevant authority may prescribe or render a certificate that he has no such account.

#### 15. DELAY IN COMPARISON OR SUBMISSION OF ACCOUNTS

Any clearing members failing to compare his accounts or send a statement or certificate relating to a defaulter within the time specified shall be called upon to compare his accounts or send such statement or certificate within such further time as may be specified.

#### 16. PENALTY FOR FAILURE TO COMPARE OR SUBMIT ACCOUNTS

The relevant authority may take such action as it may deem fit including levying of fine and suspension on any clearing member who fails to compare his accounts or submit a statement of its account with the defaulter or a certificate that he has no such account within the specified time.

#### 17. MISLEADING STATEMENT

The relevant authority may take such action as it may deem fit including levying of fine and suspension, if it is satisfied that any comparison statement or certificate relating to a defaulter sent by such clearing member was false or misleading.

#### 18. ACCOUNTS OF RELEVANT AUTHORITY

The relevant authority shall keep a separate account in respect of all monies, commodities, securities and other assets payable to a defaulter which are received by it and shall defray therefrom from all costs, charges and expenses incurred in or about the collection of such assets or in or about any proceedings it takes in connection with the default.

#### 19. APPLICATION OF ASSETS

The Relevant Authority shall apply the net assets remaining in its hands after defraying all such costs, charges and expenses as are allowed under the Rules, Byelaws and Regulations to be incurred by the Clearing Corporation, in satisfying the claims in the order of priority provided hereunder:-

- (a) Dues to the Clearing Corporation, the relevant Specified Exchange, Securities and Exchange Board of India.

The payment of such subscriptions, debts, fines, fees, charges and other money/ies due to Clearing Corporation, the relevant Specified Exchange and Securities and Exchange Board of India on a pro-rata basis,

(b) Dues to Constituents of the defaulter

The payments as may be admitted by the Relevant Authority, as being due to Constituents of the defaulter for debts, liabilities, obligations and claims arising out of any contracts made by the defaulter subject to the Rules, Bye-laws and Regulations of the Clearing Corporation, provided that if the amount is insufficient then the amounts shall be distributed pro-rata amongst all the Constituents of the defaulter,

(c) Dues to the Approved Banks and claims of any other persons as approved by the Relevant Authority

After making payments under (b) above, the amounts remaining, if any, shall be utilised to meet the claims of the approved banks and of any other person as may be admitted by the Relevant Authority. The claims of the approved banks should have arisen by virtue of Clearing Corporation or the relevant Specified Exchange invoking any bank guarantee issued by the bank concerned to the Clearing Corporation or the relevant Specified Exchange as the case may be on behalf of the defaulter to fulfil his obligation of submitting bank guarantee, guaranteeing discharge of obligations under the Byelaws, Rules and Regulations of Clearing Corporation / the relevant Specified Exchange. The claims of other persons should have arisen out of or incidental to the clearing and settlement of a deal on the Clearing Corporation or requirements laid down by the Clearing Corporation, provided that if the amount available be insufficient to pay all such claims in full, they shall be paid pro-rata,

(d) Dues to any other recognised stock exchange/clearing corporation

After meeting the claims under (c) above, the remaining amounts, if any, shall be disbursed to any other recognised stock exchange / clearing corporation for the purpose of meeting the obligations of the defaulter as a member of that exchange/clearing corporation. If the defaulter is a member of more than one recognised stock exchange/clearing corporation, then the remaining amounts shall be distributed amongst all such recognised stock exchanges / clearing corporations and if the remaining amount is insufficient to meet the claims of all such stock exchanges/clearing corporations, then the remaining amount shall be distributed pro-rata among all such stock exchanges/clearing corporations; and

(e) Surplus

The surplus amounts, if any, remaining after meeting all the above claims, shall be paid to the Clearing Member and in case where the Clearing Member has expired, the surplus amount shall be paid to his legal heirs / legal representatives.

## 20. CERTAIN CLAIMS NOT TO BE ENTERTAINED

The relevant authority shall not entertain any claim against a defaulter:



- (1) which arises out of a contract in securities, dealings in which are not permitted or which are not made subject to Bye Laws, Rules and Regulations or in which the claimant has either not paid himself or colluded with the defaulter in evasion of margin payable on bargains in any security ;
- (2) which arises out of a contract in respect of which comparison of accounts has not been made in the manner specified in the Rules, Bye Laws and Regulations or when there has been no comparison if a contract note in respect of such deals has not been rendered as provided in the Rules, Bye Laws and Regulations;
- (3) which arises from any arrangement for settlement of claims in lieu of bonafide money payment in full on the day when such claims become due;
- (4) which is in respect of a loan with or without security ;
- (5) which is not filed with the relevant authority within such time of date of declaration of default as maybe specified by the relevant authority.

## 21. ASSIGNMENT OF CLAIMS ON DEFAULTERS' ESTATE

A Clearing member being a creditor of a defaulter shall not sell, assign or pledge the claim on the estate of such defaulter without the consent of the relevant authority.

## 22. PROCEEDINGS IN THE NAME OF OR AGAINST THE DEFAULTER

The Relevant Authority shall be empowered to (a) initiate any proceedings in a court of law either in the name of the Clearing Corporation or in the name of the defaulter against any person for the purpose of recovering any amounts due to the defaulter; (b) initiate any proceedings in a court of law either in the name of Clearing Corporation or in the name of the creditors (who have become creditors of the defaulter as a result of deals cleared and settled subject to Byelaws, Rules and Regulations of the Clearing Corporation) of the defaulter against the defaulter for the purpose of recovering any amounts due from the defaulter. The defaulter as well as the creditors of the defaulter shall be deemed to have appointed the Clearing Corporation as their constituted attorney for the purpose of taking such proceedings.

## 23. PAYMENT OF RELEVANT AUTHORITY

If any clearing member takes any proceedings in a court of law against a defaulter whether during the period of its default or subsequent to its re-admission to enforce any claim against the defaulter's estate arising out of any admitted deals in the market made subject to the Bye Laws, Rules and Regulations before it was declared a defaulter and obtains a decree and recovers any sum of money thereon, it shall pay such amount or any portion thereof as may be fixed by the relevant authority for the benefit and on account of the creditor members having claims against such defaulter.

## **CHAPTER XII: CORE SETTLEMENT GUARANTEE FUND**

### **1. Objective of the Core Settlement Guarantee Fund (CSGF)**

The Clearing Corporation shall have a fund called Core Settlement Guarantee Fund (CSGF) for each clearing segment with respect to each segment of the Specified Stock Exchange to guarantee the settlement of trades executed in the respective segment of the Specified Stock Exchange. In the event a Clearing Member fails to fulfill the settlement obligations, the CSGF shall be used to fulfill the settlement obligations of the Clearing Member and complete the settlement without affecting the normal settlement process.

### **2. Corpus of the CSGF**

- (1) The corpus of the CSGF shall be adequate to meet out all the contingencies arising on account of failure of any Clearing Member(s).
- (2) The quantum of the corpus of the CSGF shall be determined by taking into consideration the risk or liability to the CSGF on account of various factors including trade volume, delivery percentage, maximum settlement liability of the Clearing Members, the history of defaults of the Clearing Members, capital adequacy of the Clearing Members and the degree of safety measures employed by the Clearing Corporation. In order to assess the fair quantum of the corpus of the CSGF, the Clearing Corporation shall consider the following factors:
  - a) Risk management system in force
  - b) Current and projected volume/turnover to be cleared and settled by the Clearing Corporation on guaranteed basis
  - c) Track record of defaults of the Clearing Members (number of defaults and amount in default of the Clearing Members)

### **3. Minimum Required Corpus of the CSGF**

The Relevant Authority shall specify from time to time the Minimum Required Corpus (MRC) of the CSGF for each clearing segment of the Clearing Corporation with respect to each segment of the Specified Stock Exchange in accordance with the norms prescribed by SEBI from time to time.

### **4. Constitution of the Corpus of CSGF**

The corpus of CSGF shall consist of the following:

- a) Contributions of various contributors:

The contributions of various contributors to the CSGF at any point of time shall be as follows:

- i. Clearing Corporation's contribution: The Clearing Corporation's contribution to CSGF shall be at least 50% of the MRC. The Clearing Corporation shall make this contribution from its own funds. The Clearing Corporation's contribution to CSGF shall be considered as part of its net worth.
- ii. Specified Stock Exchange's contribution: The Specified Stock Exchange's contribution to CSGF shall be at least 25% of the MRC.

iii. Clearing Member's primary contribution: The Clearing Corporation may seek risk based contribution from Clearing Members of the clearing segment to the CSGF subject to the following conditions:

- The total contribution from the Clearing Members shall not be more than 25% of the MRC. Such contribution shall ordinarily be in the form of cash contribution to CSGF. However, the Clearing Corporation may accept the Clearing Member's contribution in the form of bank fixed deposits, Central Government Securities or any other form in accordance with the norms prescribed by SEBI from time to time.
  - No exposure shall be available on CSGF contribution of any Clearing Member. For this purpose, the exposure-free collateral of the Clearing Member available with the Clearing Corporation can be considered towards CSGF contribution of the Clearing Member.
  - The required contribution of each Clearing Member shall be pro-rata based on the risk that they bring to the system.
  - The Clearing Corporation shall have the flexibility to collect the Clearing Member's primary contribution either upfront or staggered over a period of time. In case of staggered contribution, the remaining balance shall be met by the Clearing Corporation to ensure adequacy of total CSGF corpus at all times. Such Clearing Corporation contribution shall be available to the Clearing Corporation for withdrawal as and when further contributions from the Clearing Members are received.
- b) Any penalties levied by the Clearing Corporation (as per Regulation 32 of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 (SECC Regulations)).
- c) Interest on cash contribution to CSGF shall accrue to the CSGF and pro-rata attributed to the contributors in proportion to their cash contribution.

## **5. Management of CSGF**

- (1) The Relevant Committee of the Clearing Corporation shall manage the CSGF.
- (2) The Clearing Corporation shall follow prudential norms of investment policy for the CSGF corpus and establish and implement policies and procedures to ensure that the CSGF corpus is invested in accordance with the investment norms prescribed by SEBI from time to time.

## **6. Access to CSGF**

The Clearing Corporation may utilise the CSGF in the event of a failure of the Clearing Members to fulfill their settlement obligations.

## **7. Further contribution to / Recoupment of CSGF**

- (1) The requisite contributions to the CSGF by various contributors for any month shall be made by the contributors before start of the month.
- (2) The Clearing Corporation shall review and determine by 15th of every month the adequacy of contributions made by various contributors as above and call for any further contributions to the CSGF as may be required to be made by various contributors for the next month.
- (3) In the event of usage of Core SGF during a calendar month, contributors shall, as per usage of their individual contribution, immediately replenish the Core SGF to MRC. However, such contribution towards replenishment of Core SGF by the members would be restricted to only once during a period of 30 calendar days regardless of the number of defaults during the period. The period of 30 calendar days shall commence from the date of notice of default by Clearing Corporation to market participants.
- (4) In case there is failure on part of some contributor(s) to replenish its (their) contribution, the same shall be immediately met, on a temporary basis during the month, in the following order:
  - a) By Clearing Corporation
  - b) By Specified Stock Exchange

## **8. Default waterfall**

The Default waterfall shall become applicable only in case the Clearing Member is declared a defaulter after appropriation of the monies of the defaulting Clearing Member.

The default waterfall of the Clearing Corporation for any clearing segment shall follow the following order –

- a) Monies of the defaulting Clearing Member (including the defaulting Clearing Member's primary contribution to the CSGF(s) and excess monies of the defaulting Clearing Member in other clearing segments.)
- b) Insurance, if any.
- c) Clearing Corporation resources (equal to 5% of the clearing segment MRC).
- d) CSGF of the clearing segment in the following order:
  - i. Penalties
  - ii. Clearing Corporation's contribution to the extent of at least 25% of the clearing segment MRC
  - iii. Remaining CSGF: Clearing Corporation's contribution, Specified Stock Exchange's contribution and non-defaulting Clearing Members' primary contribution to CSGF on pro-rata basis.
- e) Proportion of remaining Clearing Corporation resources (excluding Clearing Corporation's contribution to CSGFs of other clearing segments and INR 100 Crore) equal to ratio of clearing segment MRC to sum of MRCs of all clearing segments.\*

- f) Clearing Corporation/Specified Stock Exchange contribution to CSGF of other clearing segments (after meeting obligations of those clearing segments) and remaining Clearing Corporation resources to that extent as approved by SEBI.
- g) Capped additional contribution by non-defaulting Clearing Members of the clearing segment. \*\*
- h) Any remaining loss to be covered by way of pro-rata haircut to pay-outs. \*\*\*

#### *Explanation*

1. \* INR 100 Crore to be excluded only when remaining Clearing Corporation resources (excluding Clearing Corporation contribution to CSGFs of other clearing segments) are more than INR 100 Crore.

2. \*\**(i)* Clearing Corporation shall call for the capped additional contribution only once during a period of 30 calendar days regardless of the number of defaults during the period. The period of 30 calendar days shall commence from the date of notice of default by Clearing Corporation to market participants.

*(ii)* Clearing Corporation shall have relevant regulations/provisions for non - defaulting members to resign un-conditionally within the abovementioned period of 30 calendar days, subject to member closing out/settling any outstanding positions, paying the capped additional contribution and any outstanding dues to SEBI. No further contribution shall be called from such resigned members.

*(iii)* The maximum capped additional contribution by non - defaulting members shall be lower of 2 times of their primary contribution to Core SGF or 10% of the Core SGF of the segment on the date of default in case of equity / debt segments.

*(iv)* The maximum capped additional contribution by non - defaulting members shall be lower of 2 times of their primary contribution to Core SGF or 20% of the Core SGF of the segment on the date of default in case of derivatives segment.

*(v)* In case of shortfall in recovery of assessed amounts from non - defaulting members, further loss can be allocated to layer 'f' with approval of SEBI.

3. \*\*\*In case loss allocation is effected through haircut to payouts, any subsequent usage of funds shall be with prior SEBI approval. Further, any exit by Clearing Corporation post using this layer shall be as per the terms decided by SEBI in public interest.

### **9. Stress Testing and Back Testing**

The Clearing Corporation shall conduct stress tests for credit risk, liquidity stress test, reverse stress test, back testing for adequacy of margins and such other tests as may be appropriate in accordance with the norms prescribed by SEBI from time to time.

### **CHAPTER XIII: MISCELLANEOUS**

1. Save as otherwise specifically provided in the Bye Laws and Regulations specified by the relevant authority regarding clearing and settlement arrangement, in promoting, facilitating, assisting, regulating, managing and operating the Commodity Derivative Segment of the Clearing Corporation should not be deemed to have incurred any liability, and accordingly no claim or recourse in respect of or in relation to any dealing in securities, commodities or any matter connected therewith shall lie against the Clearing Corporation or any authorised person(s) acting for the Clearing Corporation.
2. No claim, suit, prosecution or other legal proceeding shall lie against the Clearing Corporation or any authorised person(s) acting for Clearing Corporation in respect of anything which is in good faith done or intended to be done in pursuance of any order or other binding directive issued to Clearing Corporation under any law or delegated legislation for the time being in force.
3. These Bye-laws shall be interpreted in a harmonious manner with a view to complying with the requirements of the Relevant Acts and Rules & Regulations made thereunder, to effectuate the purposes and businesses of the Clearing Corporation and to ensure that all practices in connection with the business of the Clearing Corporation as well as the functions of Clearing and Settlement process of transactions executed on the Concerned Exchanges are conducted in a fair, just, reasonable manner in order to maintain the integrity of the markets, protect the investors trading on the Concerned Exchanges, the Members of the Clearing Corporation.

For NSE Clearing Limited

R. Jayakumar  
Sr. Vice President &  
Company Secretary