

**EXECUTIVE DIRECTOR
SECONDARY MARKET DEPARTMENT**

SMD/POLICY/SL/CIR-09/97

May 07, 1997.

**To Executive Directors/Presidents/
Managing Directors of all Stock Exchanges and
National Securities Clearing Corporations Ltd.**

Dear Sir,

1. Securities Lending Schemes

SEBI has notified on February 06, 1997, the Securities Lending Scheme. As per the Scheme, Approved Intermediaries may directly deliver securities to Clearing Houses of Stock Exchanges or Clearing Corporations in cases where Brokers Members of the Exchange borrow stock for delivery in the market. To facilitate this process Approved Intermediaries are required to register themselves as Clearing Members of Clearing House of a Stock Exchange or Clearing Corporation. Stock Exchanges/Clearing Corporations are advised to grant registration to Approved Intermediaries to act as Clearing Members subject to their fulfillment of the eligibility criteria as specified in their Rules, Regulations and/or Bye-laws.

Yours faithfully,

M.D. PATEL

- cc: a) Chairman's Secretariat.
b) All Executive Directors, Division Chiefs and Regional Managers of SEBI.
c) All SEBI Nominee Directors on the Board of Exchanges.
d) All Division Chiefs requested to circulate to all their officers.

SECURITIES LENDING SCHEME

1. PRELIMINARY

- (1) This scheme shall be called the Securities Lending Scheme, 1997

2. APPLICABILITY

- (1) It shall come into force on 6th February 1997.

3. DEFINITIONS

- (1) In this scheme, unless the context otherwise requires :-

- (a.) “*approved intermediary*” means a person duly registered by the Board under the guidelines/scheme through whom the lender will deposit the securities for lending and the borrower will borrow the securities;
- (b.) “*Board*” means the Securities and Exchange Board of India (SEBI) established under Section 3 of the Securities and Exchange Board of India Act, 1992;
- (c.) “*borrower*” means a person who borrows the securities under the scheme through an approved intermediary;
- (d.) “*corporate benefits*” shall include dividends(gross), rights, bonus, redemption benefits, interest, or any other right or benefit accruing on the securities lent;
- (e.) “*lender*” means a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the scheme;
- (f.) “*securities*” has the meaning assigned to it in Section 2 of the Securities Contracts (Regulation) Act, 1956;
- (g.) “*scheme*” means Securities Lending Scheme, 1997 for lending of securities through an approved intermediary to a borrower under an agreement for a specified period with the condition that the borrower will return equivalent securities of the same type or class at the end of the specified period along with the corporate benefits accruing on the securities borrowed.

- (2) *Words and expression used and not defined for the purpose of this Scheme but defined in the Securities Contracts (regulation) Act, 1956 or SEBI Act shall have the meanings respectively assigned to them in that Act or rule and regulations made thereunder.*

4. SCHEME

- (1) The lender shall enter into an agreement with the approved intermediary for depositing the securities for the purpose of lending through approved intermediary as per the scheme and the borrower shall enter into an agreement with the approved intermediary for the purpose of borrowing of securities and as such there shall be no direct agreement between the lender and the borrower for the lending or borrowing of securities.
- (2) The agreement between the lender and the approved intermediary shall provide that when the lender has deposited the securities with the approved intermediary under the scheme, the beneficial interest shall continue to remain with the lender and all the corporate benefits shall accrue to the lender.

- (3) The lender shall be entitled to deposit only those securities registered in his name or in the name of any other person duly authorised on his behalf with the 'approved intermediary' for the purpose of lending.
- (4) The lending of securities under the scheme through an approved intermediary and the return of the equivalent securities of the same type and class by the borrower shall not be treated as disposal of the securities.
- (5) The approved intermediary shall issue a receipt to the lender acknowledging the deposit of the securities by the lender.
- (6) The approved intermediary shall unless otherwise provided in the agreement with the lender, guarantee the return of the equivalent securities of the same type and class to the lender along with the corporate benefits accrued on them during the tenure of the borrowing. Even in case of failure of the borrower to return the securities or corporate benefits the approved intermediary shall be liable for making good the loss caused to the lender.
- (7) The approved intermediary may retain the securities deposited by the lender in its custody as a trustee on behalf of the lender.
- (8) The approved intermediary shall in accordance with the terms of the agreement entered into with the lender, be entitled to lend the securities deposited by the lender to the borrower from time to time.
- (9) Under the scheme, the title of the securities lent to the borrower shall vest with the borrower and the borrower shall be entitled to deal with or dispose of the securities borrowed in any manner whatsoever.
- (10) The agreement between the borrower and the approved intermediary shall *inter- alia* provide that the borrower shall have an obligation to return, the equivalent number of securities of the same type and class borrowed, to the approved intermediary within the time specified in the agreement along with all the corporate benefits which have accrued thereon during the period of borrowing.
- (11) The agreement between the lender and the approved intermediary and the borrower and the approved intermediary, shall also provide for the following terms and conditions :-
 - (a) the period of depositing/lending of securities,
 - (b) charges or fees for depositing/lending and borrowing,
 - (c) collateral securities for borrowing,
 - (d) provisions for the return including premature return of the securities deposited or lent; and
 - (e) mechanism for resolution of the disputes through arbitration.
- (12) The borrower shall not be entitled to discharge his liabilities of returning the equivalent securities through payment in cash or kind.
- (13) The approved intermediary shall be entitled to receive from the borrower collateral security and fees for lending the securities.
- (14) The borrower shall deposit the collateral securities with the approved intermediary in the form of cash, bank guarantee, Government securities or certificate of deposits or other securities as may be agreed upon with the approved intermediary for the purpose of ensuring the return of the securities.

- (15) When the approved intermediary returns securities to the lender, the approved intermediary shall issue a receipt to the lender.
- (16) The approved intermediary shall maintain a complete record of the securities deposited by the lender, securities lent to the borrower, the securities received from the borrower and the securities returned to the lender by the approved intermediary.
- (17) In the event of the failure of the borrower to return the securities in terms of the agreement, the borrower shall become a defaulter and the approved intermediary shall have the right to liquidate the collateral deposited with it, in order to purchase from the market the equivalent securities of the same class and type for purpose of returning the equivalent securities to the lender. The approved intermediary shall be entitled to take any action as deemed appropriate against the defaulting borrower to make good its loss, if any.
- (18) The approved intermediary shall notify defaults by any borrower to the Board, the concerned stock exchange and the concerned authorities for initiation of appropriate action against the defaulter.

5. **ELIGIBILITY CRITERIA FOR APPROVED INTERMEDIARY**

No person shall act as an approved intermediary unless a certificate of registration has been obtained from the Board.

For the grant of a certificate of registration the Board shall take into account the following:

- (a) whether the applicant is a person with minimum networth of Rs.50 crores;
- (b) if the applicant is a clearing house or a clearing corporation and it has the networth specified by the Board after consulting the stock exchange;
- (c) whether the applicant has adequate infrastructure facilities like office space, equipment and manpower experienced in dealing in securities to effectively discharge its activities.

6. **OBLIGATIONS AND RESPONSIBILITIES OF APPROVED INTERMEDIARY**

An approved intermediary shall comply with the following obligations and responsibilities:-

- (1) The approved intermediary shall abide by the scheme and the guidelines issued by the Board from time to time with respect to its activity of securities lending.
- (2) The approved intermediary shall comply with the requirement of eligibility criteria for the lender and the borrower with the eligibility criteria, if, specified by the Board.
- (3) The approved intermediary shall specify in the respective agreement the fees payable to the lender and the fee to be charged from the borrower.
- (4) The approved intermediary shall specify the amount and type of collateral acceptable for the purpose of securities lending as well as the norms for the valuation of securities. It may also specify the mechanism of sharing the income on collateral with the borrower.
- (5) The approved intermediary at the request of lender shall issue a receipt acknowledging the deposit of the securities by the lender. The receipt shall include the complete details of securities deposited such as name of security, quantity, face value, certificate number and folio number of the lender along with the date from when the lender has become the registered holder of the security. Similarly, when securities are returned to the lender by approved intermediary, it shall issue a receipt containing the above details to enable the lender to use the same as a proof of continuity of his holdings.
- (6) The approved intermediary shall maintain a complete record of the securities deposited by the lender, securities lent to the borrower, the securities received from the borrower and the securities returned to the lender by the approved intermediary. The records of the approved intermediary shall be open for inspection by the Board or any other person duly authorised by the Board for this purpose.
- (7) The approved intermediary shall maintain and make available to the Board such information, documents, returns and reports as may be specified from time to time.

- (8) The approved intermediary shall abide by the code of conduct as may be specified by the Board.
- (9) Nothing in this scheme shall exempt the approved intermediary from discharging any obligations placed on it by any law, regulations and guidelines.

7. **GUIDELINES FOR APPROVED INTERMEDIARIES**

Terms of Registration :

- (a) The registration shall be for an initial period of three years.
- (b) The approved intermediary as a condition of registration shall be required to pay fees as specified by the Board.
- (c) The Board shall have the right to suspend/cancel the registration of the approved intermediary in case of violation of the terms of the scheme.
- (d) Notwithstanding anything contained above, no action shall be initiated by the Board without following the principles of natural justice.

SCHEDULE OF FEES

1. The Securities Lending Scheme provides for registration of approved intermediaries.
2. The registration shall be valid for 3 years and can be renewed thereafter.
3. The application fee shall be non-refundable - Rs.10,000/-.
4. The initial registration fee shall be Rs.10 lakhs. On renewal after 3 years, the renewal fee shall be Rs.5 lakhs.
5. The annual fee shall be Rs.2 lakhs per annum.
6. The annual fee shall be payable yearly in advance and in the first instance should be payable (pro-rata) for the financial year ending 31st March 1998.
7. Approved intermediaries are requested to send the fee payable, as stated above by means of a demand draft favouring "Securities and Exchange Board of India", payable at Bombay.
8. A receipt shall be sent to the approved intermediaries after the realisation of the demand draft.

CODE OF CONDUCT FOR APPROVED INTERMEDIARIES

An approved intermediary will be deemed to be guilty of misconduct or unprofessional conduct if it violates intentionally or otherwise any of the following provisions of the Code of Conduct:

1. The approved intermediary herein agrees and undertakes to perform its duties as an approved intermediary with the highest standards of integrity and fairness in all its dealings.
2. The approved intermediary shall abide by the obligation as specified under the securities lending scheme and the terms of the agreement entered into by the approved intermediary with the lender / borrower.
3. The approved intermediary shall inform the client before taking up any assignment that it is obliged to comply with the Code of Conduct and it shall deliver a copy of the Code of Conduct to its client, if the client is not aware of the same or does not have it.
4. The approved intermediary shall maintain true and correct record of the securities lending transactions undertaken by it under the scheme and in particular the records in respect of:-
 - (a) the securities held by it on behalf of the lenders,
 - (b) the securities lent by it to the borrowers,
 - (c) the time and tenure of such lending,
 - (d) the return of equivalent security by the borrower after the tenure of lending to the approved intermediary, and
 - (e) the return of equivalent security by the approved intermediary.
5. The approved intermediary shall ensure that the lending of security is not misused or disguised by the lender or borrower for the sale of security or for avoidance of capital gains tax.
6. The approved intermediary shall render at all times high standards of service, exercise due diligence, ensure proper care and exercise independent professional judgment. The approved intermediary shall disclose to the clients its possible sources or potential areas of conflict of duties and interest and provide unbiased services.
7. The approved intermediary shall maintain confidentiality of information about a lender or borrower which has come to possess as a consequence of dealings with it and shall not divulge the same to other clients, the press or any other interested party.
8. Being fully aware of its obligations, the approved intermediary shall endeavour to ensure that true and adequate information is provided to the SEBI, Income-Tax Department, any other Government authority.
9. An approved intermediary shall abide by all the provisions of the Act, Rules, Regulations, Guidelines, Resolutions, Notifications, Directions, Circular, etc. as may be issued by the Government of India and Securities and Exchange Board of India from time to time as may be applicable to the approved intermediary.

**FORM OF APPLICATION TO BE SUBMITTED BY THE APPROVED INTERMEDIARY
UNDER THE
SECURITIES LENDING SCHEME TO SEEK REGISTRATION FROM THE SECURITIES AND
EXCHANGE BOARD OF INDIA
UNDER THE SEBI ACT, 1992**

Name of the Applicant

Contact Person

Telephone No.

INSTRUCTIONS

- (i) This form is meant for use by the applicant for the application for the grant of registration to act as an approved intermediary. .
- (ii) Applicants should complete this form and submit it along with all supporting documents and the appropriate application and registration fee to the Securities and Exchange Board of India at its Head Office at Mumbai.
- (iii) It is important that this application form should be read in conjunction with the terms of the agreement entered into by the approved intermediary and the lender/borrower as well as the Code of Conduct for approved intermediaries.
- (iv) Applications for registration will only be considered provided it is **complete in all respects.**
- (v) All answers must be legible.
- (vi) Information which needs to be supplied in more detail may be written on a separate sheet which should be attached to the application form.
- (vii) The application must be signed and all signatures must be original.

2. Applicant's details

2.1 Name of the Applicant:

- (a) If the applicant is already registered under any other regulations under the Act, please mention the registration number and the period of validity of registration and other details.
- (b) Whether the applicant is a member of a clearing house or clearing corporation. (If yes, details of its activities).
- (c) Net worth of the applicant _____ (Paid up capital plus free reserves minus the profit and loss debit balance minus intangible assets)

2.2 Address of registered office:

Pin Code:..... Telephone No.

Telex No. Fax No.

Address for correspondence:

Pin Code: Telephone No.

Telex No. Fax No.

Address of Branch offices, if any:

3 Organisation Structure

3.1 Objectives, memorandum and articles of association to be annexed

3.2 Date and place of incorporation:

Place	Date	Month	Year
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3.3 Nature (e.g. limited company - private / public, unlimited company, partnership, others)

3.4 Particulars of all directors / partners / proprietors:

Name	Qualification	Experience	Share in applicants' firm / company
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3.5 Particulars of key management personnel:

Name	Qualification	Experience	Date of Appointment	Functional Areas
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3.6 Details of infrastructure such as office space, computers and others

3.7 Names and activities of associate companies / concerns:

Name of company/firm	Address	Phone Nos.	Type of activity handled	Nature of interest
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4. Business information

4.1 Experience in dealing in securities (period to be indicated)

4.2 Indicate type of activity

4.3 Experience in other financial services rendered (period, area and date of commencement of activity)

4.4 Business handled during the last three years:

5. Client information

5.1 List of clients

Name	Services rendered
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6. Financial information

Please enclose audited annual accounts of three years. Where un-audited reports are being submitted, give reasons.

I/We warrant that I/we have truthfully and fully answered the questions above and provided all the information which might reasonably be considered relevant for the purposes of my/our registration and I/We will promptly notify SEBI of any changes in the information during the period that my/our registration is being considered and if my/our registration is accepted, thereafter.

I/We understand that misleading or attempting to mislead SEBI on any point will be deemed an act of misconduct and may render the applicant, if registered, liable to disciplinary proceedings.

I/We declare that the information supplied in the application form is complete and correct.

For and on behalf of _____

(Name of Applicant)

Director/Partner or Sole Trader

Director/Partner

Name in Block Letters

Name in Block Letters

Date

Date

