

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

EXIT ORDER IN RESPECT OF:

OTC EXCHANGE OF INDIA

1. OTC Exchange of India (hereinafter referred to as the 'OTCEI') was established on September 25, 1990 and was incorporated as a Public Limited Company (limited by shares) under section 25 of the Companies Act, 1956. The Central Government had granted recognition to OTCEI, as a stock exchange under the provisions of section 4 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the 'SCRA') on August 23, 1989 initially for a period of 5 years, which was subsequently renewed from time to time under rule 7 of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as the 'SCRR')
2. The recognition of OTCEI was last renewed by Securities and Exchange Board of India (hereinafter referred to as 'SEBI') for a period of one year commencing on the August 23, 2013 and ending on August 22, 2014. The renewal was, however, subject to condition that the OTCEI can commence trading only after full compliance with the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 and after complying with the SEBI circular no. MRD/DSA/SE/Cir-12/09 dated October 7, 2009, and such other conditions as may be prescribed by SEBI from time to time.
3. SEBI, vide circular no. MRD/DoP/SE/Cir-36/2008 dated December 29, 2008, issued Guidelines and laid down the framework for exit by stock exchanges whose recognition is withdrawn and/or renewal of recognition is refused by SEBI and who may want to surrender their recognition. The said Guidelines were reviewed and modified vide circular no. CIR/MRD/DSA/14/2012 dated May 30, 2012 (hereinafter referred to as "Exit Circular, 2012"). In terms of clause 2.2 of the Exit Circular, 2012, a stock exchange, where the annual trading turnover on its platform is less than ₹1,000 crore, can apply to SEBI for voluntary surrender of recognition and exit, at any time before the expiry of two years from the date of issuance of the said Circular. In terms of clause 2.3 of the said Circular, if any stock exchange failed to achieve a turnover of ₹1,000 crore, it would be subject to compulsory exit process.
4. OTCEI vide letters dated January 07 and 22, 2014 made a request to SEBI for exit as stock exchange and intimated that in the meeting held on January 03, 2014 its board of directors unanimously approved for voluntarily exit in terms of SEBI circular dated May 30, 2012. Thereafter, the shareholders of OTCEI passed the resolution at the Annual General Meeting of the Exchange held on February 18, 2014 approving the exit of stock exchange in terms of SEBI circular no. CIR/MRD/DSA/14/2012 dated May 30, 2012.

5. Accordingly, I proceed to deal with the exit request of the OTCEI in terms of clause 2.2 of the Exit Circular, 2012. I note that as per the Exit Circular, 2012, *inter alia*, following conditions are required to be complied with by the de-recognised/non-operational stock exchanges for seeking exit:
- (a) Permission to distribute its assets subject to certain conditions as laid down in the circular as well as the other guidelines that may be issued by SEBI, Governments or any other statutory body from time to time.
 - (b) For the purpose of valuation of the assets of the stock exchange, a valuation agency appointed by SEBI shall submit its report.
 - (c) The quantum of assets for distribution will be available after payment of the following by the stock exchange:
 - (i) Statutory dues including Income Tax;
 - (ii) Transfer of Investor Protection Fund, Investor Services Fund, 1% security deposit available with the Exchange to SEBI Investor Protection and Education Fund (hereinafter referred to as the 'IPEF');
 - (iii) The exiting exchange shall pay the following dues to SEBI:-
 - Dues outstanding to SEBI including 10% of the listing fee and the annual regulatory fee;
 - The outstanding registration fees of brokers/trading members of such de-recognised stock exchanges as specified in the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992, till the date of such de-recognition;
 - In case of any shortfall in collection of dues of the brokers to SEBI, the exiting Stock Exchange will make good the shortfall;
 - (iv) Refund of deposit (refundable) to the stock brokers including their initial contribution/deposit to Settlement Guarantee Fund/Trade Guarantee Fund (SGF/TGF).
 - (d) Contribution of up to 20% of its assets (after tax) towards IPEF taking into account, *inter alia*, the governance standards of the stock exchange and estimation of future liabilities.
 - (e) The companies exclusively listed on the stock exchange seeking exit shall list their securities on any other recognised stock exchange. If such exclusively listed companies fail to obtain listing on any other recognised stock exchange, they will cease to be listed companies and will be moved to the dissemination board by the exiting stock exchange. Such dissemination board would be provided by a Stock Exchange with nationwide trading terminals. The exiting stock exchange as well as exchange providing dissemination board will give wide publicity about the dissemination board in one leading national daily and one local daily.
 - (f) The exiting stock exchange shall set aside sufficient funds in order to provide for settlement

of any claims, pertaining to pending arbitration cases, arbitration awards, not implemented, if any, liabilities/claims of contingent nature, if any, and unresolved investor complaints/grievances lying with it.

- (g) The exiting exchange may provide trading opportunity to their trading members to trade on stock exchanges having nationwide terminals through their subsidiary company, which will function as a normal broking entity.
6. I have considered all relevant documents available on record for the purpose of considering the case of exit of OTCEI.
7. In terms of condition mentioned in para 5(b) above, SEBI in consultation with OTCEI on April 01, 2014 appointed M/s. S. K. Patodia & Associates as Valuation Agency, for verification and valuation of assets and liabilities of OTCEI. The Valuation Agency submitted its report vide letter dated May 08, 2014 and further clarifications vide e-mail dated May 23, 2014.
8. With respect to the compliance of conditions specified in the Exit Circular, 2012 by OTCEI and settlement of its liabilities observed by the Valuation Agency, I note that :
- (a) In compliance with condition mentioned in para 5(c)(ii) above, as advised by SEBI, OTCEI has transferred an amount of ₹5,88,25,206/- available in its 'Investor Protection Fund' through RTGS on February 18, 2015, an amount of ₹93,81,694/- available in its 'Investor Services Fund' through RTGS on February 18, 2015 and '1% security deposit' amount of ₹5,42,430/- through RTGS on September 22, 2014 to the SEBI Investor Protection and Education Fund (IPEF).
- (b) In compliance of condition mentioned in para 5(c)(iii) above, OTCEI has paid necessary dues outstanding to SEBI including 10% of the listing fee and the annual regulatory fee. OTCEI has also paid the outstanding registration fees amounting to ₹1,77,13,647.84 of stock brokers dues through RTGS on February 23, 2015 and March 04, 2015 and ₹20,500/- sub-broker dues as specified in the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 till the date of such de-recognition, vide demand draft dated March 16, 2015.
- (c) In compliance of condition mentioned in para 5(c)(iv) above, OTCEI has given an undertaking dated February 26, 2015 that they will not distribute any assets before clearing the liabilities in that regard.
- (d) In compliance of condition mentioned in para 5(d) above, OTCEI has contributed an amount to ₹15,00,000/- through RTGS on February 25, 2015 towards IPEF.
- (e) In compliance with condition mentioned in para 5(e) above, OTCEI in its undertaking has stated that it has taken necessary steps in terms of the Exit Circular, 2012 and the SEBI

circular no. CIR/MRD/DSA/18/2014 dated May 22, 2014 and other circular/directions issued by SEBI from time to time. It has further undertaken to extend all the co-operation to SEBI and other regulatory authorities with regards to any matters/issues that may arise subsequently.

- (f) In compliance of condition mentioned in para 5(f) above, OTCEI has submitted an undertaking dated February 26, 2015 stating that there are no arbitration disputes/investor complaints pending and also stating that it will undertake to clear all the liabilities before distribution of assets of OTCEI.
 - (g) With regard to its other liabilities and contingent liabilities as pointed out by the Valuation Agency, OTCEI in its undertaking has stated the extent of discharge of liabilities and has further undertaken to clear the said liabilities before the distribution of its assets. It has also undertaken to clear any additional amount that may become liable to be paid on account of liabilities stated in the undertaking.
 - (h) With regard to condition mentioned at para 5(g), OTCEI has submitted vide undertaking dated February 26, 2015, that "*M/s OTCEI Securities Ltd. was a Corporate member of National Stock Exchange Ltd only. M/s OTCEI Securities Ltd. is not functional now and the membership of National Stock Exchange Ltd has been surrendered and approved by SEBI vide letter no: NSE/MEM-COMP/1393/10761/249411-D dated August 28, 2014*".
 - (i) OTCEI has also given an undertaking dated February 26, 2015 stating that the details of cases as submitted to SEBI lodged against it are the only cases pending before various legal fora and it has undertaken to assume complete responsibility for the financial implication of any claims against it that may arise at any future date as an outcome of the resolution/settlement of those cases.
9. From the valuation report and undertaking of OTCEI, it is observed that all the known liabilities have been brought out and that there is no other future liability that is known as on date. I note that OTCEI has substantially complied with the conditions contained in the Exit Circular, 2012 subject to its undertakings. I, therefore, am of the view that it is a fit case to allow exit to OTCEI in terms of clause 8 of the Exit Circular, 2012.
10. I, therefore, in exercise of the powers conferred upon me by virtue of section 19 read with provisions of section 11(1), section 11(2) (j) of the Securities and Exchange Board of India Act, 1992 and sections 4, 5 and 12A of the SCRA, allow the exit of OTC Exchange of India as a stock exchange and hereby direct OTCEI to :-
- (a) comply with its tax obligations under Income Tax Act, 1961;
 - (b) comply with the undertakings given by it to SEBI;
 - (c) comply with other consequential conditions of 2012 Exit Circular; and

(d) change its name and not to use the expression “Stock Exchange” or any variant of this expression in its name and to avoid any representation of present or past affiliation with the stock exchange, in all media.

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

Sd/-

DATE: MARCH 31st, 2015

PLACE: MUMBAI

RAJEEV KUMAR AGARWAL

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA