

**CHAPTER-7****TRANSACTIONS BY TRADING MEMBERS****7.1 All Transactions Subject to Rules, Bye-laws and Regulations**

All transactions in securities in which trading is allowed by the Exchange shall, in all cases, be deemed to have been made subject to the Rules, Bye-laws, Regulations and usages of the Exchange which shall be part of the terms and conditions of all such transactions and they shall be subject to the exercise of the powers by the Governing Board and/or Managing Director with respect thereto vested in it or him under the Rules, Bye-laws and Regulations of the Exchange.

**7.2 Trading Members Only Parties to Transactions**

The Exchange does not recognise as parties to any transaction on the Exchange any party other than its own trading members and every trading member is directly and primarily liable to every other trading member with whom he effects a transaction for its due fulfillment in accordance with the Rules, Bye-laws and Regulations of the Exchange, whether such transaction be for the account of the trading member effecting the transaction or on account of his sub-broker / remisier or client.

**7.3 Restrictions on Trading Members**

**7.3.1** Unless the Exchange otherwise specifies, a trading member shall not become a client of another trading member.

**7.3.2** No trading member shall have any mechanism, either electronic or otherwise, whereby any order for buying and / or selling a security which is listed on any recognized stock exchange shall be processed for matching and thus culminating into a trade / transaction, other than through the trading mechanism, duly approved by the Exchange. If any trading member or any other person, either directly or indirectly, or intentionally or otherwise, is found to be using any mechanism not approved by the Exchange which facilitates matching of orders, culminating into a trade / transaction, such mechanism shall be deemed to be in violation of the stipulated requirements. Such trades / transactions done through such unapproved mechanism shall be void ab initio, and the concerned trading member shall render himself liable for

disciplinary action under the Rules, Bye-laws and Regulations of the Exchange, as may be deemed fit by the Relevant Authority.

#### **7.4 Trading Members as Principal**

Except to the extent and in the manner provided for in these Bye-laws and Regulations, every transaction for purchase or sale of securities made, whether between two trading members or between a trading member and his sub-broker and / or client, shall be deemed to have been made as between two principals, for the purpose of performance or otherwise of the transaction.

Provided, however, that any liability arising out of any dispute between a buying trading member and a selling trading member relating to such transaction shall not be passed on to their respective sub-brokers or clients.

Provided further that on a contracting trading member being declared a defaulter or expelled from the trading membership, it shall not affect the rights and obligations of sub-brokers and / or clients of the other contracting trading member/s.

#### **7.5 Brokerage**

**7.5.1** Save as otherwise provided, brokerage shall be charged and collected by the trading members upon the execution of all trades for sub-brokers and clients in respect of purchase or sale of securities. Trading members are entitled to charge brokerage at rates not exceeding the official scale prescribed in the relevant Regulations as may be in force from time to time.

**7.5.2** Where a trading member has transacted for a sub-broker, the aggregate amount of brokerage charged by the trading member to his sub-broker and the sub-broker to his client shall not exceed the maximum scale of brokerage prescribed by the Exchange or SEBI in this regard.

**7.5.3** The brokerage charged by the trading member to his sub-broker or client and by a sub-broker to his client shall be shown separately in the contract note or in the confirmation memo, as the case may be.

**7.6 Brokerage on Calls**

A trading member buying securities on which calls have been prepaid by the seller may charge brokerage on the aggregate of the purchase price and the amount of such calls.

**7.7 Brokerage on Put-Through Transactions**

A trading member authorising a representative trading member to put through the transactions of a sub-broker or a client may pay the representative trading member a share of the brokerage charged to such sub-broker or client.

**7.8 Underwriting Commission and Brokerage on New Issues and Offers for Sale**

Unless otherwise determined by the Governing Board, a trading member may, at his discretion, charge such brokerage or commission for underwriting or placing or acting as a broker or entering into any preliminary arrangement in respect of any floatation or new issue or offer for sale or book-building of any security as he may agree upon with the issuer or offerer or with the principal underwriters or brokers engaged by such issuer or offerer, subject to the limits prescribed under the Companies Act, 1956 or any other relevant statutory provisions as may be applicable from time to time.

**7.9 Brokerage on Application**

Unless otherwise determined by the Governing Board, brokerage or commission on all tenders or applications by or through trading members for submission or purchase in respect of any floatation or new issue or offer for sale of any security shall be on the terms offered by the issuer or offerer or by the underwriters or brokers engaged by such issuer or offerer.

**7.10 Rebate Not Allowed**

No allowance, kickback, rebate, return or division of brokerage or commission of any nature or character in respect of operations in the primary market shall be made by a trading member to any sub-broker or client in respect of any transaction or to any applicant whose tender or application for subscription or purchase has been submitted by or through him or to any other person except as hereinafter provided..

**7.11 No Special or Unusual Advantage**

For purposes of these provisions, a trading member shall not act as a principal or enter into any agreement or arrangement with a non- trading member whereby special and unusual rates are given with intent to give special or unusual advantage to such non-trading member for the purpose of securing his customer's business.

**7.12 No Brokerage In Cases of Charity**

A trading member may relinquish his brokerage in cases of transactions relating to charity.

**7.13 With Whom Brokerage May be Shared**

**7.13.1** A trading member may share brokerage with a sub-broker, remisier or employee in his own exclusive employment subject to the provisions contained in Bye-law 7.5.2 and further subject to such terms of brokerage as agreed upon in writing by way of an agreement. He may similarly share brokerage with any other person introducing a client provided such person –

**7.13.1.1** is not one for or with whom trading members are forbidden to do business under the Rules, Bye-laws and Regulations of the Exchange;

**7.13.1.2** is not a sub-broker or remisier of any other trading member of the Exchange;

**7.13.1.3** is not an employee of any other trading member;

**7.13.1.4** does not advertise in the public, press or in any other manner that he is acting as a broker;

**7.13.1.5** does not pass contracts in his own name.

**7.13.2 Rebate or Return Disallowed**

A sub-broker or a remisier or an employee or any other person sharing brokerage shall not make any allowance, rebate or return of such brokerage directly or indirectly to the client introduced by him or to any other person or agent.

**7.13.3 Indemnity**

In the absence of an agreement in writing to the contrary, a sub-broker or a remisier or an employee or other any person sharing brokerage shall be deemed to have agreed to give a full and complete indemnity to the

trading member with whom he shares brokerage for any loss which such trading member may sustain by the failure of the client introduced by him in fulfilling his obligations, provided such client is not a trading member of the Exchange.

#### **7.13.4 Failure by Client**

**7.13.4.1** In the event of any failure by a client, the sub-broker or remisier or employee or any other person sharing brokerage, as the case may be, introducing such client, shall pay the amount due forthwith to the trading member.

**7.13.4.2** If a sub-broker or a remisier or an employee of a trading member or any other person sharing brokerage with the trading member fails to pay the amount as provided in Bye-law 7.13.4.1, the trading member shall be entitled to take such proceedings against such sub-broker, remisier, employee or any other person sharing brokerage, to recover the amount, as he, in his discretion deems fit.

#### **7.13.5 Liability of Sub-broker, Remisier, Employee or Any Other Person**

If a client introduced by a sub-broker or a remisier or any employee of a trading member or any other person sharing brokerage with the trading member fails to pay the amount due by the client introduced by him, the trading member shall be entitled to take such proceedings against such client and/or make such settlement or compromise with him as he, in his discretion, deems fit. The acceptance of a negotiable instrument from such client by the trading member for the part of the amount due from him shall not release the sub-broker, remisier, or employee or other person from his liability to pay to the trading member the balance amount due from such client nor shall any arrangement or compromise with such client diminish the liability of the sub-broker, remisier, employee or other person who shall pay to the trading member the unrealised balance of the original amount due from such client and the costs and expenses incurred in the course of realization.

#### **7.13.6 Liability of Trading Member**

**7.13.6.1** Notwithstanding any arrangement for sharing of brokerage with any person, the trading member shall be directly and wholly

responsible to the Exchange for the liability of clients of such persons.

**7.13.6.2** The trading member shall also be directly and wholly responsible to the Exchange for the liability of clients of his sub-brokers.

**7.13.6.3** The trading member shall also be directly and wholly responsible to the clients for the transactions done by him directly and / or through his sub-broker.

#### **7.13.7 Arbitration**

Any dispute between a trading member and his sub-broker or remisier, employee or any other person sharing brokerage with him in respect of any matter shall be referred to arbitration and decided in accordance with the Bye-laws and Regulations relating to arbitration of disputes.

### **7.14 Contract Notes**

#### **7.14.1 Mandatory to Issue**

A trading member shall issue to clients contract notes in such form and within such time of execution of a transaction on the ATS of the Exchange, as may be prescribed in the relevant Regulations in respect of all trades done for and on behalf as an agent, save where the transaction is made on spot delivery basis, the contract note shall be issued as a principal.

#### **7.14.2 Bar on Issue of Contract Note**

No contract note shall be issued by any trading member for any security other than for a transaction executed on the ATS of the Exchange or for a transaction which is not recognized and specified in these Bye-laws. Any claim arising from a contract note issued by any trading member in violation of this requirement may be good for initiating any action under civil laws by any affected person against the trading member but shall be void for enforcement under the Rules, Bye-laws and Regulations of the Exchange and for seeking remedy thereunder by a trading member against the affected person or vice versa.

### **7.14.3 Rules, Bye-laws, Regulations, etc. Applicable**

The contract note issued by a trading member to clients shall state that the transaction is subject to the Rules, Bye-laws, Regulations, Circulars and Usages of the Exchange and subject to arbitration as provided in the Rules, Bye-laws and Regulations of the Exchange and subject to the jurisdiction of the Courts in \_\_\_\_\_. The contract note shall not contain any provision inconsistent with the Rules, Bye-laws, Regulations, Circulars and Usages of the Exchange. The name of the sole proprietor of the firm or names of the partners of the partnership firm or of the designated directors of the company shall be printed on the contract notes. The contract notes shall also have the words “ trading member(s) of the \_\_\_\_\_ Stock Exchange, \_\_\_\_\_ ” immediately following the signature.

**7.14.4** In case where a trading member chooses to issue a contract note-cum-bill, it shall be obligatory to follow the same format as is mandatorily required for the contract notes, with additional particulars relating to the information contained in a bill.

### **7.14.5 Contract Note to Contain Specified Details**

The contract note issued by a trading member to clients shall disclose the order number, order execution time, trade number, client code and such other details, as may be prescribed by the Exchange in the relevant Regulations and/or by SEBI from time to time.

### **7.14.6 Period for Submitting / Making Claim / Complaint by a Client**

If there is any claim, difference or dispute relating to a transaction, whether there exists a contract note or not or whether an order is executed on the ATS or not, the affected client may lodge a claim / complaint with the Investors' Grievance Cell of the Exchange within thirty calendar days from the date of transaction or from the date the client claims to have given instruction / order to buy or sell a security to the concerned trading member or from the date on which the client claims to have made payment of money or delivery of a security, as the case may be, to the concerned trading member, in relation to an instruction / order to buy or sell the security. Any claim, difference or dispute, not meeting with this requirement, shall be time-barred for the purpose of the same being taken up by the Investors' Grievance Cell

under the Rules, Bye-laws, Regulations and Circulars of the Exchange. A claim, difference or dispute shall be time-barred under the Rules, Bye-laws, Regulations and Circulars of the Exchange, if it is not lodged within six months from the date of transaction or from the date the client claims to have given instruction / order to buy or sell a security to the concerned trading member or from the date on which the client claims to have made payment of money or delivery of a security, as the case may be, to the concerned trading member, in relation to an instruction / order to buy or sell the security. These requirements shall be incorporated in the Broker-Client Agreement and also conspicuously printed on the contract note.

#### **7.15 Contract Notes Issued by Firms and Companies**

**7.15.1** In the case of a firm or a company registered as a trading member under the Rules, Bye-laws and Regulations of the Exchange, every contract note shall be signed and issued only in the name of the firm or company and no contract note shall be signed and issued in the name of the sole proprietor in the case of a proprietary firm or an individual partner in the case of a partnership firm or an individual director in the case of a company.

**7.15.2** Even if the contract note is not signed or signed by an unauthorised person, it would not invalidate the contract provided the transaction has been executed on the ATS of the Exchange. In such a case, the trading member shall be fully liable for its performance, as may be provided in the Rules, Bye-laws and Regulations of the Exchange.

#### **7.16 Contract Notes to Disclose Whether Trading Member Acted As Principal or Agent**

The contract notes issued by a trading member to his clients for any transaction on a spot delivery basis shall be as a principal and for any transaction other than on a spot delivery basis shall be as an agent, in accordance with the provisions of the Rules, Bye-laws and Regulations of the Exchange and shall be in such form, as may be prescribed in the relevant Regulations. Contract notes shall disclose whether the trading member has acted as a principal or as an agent.



### **7.17 Signing of Contract Notes**

A contract note issued by a trading member shall be signed by -

**7.17.1** the sole proprietor in case of a proprietary firm;

**7.17.2** a partner of the firm in case of a partnership firm;

**7.17.3** a designated director or authorised signatory in case of a company; or

**7.17.4** a constituted attorney of a trading member,

and that the contract note shall not be signed by any person other than the persons specified herein above.

Notwithstanding this requirement, where a contract note is not signed or not signed by an authorized person, it shall not invalidate the contract provided the transaction has been executed on the ATS of the Exchange. In such a case, the trading member shall be fully liable for its performance, as may be provided in the Rules, Bye-laws and Regulations of the Exchange.

### **7.18 Use of Digital Signatures on Contract Notes**

A trading member may, if he so chooses, issue contract notes carrying digital signatures. Such contract notes have to be electronically authenticated and their digital certificates, obtained from any of the Certifying Authorities approved under the Information Technology Act, 2000, are affixed thereon.

Provided, however, that a client shall have the right to receive the contract note in printed form.

### **7.19 Confirmation Memos**

A sub-broker, as an agent, affiliated and trading through a trading member, shall issue confirmation memos to his clients in respect of all trades done for his clients in such form and within such time, as may be prescribed under the relevant Regulations.

#### **7.19.1 Reference of Contract Note Compulsory on Confirmation Memos**

The confirmation memo issued by a sub-broker of a trading member to his client for any transaction in a security shall make a reference to the contract note number printed on the contract note, which is issued by the trading member to the sub-broker for the same transaction. The confirmation memo issued for any transaction shall state that the

transaction is subject to the Rules, Bye-laws, Regulations, Circulars and Usages of the Exchange and subject to arbitration, as may be provided in the Rules, Bye-laws and Regulations of the Exchange and subject to the jurisdiction of the Courts, as may be specified by the Relevant Authority from time to time.

#### **7.19.2 Compulsory Details in Confirmation Memos**

The confirmation memos issued by a sub-broker to his clients shall disclose the order number, order execution time, trade number, client code and such other details, as may be prescribed by the Exchange from time to time in the relevant Regulations and/or by SEBI.

**Explanation:**

The reference relating to the Income Tax Permanent Account Number of a client shall be applicable to such of those transactions the value of which exceeds such amount, as may be specified in this behalf by the Relevant Authority.