

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

S. RAMAN, WHOLE TIME MEMBER

EXIT ORDER

IN RESPECT OF DELHI STOCK EXCHANGE LIMITED

1. Delhi Stock Exchange Limited (Derecognized) formerly known as the Delhi Stock Exchange Association Limited (“**DSE**”) was incorporated on June 25, 1947 as a corporate body with limited liability under the Indian Companies Act, 1913. The Central Government granted recognition to DSE under the provisions of Securities Contracts (Regulation) Act, 1956 (“**SCRA**”). DSE was later granted permanent recognition on March 01, 1982, as a stock exchange under the provisions of Section 4 of SCRA.
2. Securities and Exchange Board of India (“**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dated December 29, 2008, issued guidelines and laid down the framework for exit by stock exchanges whose recognition is withdrawn and/or renewal of recognition is refused by SEBI and Recognised Stock Exchanges (“**RSEs**”) who may want to surrender their recognition. These Guidelines were reviewed and modified vide Circular No. CIR/MRD/DSA/14/2012 dated May 30, 2012 (“**Exit Circular**”). In terms of clause 2.2 of the Exit Circular, a stock exchange where the annual trading turnover on its own platform is less than Rs.1000 crores 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 fails to achieve a turnover of Rs.1000 crores, it would be subject to compulsory exit process as stipulated under clause 2.3 thereof.
3. Pursuant to the Extraordinary General Meeting held by the shareholders of DSE on May 23, 2014, a resolution was passed for exiting as a stock exchange through voluntary surrender of recognition as per the Exit Circular. Accordingly, vide letter dated May 24, 2014 DSE made a request to SEBI for its exit as stock exchange.
4. In the meanwhile, SEBI in exercise of the powers conferred upon it in terms of Section 11(2) (j) and Section 19 of the Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”) read

with Section 5(2) and 12A of SCRA, vide order dated November 19, 2014 withdrew the recognition granted to DSE. Further, in exercise of the powers conferred under Section 5(2) of SCRA, the Central Government withdrew recognition granted to DSE vide Gazette notification dated March 15, 2016.

5. DSE filed an appeal before Hon'ble Securities Appellate Tribunal (“**SAT**”) challenging the SEBI order dated November 19, 2014 and to direct SEBI to allow DSE to continue with its voluntary exit in accordance with the SEBI circular dated May 30, 2012 and for such other reliefs as the nature and circumstances of the case may require. Hon'ble SAT vide order dated June 24, 2016 directed DSE to furnish the requisite information to SEBI within three months from the date of order for the voluntary de-recognition sought by DSE. Hon'ble SAT further directed SEBI “*to complete the voluntary de-recognition process within a period of five months from the date of the order by determining the quantum amount payable and the time within which the said payment is to be made*”.

Subsequently, SEBI determined the amount payable by DSE and communicated the same on September 06, 2016.

In view of the operational difficulty, SEBI sought an extension of two months' time to pass the Exit order of DSE. The Hon'ble SAT vide order dated November 22, 2016 was kind enough to grant the same.

6. Considering the directions of the Hon'ble SAT, I now proceed to deal with the exit request of DSE. I note that as per the Exit Circular, the following conditions are *inter alia* required to be complied with by the de-recognised/non-operational stock exchanges for seeking exit:
 - a) Distribution of its assets subject to certain conditions as laid down in the Exit 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 upto 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 and seeking exit shall list their securities on any other recognised stock exchange.
- 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. As regards the income tax obligation in respect of transfer of capital assets of a stock exchange, I note that the same is subject to relevant provisions of Income Tax laws.

7.1 The corporatisation and demutualisation scheme of DSE was approved by SEBI vide notification F No. SEBI/MRD/48107/2005 dated August 29, 2005 ("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 DSE.

8. I have considered all relevant documents available on record for the purpose of considering the case of exit of DSE. On an examination, the following are noted:

8.1 I note that in terms of condition mentioned in paragraph 6(b) above, SEBI in consultation with DSE on July 04, 2014 appointed M/s. SARC and Associates as the Valuation Agency, for verification and valuation of assets and liabilities of DSE. The Valuation Agency submitted its report to SEBI on December 15, 2014.

8.2 With respect to the compliance of conditions specified in the Exit Circular, 2012 by DSE and settlement of its liabilities observed by the Valuation Agency, I note the following:

(a) In compliance with condition mentioned in para 6(c)(ii) above, as advised by SEBI, DSE has transferred the following to the SEBI- Investor Protection and Education Fund (SEBI IPEF):

(i) an amount of Rs.17,93,93,816.13/- available in its 'Investor Protection Fund' vide RTGS on May 18, 2015,

(ii) an amount of Rs.19,54,46,391/-, Rs.2,60,57,388/- and Rs.1,04,69,687/- available in its 'Investor Services Fund' vide RTGS dated June 11, 2015, June 15, 2015 and August 10, 2016.

(iii) an amount of Rs.1,88,12,794/- towards 1% security deposit vide RTGS dated May 18, 2015.

(b) In compliance with condition mentioned in para 6(c)(iii) above, DSE has paid outstanding dues to SEBI, including 10% of the listing fee and the annual regulatory fee, the details of the same are as under:

i. DSE paid Rs 1,02,692/- vide NEFT dated August 14, 2015, Rs. 3,65,191/- vide RTGS dated October 18, 2014 and Rs. 8,62,987/- vide RTGS dated July 17, 2014 towards 10% Listing Fees (for the quarter ended on 30.06.2014, quarter ended on 30.09.2014 and quarter ended on 31.12.2014) to SEBI.

ii. DSE paid an amount of Rs.15,61,98,364.96 vide RTGS dated September 19, 2016

towards Annual Regulatory fee for the financial year 2014-15.

- iii. DSE paid the outstanding registration fees amounting to Rs.15,61,98,364.96/- towards brokers dues.
 - iv. DSE paid an amount of Rs.22,11,500/- towards sub-brokers dues as specified in the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 till the date of de-recognition vide RTGS dated September 19, 2016.
- (c) The Liability with respect of 36 members which were party to the appeal in the matter of SEBI vs. Alliance Finstock Private Limited and their corresponding transferees and liability with respect of 8 members which were party to the appeal in the matter of Association for welfare of Delhi Stock Brokers & Ors. Vs. Union of India & Ors. (W.P.(C) 17349/2004 is yet to be crystalized. DSE vide its undertaking dated October 22, 2016 undertook to pay the amount immediately upon crystallization.
- (d) In compliance with condition mentioned in para 6(d) above, DSE has contributed an amount of Rs.25,00,000/- through RTGS dated September 19, 2016 towards SEBI IPEF.
- (e) DSE vide an undertaking dated October 22, 2016 (hereinafter referred to as “Undertaking”) *inter alia* stated as under:
- (i) In compliance with condition mentioned in para 6(c)(iv) above, **DSE will not distribute any assets before clearing the liabilities in that regard.**
 - (ii) In compliance with condition mentioned in para 6(e) above, DSE has taken necessary steps to refer the companies exclusively listed on its board to the Dissemination Board of BSE Limited (“BSE”) and has undertaken to comply with SEBI Circulars dated May 30, 2012, May 22, 2014 and April 17, 2015 and other circulars/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 regard to any matters/issues that may arise in future.
 - (iii) In compliance of condition mentioned in para 6(f) above, DSE has *inter alia* stated that:
 - there are no investor complaints pending.
 - one arbitration case DSE vs. M/s Evergreen Investment Consultant is pending. DSE undertakes to assume complete responsibility of claim against the DSE that may arise on the outcome of the case.

- 32 claims have been lodged against it;
 - it undertakes 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 the cases pending against DSE.
- (iv) With regard to its other liabilities and contingent liabilities as pointed out by the Valuation Agency, DSE has stated the extent of discharge of liabilities and has **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 as stated in the undertaking.
- (v) In compliance of condition mentioned in para 6(g) above, DSE has undertaken and declared that DSE Financial Services Limited, a functional subsidiary of DSE, is a corporate member of National Stock Exchange of India Ltd, BSE and Metropolitan Stock Exchange of India Ltd. and is providing trading facilities to all those trading Members of DSE who have opted for the same.
- (vi) The details of cases lodged against DSE and as submitted by it to SEBI are the only cases pending before various legal fora and that it assumes 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 DSE, it is observed that all the known liabilities have been brought out and that there is no future liability that is known as on date. I note that DSE has substantially complied with the conditions contained in Exit Circular, 2012 subject to its undertakings. In view of the foregoing, I am of the view that it is a fit case to allow exit to DSE in terms of clause 8 of the Exit Circular.
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 SEBI Act, 1992 and Sections 4, 5 and 12A of the SCRA, allow the exit of Delhi 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 to SEBI;
 - (c) comply with other consequential conditions of Exit Circular, 2012;
 - (d) change its name and in case, after exit as a stock exchange, it continues as a corporate

entity under the Companies Act, 2013, not to use the expression 'stock exchange' or any variant in its name or in the name of its subsidiary so as to avoid any representation of present or past affiliation with the stock exchange;

- (e) provide required information to the Ministry of Corporate Affairs on identifying any vanishing company which was listed on Delhi Stock Exchange Limited for inclusion in the list of vanishing companies maintained by the Ministry of Corporate Affairs.

11. This order shall come into force with immediate effect.

12. A copy of this order shall be forwarded to the Income Tax Authorities, the State Government of Delhi and the Ministry of Corporate Affairs for appropriation action at their end.

JANUARY 23, 2017
MUMBAI

S.RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA