

Discussion Paper on Execution of Power of Attorney by Clients Favoring Stock Brokers/Depository Participants

INTRODUCTION:

This discussion paper outlines the guidelines for incorporating conditions/clauses in the Power of Attorney (PoA) given by clients to their Stock Brokers and/or Depository Participants in the context of possible risks for the clients in this regard.

BACKGROUND:

Secondary Market Advisory Committee (SMAC) of SEBI discussed the proposed conditions/clauses in the Power of Attorney given by clients to their Stock Brokers and/or Depository Participants.

The proposed guidelines have been finalized as per the discussions between the representatives of Stock Exchanges, Depositories, Brokers, Investors associations and the deliberations in the meeting of SMAC.

PROPOSED GUIDELINES:

The proposed guidelines for execution of PoA by clients favoring Stock Brokers/Depository are given below:

I. PoA favoring Stock Brokers:

1. A specific PoA should be executed in favor of a stock broker to facilitate the following:
 - a) Transfer of securities held in the beneficial owner account(s) of the client(s) for stock exchange related margin / delivery obligations arising out of trades executed by the Client(s) on the stock exchange through the same stock broker.

- b) Transfer of funds from the bank account(s) of the clients for the limited purpose of meeting the settlement obligations of the client(s) / margin requirements of the client(s) in connection with the trades executed by the clients on the stock exchange through the same stock broker.
- c) Identify/provide the particulars of the beneficial owner account(s) and the bank account(s) of the client(s) that the stock broker is entitled to operate.
- d) Transfer of securities to the Clearing Member Pool account / Client Margin account of the stock broker only.

II. PoA favoring Stock Brokers and Depository Participants:

- 2. The PoA shall not be executed in the name of any employee or representative of the stock broker/Depository Participant, but only in the name of the concerned entity.
- 3. The PoA should be executed and stamped as per the rules / law prevailing in the place where the PoA is executed or the place where the PoA is kept as a record, as applicable.
- 4. The stock broker /Depository Participant will provide to the Client(s) an original/a certified true copy of the PoA after execution.
- 5. The PoA shall authorize the Stock Broker/Depository Participant to send SMS alerts regarding broking transactions/debits to the Beneficial Owner accounts of the Client.

6. The PoA should provide for a clause for settlement of disputes arising out of the operations of the PoA. Broking disputes will have to be settled under the Bye Laws of the concerned Stock Exchange where the trades have been executed and depository related issues under the Bye Laws of the concerned Depository, where the concerned beneficial owner demat account is held.

7. In case of merger/demerger of the Stock Broker/Depository Participant with another entity/into another entity, if the PoA does not provide the authority to continue the rights in favor of assignees, transferees, nominees, etc. of the Stock Broker/Depository Participant, the new Stock Broker/Depository Participant will have to obtain a written confirmation from the Client(s) to continue to use the PoA.

Comments are invited from the public on the above proposal. The comments may be sent by e-mail on or before November 30, 2009 to nitins@sebi.gov.in or meenakshij@sebi.gov.in. Comments may also be sent to the following address, so as to reach latest by November 30, 2009.

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