

THE SECURITIES AND EXCHANGE BOARD OF INDIA

EXIT ORDER IN RESPECT OF

PUNE STOCK EXCHANGE LIMITED

1. Pune Stock Exchange Limited (hereinafter referred to as the “PSE”) was incorporated on September 02, 1982 as a public company limited by guarantee. The Central Government had granted recognition to PSE , as a stock exchange under the provisions of section 4 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the “SCRA”) on September 02, 1982, 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 “SCRR”).
2. The recognition of PSE was last renewed by Securities and Exchange Board of India (hereinafter referred to as “SEBI”) for a period of one year commencing on the September 02, 2013 and ending on September 01, 2014. The renewal was, however, subject to condition that *the Exchange can commence trading only after complying with all the regulatory requirements imposed by SEBI and shall comply with such other conditions prescribed by SEBI.*
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dated December 29, 2008, issued Guidelines and laid down the framework for exit by stock exchanges whose recognition is withdrawn and/or renewal of recognition is refused by SEBI and who may want to surrender their recognition.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 the “Exit Circular, 2012”). In terms of clause 2.2 of "Exit Circular, 2012", a stock exchange, where the annual trading turnover in its platform is less than ₹1,000 crore, can apply to SEBI for voluntary surrender of recognition and exit, at any time before 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 fails to achieve a turnover of ₹1,000 crore, it would be subject to compulsory exit process.
4. PSE vide its letters dated January 21, 2014 and January 23, 2014 submitted that the Governing Board in its meeting held on December 13, 2013 has endorsed the decision of the shareholders of PSE in their Annual General Meeting dated September 28, 2013 to make application for voluntary surrender of recognition and exit of PSE as a stock exchange as per SEBI circular dated May 30, 2012.

5. PSE vide letter dated June 19, 2014 made an application for renewal of its recognition under section-3 of the SCRA read with rule 7 of the SCRR. In this regard, vide letter dated July 02, 2014, SEBI informed PSE that its application for renewal of recognition could not be processed as PSE's application for voluntary exit was under process.
6. Accordingly, I proceed to deal with the exit request of PSE 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.

7. I have considered all relevant documents available on record for the purpose of considering the case of exit of PSE . With regard to the income tax obligation in respect of transfer of capital assets of a stock exchange, I note that section 47(xiii) of the Income Tax Act, 1961 provides as under:-

Section 47 (xiii):

Nothing in Section 45 applies to any transfer of a capital asset or intangible asset by a firm to a company as a result of succession of the firm by a company in the business carried on by the firm, or any transfer of a capital asset to a company in the course of demutualisation or corporatisation of a recognised stock exchange in India as a result of which an association of persons or body of individuals is succeeded by such company:

Provided that –

(e) the demutualisation or corporatisation of a recognised stock exchange in India is carried out in accordance with a scheme for demutualisation or corporatisation which is approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);]”

8. In respect of the tax treatment to a stock exchange post its corporatisation and demutualization, the following recommendation of the Justice Kania Committee which was the basis for the amendment in section 47(xiii) of the Income Tax Act, 1961 to provide tax benefit to the corporatised and demutualised stock exchanges is worth mentioning:

“as corporatisation and demutualisation of a stock exchange is essentially a conversion from a not-for profit entity to a for-profit company, and would result in a distribution of assets, the Income Tax Act should be amended if necessary, so that the past profits of an stock exchange which were not taxed when it had the character of a not for profit entity should not be taxed when its character changes. In other words, the accumulated reserves of the stock exchange as on the day of corporatisation should not be taxed. However, there would be no objection to taxation of these reserves, in the hands of the shareholders

when these are distributed to shareholders as dividend at the net applicable tax rate; equally all future profits of the stock exchange after it becomes a for profit company may be taxed”.

9. The corporatisation and demutualisation scheme of PSE was approved by SEBI vide notification SEBI/MRD/DSA/111917/2007 dated December 31, 2007 (hereinafter referred as "the scheme"). The scheme, *inter alia*, provided for the segregation of ownership and management from the trading rights of the members, restriction on voting rights of shareholders who are also trading members, composition of the Governing Board etc. in accordance with the provisions of section 4B(6) of the SCRA, utilization of assets and reserves and other matters required for the purpose of and in connection with the corporatisation and demutualisation of PSE .
10. In terms of condition mentioned in para 6(b) above, SEBI in consultation with PSE on March 13, 2014 appointed M/s. D V Sathe & Co. as the Valuation Agency for verification and valuation of assets and liabilities of PSE . The Valuation Agency submitted its final report to SEBI on May 23, 2014.
11. With respect to the compliance of conditions specified in the Exit Circular, 2012 by PSE and settlement of its liabilities observed by the Valuation Agency, it is important to note the following:
 - (a) In compliance of condition mentioned in para 6(c) (ii) above, as advised by SEBI, PSE has transferred to SEBI - Investor Protection and Education Fund (IPEF) an amount of ₹1,82,51,847/- vide account payee cheque no. “480996” towards Investor Protection Fund (IPF), ₹16,61,818.72 vide account payee cheque no. “893904” towards “Investor Services Fund” (ISF) and ₹53,89,615/- vide account payee cheque no. “019375”- towards ‘1% security deposit’ available with PSE.
 - (b) In compliance of condition mentioned in para 6(c)(iii) above, PSE has paid the necessary dues outstanding to SEBI including 10% of the listing fee and the annual regulatory fee. PSE has also paid the outstanding registration fees amounting to ₹27,15,614/- of stock brokers dues and ₹3,68,500/- sub-brokers dues as specified in the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 till the date of such de-recognition, vide account payee cheque dated March 23, 2015 and March 13,2015.
 - (c) In compliance of condition mentioned in para 6 (c) (iv) above, PSE has given an undertaking dated March 24, 2015 that they will not distribute any assets before clearing the liabilities in that regard.
 - (d) In compliance of the condition mentioned in para 6(d) above, PSE has contributed an amount of ₹10,00,000 vide account payee cheque dated March 13,2015 towards SEBI

IPEF.

- (e) In compliance of condition mentioned in para-6(e) above, PSE has submitted an undertaking stating that it has placed the exclusively listed companies in dissemination board of National Stock Exchange of India Ltd (NSE). It has further undertaken that it will take adequate measures to comply with Exit circular, 2012 and other circular issued by SEBI on completion of exit of PSE.
- (f) In compliance of condition mentioned in para 6(f) above, :
- PSE has submitted an undertaking dated March 24, 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 PSE.
 - PSE in its undertaking stated the details of cases lodged against it, details whereof have been submitted to SEBI, are the only cases pending before various legal fora. PSE has also 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.
 - With regard to its other liabilities and contingent liabilities as pointed out by the Valuation Agency, PSE 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.
- (g) In compliance of condition mentioned in para 6(g) above, vide its undertaking, PSE has declared that M/s PSE Securities Limited, a functional subsidiary, is a corporate member of BSE and NSE and is providing trading facilities to all PSE members who opted for the same.

12. SEBI had conducted investigation into the allegations levelled by Pune Stock Exchange Brokers Forum in respect of matter pertaining to certain shareholders of PSE. The documents pertaining to Expression of Interest (EOI) and supporting documents related to demutualization of PSE were directed to be sealed and kept under custody of the exchange by the inspection authority during the inspection conducted in December 2011. Regulatory action for the alleged violations/non-compliances by the concerned entities has been initiated however, the exit process of the stock exchange is delinked from such regulatory actions. In view of the same, PSE submitted an undertaking dated March 16, 2015, that "*the exchange shall keep these documents in proper form in all conditions except condition beyond control & condition arising due to natural calamities and the same shall be made available to SEBI for any future reference or regulatory proceedings, if any*".

13. From the valuation report and undertakings of PSE, 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 PSE has substantially complied with the conditions contained in Exit Circular, 2012 subject to its undertakings. I, therefore, am of the view that it is a fit case to allow exit to PSE in terms of clause 8 of the Exit Circular, 2012.
14. 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 Pune Stock Exchange Limited as a stock exchange and hereby direct it 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 Exit Circular,2012; and
 - (d) to 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.
15. The order shall come into force with immediate effect. A copy of this order shall also be forwarded to the Income Tax Authorities, the Ministry of Corporate Affairs and the State Government of Maharashtra intimating the exit of Pune Stock Exchange Limited and for appropriate action at their end as per applicable laws.

DATE: April 13, 2015
PLACE: MUMBAI

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA