

Recognition of a body or body corporate for administration and supervision of Research Analysts and consequential changes to the framework for administration and supervision of Investment Advisers

1. Objective

To seek approval of the Board:

- 1.1. for recognition of a body or body corporate for administration and supervision of Research Analysts (“RAs”) under regulation 14 of the SEBI (Research Analysts) Regulations, 2014 (“RA Regulations”);
- 1.2. to include an express provision enabling stock exchange to have oversight over specified intermediaries such as Investment Advisers (“IAs”) and RAs in the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 (“SECC Regulations”); and
- 1.3. consequential amendments to the RA Regulations and to the SEBI (Investment Advisers) Regulations, 2013 (“IA Regulations”).

2. Background

- 2.1. The RA Regulations were notified on September 01, 2014 and came into force on December 01, 2014. The growth in the number of registered RAs can be seen from the table below:

As on date	Number of registered RAs	As on date	Number of registered RAs
March 31, 2015	27	March 31, 2020	643
March 31, 2016	272	March 31, 2021	690
March 31, 2017	372	March 31, 2022	614
March 31, 2018	479	March 31, 2023	869
March 31, 2019	592	February 20, 2024	1,176

- 2.2. Given the potential for growth in number of investors in the country will lead to a much larger number of RAs/IAs, coupled with the fact that the industry has undergone significant changes since the regulations were notified, a review of Regulations is required, which is currently underway separately.
- 2.3. Investment Adviser Administration and Supervisory Body (“IAASB”) has been assigned to BSE Administration and Supervision Limited (“BASL”), a wholly

owned subsidiary of BSE Limited (“BSE”) in terms of regulation 14 of the IA Regulations.

2.4. (This has been excised for reasons of confidentiality)

2.5. (This has been excised for reasons of confidentiality)

3. **Examining the modes of obtaining assistance in the activities of administration and supervision (excised for reasons of confidentiality)**

3.1. **Contracting to other entity** – Tendering process or public auction is a basic requirement for award of contract by any government agency (circular number 04/04/21 dated April 06, 2021 of Central Vigilance Commission -**Annexure C** and the SEBI Procurement Manual - extract in **Annexure D**). This contract may not be suitable for the following reasons:

- a. Considering the criticality of the proposed role of administration and supervision of RAs and its potential to affect the integrity of the securities market, selection of suitable agency should not be based on cost, i.e., awarding contract to the lowest bidder, but on the capability to effectively and efficiently discharge the task.
- b. The agency which is awarded the contract for one term shall remain uncertain of their continuance. Such uncertainty shall constrain them from making requisite investment in manpower, infrastructure, technology, etc., thereby limiting their ability to effectively discharge their functions. Further, repetitive empanelment, tendering exercises and the resultant uncertainties shall also create challenges related to compliance, reporting, etc. for RAs. Frequent changes also mean frequent transmission of data from one agency to another with consequent downtime. This may lead to some latency in the activity of the agency, coupled with need for seamless migration.
- c. Entities other than MIs may not have adequate exposure, understanding and capability to correctly appreciate the regulatory intent and carry out their responsibility suitably and adequately. Hence, the process of empanelment and tendering through public advertisements will only add to the cost and time of the selection process and may not necessarily lead to discovery of any new suitable agency other than already known MIs.

- d. Supervision sometimes converts into recommendations for enforcement actions for any suspected violations of regulatory provisions. If supervision is contracted to an outsourced entity other than MII, collaborating with such entity in enforcement matters may be challenging as these entities may not have the relevant experience/expertise and even confidentiality of the proceedings may be compromised. Further, these entities may also lack the regulator's perspective, which is today shared by the MIIs.

3.2. Recognition to existing MII as RAASB -

- a. The activities of administering and supervising RAs, though regarded as non-core activities, are an extension of the regulatory obligation enshrined in the SEBI Act, 1992 ("SEBI Act") and relevant regulations. A designated MII is more suitable for such role as compared to any other entity.
- b. MIIs acting as first level regulator themselves may provide the highest degree of accountability, which is expected from the proposed body.
- c. During the process of recognition of IAASB, SEBI had sought expression of interest from MIIs (stock exchanges) and subsequently granted recognition to an MII subsidiary.
- d. MIIs (exchanges and depositories) are jointly managing the Online Dispute Resolution ("ODR") mechanism which facilitates resolution of disputes between investors and intermediaries including RAs.
- e. MIIs such as stock exchanges presently carry out administration and supervision of stock brokers which are client-facing intermediaries like IAs and RAs. Further, many stock brokers are also registered as IA/RA.

3.3. In view of the discussions in paras 3.1 and 3.2 above, it is proposed to recognise an existing MII for the purpose of administration and supervision of RAs rather than contract to any other entity, while at the same time ensuring that SEBI shall continue to register RAs as per the mandate given under the SEBI Act and that the core functions relating to registration, enforcement action and disciplinary/ penal action shall not be delegated by SEBI to RAASB.

3.4. The evaluation of the activities as well as regulatory provisions governing various kinds of MIIs in the securities market is given below:

3.4.1. **Clearing Corporations** – As per the definition of clearing corporation under regulation 2(d) of the SECC Regulations, it is a specialised body entrusted with the specific functions of clearing and settlement of trades that have taken place on a stock exchange. It is incongruent with the activities of administration and supervision of intermediaries such as IAs/RAs. Further, a clearing corporation has interface only with clearing members, which need not be client-facing intermediaries like IAs and RAs. Hence, clearing corporation is not suitable for undertaking administration and supervision of RAs.

3.4.2. **Depositories** – A depository operates in a specialized and technical domain as facilitator of dematerialisation of securities and is responsible for the maintenance of electronic records of beneficial owners of securities. These primary functions of depository are incongruent with the activities of administration and supervision of intermediaries such as IAs/RAs. Hence, depository is also not suitable for undertaking administration and supervision of RAs.

3.4.3. **Stock Exchanges** –

a. It may be noted that Section 11 of the SEBI Act empowers SEBI to regulate the securities market by such measures as it thinks fit. Section 11(2)(a) provides that one of the functions of SEBI is to regulate the business in the stock exchanges. Stock exchange is recognised by SEBI for the specified purpose in terms of the Securities Contracts (Regulation) Act, 1956 (“SCRA”) wherein

b. Section 2(j) of the SCRA defines a ‘stock exchange’ as follows:

“(j) “stock exchange” means –

(a) any body of individuals, whether incorporated or not, constituted before corporatisation and demutualisation under sections 4A and 4B, or

(b) a body corporate incorporated under the Companies Act, 1956 (1 of 1956) whether under a scheme of corporatisation and demutualisation or otherwise,

for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.”

- c. The phrase 'dealing in securities' used in section 2(j) of the SCRA has a wide connotation and is not restricted to that of only buying or selling transactions in securities. The following observations of the Hon'ble Supreme Court made in the case of Securities and Exchange Board of India v. Shri Kanaiyalal Baldevbhai Patel¹ are worth noting wherein the term "dealing in securities" has been interpreted in the following manner:

"26. For a transaction to be termed as dealing in securities, following ingredients need to be satisfied-

- 1. includes an act of buying, selling or subscribing pursuant to any issue of any security, or*
- 2. Agreeing to buy, sell or subscribe to any issue of any security, or;*
- 3. Otherwise transacting in any way in any security by any person as principal, agent or intermediary referred to in Section 12 of the Act."*

- d. Although the aforesaid interpretation has been rendered in relation with the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, it may be noted that since an RA is primarily responsible for providing research report with respect to securities that are listed or to be listed in a stock exchange, such activity squarely falls within the ambit of the phrase "dealing in securities". Likewise, since an IA provides investment advice inter-alia with respect to securities, such activity also falls within the ambit of the phrase "dealing in securities".
- e. In view of the above, it can be said that a stock exchange, which is recognised under the SCRA, can be recognised for undertaking the functions relating to the 'assisting, regulating or controlling the business of dealing in securities' in the securities market, which include administration and exercising oversight over registered intermediaries like IAs and RAs. Further, a perusal of the SCRA and

¹ (2017) 15 SCC 1.

the Securities Contracts (Regulation) Rules, 1957 (“SCRR”) reveals that the aforesaid pieces of legislation do not contain any express prohibition for undertaking administration and supervision of IAs/RAs by a stock exchange.

- f. In this regard, it is pertinent to refer to the following extract of the “Report of the Committee on Review of regulations and relevant circulars pertaining to Market Infrastructure Institutions (MIs) viz., Stock Exchanges, Depositories and Clearing Corporations” dated March 26, 2018 (extract at **Annexure E**):

“5.3. Any activity which is not related or incidental to exchange activity can be done through separate legal entity and as permitted by SEBI. MIs over a period of time have gathered expertise in certain types of operations that can be applied to other activities for generating revenue. Areas like handling big data, managing transaction processing etc. are some of them. Getting into such other activities may also complement the existing activities of stock exchanges. Moreover, it is observed that every business look, for opportunities of growth, especially where there is a limited scope for deployment in related activity.

5.4. The principle for MIs entering into related/unrelated activities would be that any activity related to capital market is a related activity. [...]”

- g. While as per regulation 38 of the SECC Regulations (extract at **Annexure F**), with the approval of SEBI, stock exchanges can be recognised to undertake the activities of administration and exercising oversight over registered intermediaries like IAs and RAs and no amendments may be required, in order to have an express provision and to avoid ambiguity and challenge by way of litigation, it is proposed to insert a new regulation after the existing regulation 38 in the SECC Regulations, to specifically provide for the activities of administration and supervision over specified intermediaries to be carried out by recognised stock exchange on such terms and conditions and to such an extent as may be specified.

- 3.5. Clearing corporations and depositories can be permitted to do any activity away from their primary activity after specific approvals by SEBI under the provisions for clearing corporations under regulation 38(2) of the SECC Regulations (extract at **Annexure F**) and for depositories under regulation 7(c)(i) of the SEBI (Depositories and Participants) Regulations, 2018 (extract at **Annexure G**); however, as already mentioned, functionally they are not the best fit.
- 3.6. Given the above discussions and recognising that the functions of stock exchanges contain a wide set of activities including registration, administration and supervision of client-facing intermediary, namely, stock brokers - many of which are also registered as IAs/RAs both of which are client/investor interfacing intermediaries, stock exchanges appear to be the most apt MII for recognition as IAASB/RAASB.
- 3.7. It may be relevant here to also note the regulatory landscape involving IAs/RAs across global jurisdictions. Based on web search, it is observed that in USA and Canada, regulation of RAs has been delegated to SROs, which have also framed rules for regulating RAs. IAs in USA are regulated by the securities market regulator and/or state securities regulators. IAs in Canada are regulated by the securities market regulator. In UK, France, Germany, Hong Kong, Singapore, Japan and Australia, IAs/RAs are regulated by the securities market regulator.
- 3.8. While SROs have had limited amount of success in the financial markets, some of the drawbacks are enlisted below:
- a. Conflict of Interest - SROs may face conflicts of interest as they are funded by the industry they regulate. This financial dependence on market participants could compromise their ability to enforce regulations strictly, especially in situations where regulatory measures might adversely affect the industry's profitability.
 - b. Inadequate Oversight - In some cases, SROs may not have sufficient resources or independence to effectively monitor and enforce regulations. This could lead to inadequate oversight, allowing market participants to engage in unethical or fraudulent activities.
 - c. Lack of Consistency - Different SROs may have varying rules and regulations, leading to inconsistencies in oversight. This lack of uniformity

can create confusion among market participants and hinder the development of a cohesive regulatory framework.

- d. Risk of Capture - SROs may be susceptible to regulatory capture, where industry interests influence the regulatory agenda. This could result in regulations that favour the industry rather than prioritizing the broader public interest.

3.9. Given the above, it appears apt to recognise a stock exchange, which is considered as first level regulator in the Indian securities market, for the purpose of administration and supervision of IAs and RAs.

4. **Proposals for consideration - Recognition to Stock Exchange as RAASB**

In view of the above discussions, it is proposed as under:

- 4.1. To recognise an MII, particularly a recognised stock exchange as a RAASB under regulation 14 of the RA Regulations for administration and supervision of RAs to the extent and on terms as may be specified by SEBI.
- 4.2. To amend regulation 14 of the RA Regulations to remove the term “regulation of research analysts” and incorporate the expression “to the extent as may be specified” (**Annexure H**). The core functions relating to registration, enforcement action and disciplinary/penal action shall not be delegated to RAASB, SEBI shall continue to register IAs/RAs as per the mandate given under the SEBI Act. The other non-core or incidental functions as may be specified by SEBI shall be performed concurrently by SEBI and RAASB. SEBI shall monitor RAASB through periodical reports and inspection regarding activities of RAs.
- 4.3. To insert a new regulation 38A (**Annexure I**) in the SECC Regulations to specifically provide for the activities of administration and supervision over specified intermediaries to be carried out by recognised stock exchange on such terms and conditions and to such an extent as may be specified, in order to avoid ambiguity and challenge by way of litigation.
- 4.4. The activities of administration and supervision of RAs, to begin with, may be conducted by only one stock exchange and the same stock exchange may be granted recognition as IAASB, in order to ensure efficiency in the system and economies of scale. Recognition may be granted to a stock exchange as

IAASB/ RAASB for a period of five years. However, as the industry progresses and the number of entities increase, competition would be fostered and more than one stock exchange shall be enabled to undertake this activity.

4.5. The eligibility of the stock exchange shall remain the same as provided in SEBI circular number SEBI/HO/IMD/DF1/CIR/P/2020/148 dated August 06, 2020 (**Annexure J**).

4.6. It is further proposed to issue a circular under Section 11(1) of the SEBI Act read with regulation 14 of the RA Regulations for operationalising RAASB framework. The circular shall also specify the role and responsibilities of RAASB. It is proposed that the work allocation between SEBI and RAASB shall be similar to the roles and responsibilities of IAASB, as listed in **Annexure K**.

5. Enlistment with RAASB as eligibility criterion for registration as RA

5.1. Regulation 14(3) of the RA Regulations inter alia provides that no person shall act as RA unless he is a member of a recognised body or body corporate. As now the recognised stock exchange shall be Administration and Supervisory Body (“ASB”) and as membership of stock exchanges has different connotation, it may not be appropriate to use the term “member” in reference to IAs/RAs. Hence, it is proposed to amend regulation 14(3) of the RA Regulations to require an RA to “enlist” with RAASB rather than be a member of RAASB. Similar provisions in the IA Regulations may also be amended. It is also proposed to include enlistment with RAASB as an additional eligibility criterion for grant of certificate of registration as RA. These proposed amendments to the RA Regulations and IA Regulations are given in **Annexure H** and **Annexure L** respectively.

5.2. Post-operationalisation of IAASB, IAs were required to take membership of IAASB (BASL). This led to compliance burden for existing IAs already registered with SEBI, as they had to complete formalities with BASL for membership. Given that the additional eligibility criterion of enlistment is being introduced during the currency of registration of RAs, it would be considered as retrospective implementation of law if all RAs are required to obtain enlistment with RAASB. Thus, an RA having valid registration would be required to go through another on-boarding process at RAASB, thereby duplicating the efforts at the end of RA as well as RAASB. This would also not be in the best interests

of market participants and would not only lead to disruption of their business but also add to their compliance cost. It is, therefore, proposed to clarify the following by way of a circular:

- a. Existing RAs registered with SEBI shall be deemed to be enlisted with RAASB from the effective date of operationalisation of RAASB. No additional documentation shall be required to be submitted by existing RAs for the purpose of enlisting with RAASB.
- b. Registration applications received and under process with SEBI up to the effective date of operationalisation of RAASB shall continue to be processed by SEBI. RAs shall be deemed to be enlisted with RAASB once registration is granted by SEBI. No additional documentation shall be required to be submitted by such RAs for the purpose of enlisting with RAASB.
- c. New applications received from the effective date of operationalisation of RAASB shall be routed through RAASB. In such cases, enlistment with RAASB shall be a pre-requisite for grant of certificate of registration as RA by SEBI.

5.3. The above approach will not only provide ease of doing business but also ensure that operationalisation of RAASB framework shall be smooth and without disruption for existing RAs registered with SEBI. The details of RAs registered with SEBI shall be shared with RAASB to enable it to create a database.

6. Fee neutrality to the specified intermediaries - RAs

6.1. Regulation 3(2) of the RA Regulations provides for payment of non-refundable application fee by applicants seeking registration as RA. Regulation 9 of the RA Regulations provides for payment of registration fees as specified in Second Schedule to the RA Regulations.

6.2. The responsibilities proposed to be undertaken by RAASB (**Annexure K**) would necessitate RAASB to have necessary infrastructure, systems, manpower, etc. to perform these responsibilities. Hence, RAASB may charge administrative fee from enlisted RAs.

6.3. In view of the above and to ensure that the proposal is fee neutral to RAs, the fees payable by RAs to SEBI and RAASB are revised as under:

Type of fees	Legal Structure of RA	Fees payable to SEBI (in INR)		Maximum administrative fees payable to RAASB (in INR)
		Current	Proposed	
Application fees (payable one-time and non-refundable)	Individuals and partnership firms	5,000	2,000	-
	Proxy advisory firms	5,000	2,000	
	Body corporates including Limited Liability Partnerships ("LLPs")	50,000	20,000	
Registration fees (payable for 5 years)	Individuals and partnership firms	10,000	3,000	10,000 (2,000 per year)
	Proxy advisory firms	10,000	3,000	10,000 (2,000 per year)
	Body corporates including LLPs	5,00,000	30,000	5,00,000 (1,00,000 per year)
Renewal fees (payable every 5 years to keep registration in force)	Individuals and partnership firms	10,000	1,000	9,000 (1,800 per year)
	Proxy advisory firms	10,000	1,000	9,000 (1,800 per year)
	Body corporates including LLPs	5,00,000	5,000	4,95,000 (99,000 per year)

6.4. As may be seen from the above table, fee neutrality is maintained as the aggregate fees payable by RAs remains unchanged. To illustrate, for an individual RA/applicant, the application fee and registration fee payable to SEBI as per the existing fee structure is INR 15,000. As per the revised fee structure, the total amount of application and registration fees payable by the individual RA would remain INR 15,000, whereby the amount payable to SEBI shall reduce to INR 5,000 (application fee of INR 2,000 + registration fee of INR 3,000) and the amount payable to RAASB as administrative fee for 5 years shall be INR 10,000. Similarly, the total renewal fees payable by the individual RA

for every subsequent 5 years shall remain INR 10,000 in the revised fee structure.

6.5. It is proposed to amend Second Schedule to the RA Regulations to specify the above-mentioned revised fee structure for SEBI (**Annexure H**).

6.6. For existing registered RAs, it is proposed that fees in proportion to the registration period up to operationalisation of RAASB shall be retained by SEBI and fees for the remainder of registration period shall be shared with RAASB. Similar approach was adopted at the time of operationalisation of IAASB. Thus, it is proposed to clarify the following by way of a circular:

- a. After operationalisation of RAASB, registration/ renewal fees already paid by existing RAs to SEBI shall be shared with RAASB in proportion to the remainder of the validity of RA registration, as per the revised fee structure.
- b. In respect of applicants whose registration applications are received before the date of operationalisation of RAASB but are granted certificate of registration by SEBI after the date of operationalisation of RAASB, registration fee shall be received by SEBI as per the existing fee structure. Such registration fees shall be shared with RAASB, after adjusting the registration fees attributable to SEBI as per the revised fee structure.
- c. In respect of applications received on or after the date of operationalisation of RAASB, SEBI and RAASB shall charge fees as per the revised fee structure.

7. Consequential amendments to the IA Regulations and circulars

7.1. In line with the proposals regarding recognition of MII (stock exchange) as RAASB, a similar approach is required for IAs too. Accordingly, the IA Regulations may be amended (**Annexure L**) -

- a. to provide for enlistment of IAs in place of membership of IAs as an eligibility criterion;
- b. to remove the reference to the term “regulation” of IAs in the context of the function of IAASB; and
- c. to insert a savings clause in the IA Regulations so that any action taken or purported to have been taken or that may be taken in relation to membership of IAASB shall remain unaffected.

8. Oversight of the administration and supervision of IAs/RAs

8.1. It is proposed that an internal committee of the stock exchange shall oversee the activities of administration and supervision of RAs/IAs. The public interest directors shall form the majority of the committee. A maximum of two key management personnel of the exchange can be on the committee. The committee may also include independent external persons representing RA/IA industry. The committee shall review the performance of the exchange as RAASB/IAASB and make recommendations to SEBI.

8.2. As the ASB for IAs and RAs are envisaged to be with a single MII, there shall be a single window concept of various approvals for persons registered as IA and RA in the interest of efficiencies.

9. (This has been excised for reasons of confidentiality)

10. Effective date of amendments to Regulations and operationalisation of stock exchange as IAASB/RAASB

10.1. The effective dates of amendments to Regulations and operationalisation of stock exchange as IAASB/RAASB shall be as under:

Sr. No.	Particulars	Effective date	Rationale
1	Amendments to the SECC Regulations	Date of publication in Official Gazette	To enable stock exchange to be RAASB/IAASB
2	(Excised for reasons of confidentiality)		
3	Amendments to the RA Regulations and IA Regulations	Ninetieth day from date of publication in Official Gazette	To enable smooth enlistment of existing RAs/IAs from SEBI to ASB
4	Transfer of activities from existing IAASB, i.e., BASL to Stock Exchange	One eightieth day from effective date of amendments to the IA Regulations	To enable smooth transfer of activities from IAASB to MII

11. Proposals

The Board is requested to:

11.1. consider and approve the proposals made in paras 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 5.1, 5.2, 6.2, 6.3, 6.5, 6.6, 7.1, 8.1, 8.2, 9.1 and 10.1 above;

- 11.2. consider and approve the proposed amendment to the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Amendment) Regulations, 2024 as stated in para 4.3 above;
- 11.3. consider and approve the proposed amendment to Securities and Exchange Board of India (Research Analysts) (Amendment) Regulations, 2024 as stated in paras 4.2, 5.1, 6.3 and 6.5 above;
- 11.4. consider and approve the proposed amendment to Securities and Exchange Board of India (Investment Advisers) (Amendment) Regulations, 2024 as stated in paras 5.1 and 7.1 above;
- 11.5. (This has been excised for reasons of confidentiality); and
- 11.6. authorize the Chairperson to make consequential and incidental changes and take necessary steps to give effect to the decisions of the Board.

Encl.:

- Annexure A - (This has been excised for reasons of confidentiality)
- Annexure B – (This has been excised for reasons of confidentiality)
- Annexure C - Circular number 04/04/21 dated April 06, 2021 of Central Vigilance Commission (2 pages)
- Annexure D – Extract of SEBI Procurement Manual (5 pages)
- Annexure E - Extract of the “Report of the Committee on Review of regulations and relevant circulars pertaining to Market Infrastructure Institutions (MIs) viz., Stock Exchanges, Depositories and Clearing Corporations” dated March 26, 2018 (2 pages)
- Annexure F – Extract of Regulation 38 of the SECC Regulations (1 page)
- Annexure G – Extract of Regulation 7(c)(i) of the SEBI (Depositories and Participants) Regulations, 2018 (1 page)
- Annexure H - Proposed amendments to RA Regulations (5 pages)
- Annexure I - Proposed amendment to SECC Regulations (3 pages)
- Annexure J - SEBI circular number SEBI/HO/IMD/DF1/CIR/P/2020/148 dated August 06, 2020 (2 pages)
- Annexure K - Proposed work allocation between SEBI and RAASB (2 pages)
- Annexure L - Proposed amendments to IA Regulations (4 pages)
- Annexure M - (This has been excised for reasons of confidentiality)

Annexure A

(This has been excised for reasons of confidentiality)

Annexure B

(This has been excised for reasons of confidentiality)

Annexure C

Circular number 04/04/21 dated April 06, 2021 of Central Vigilance Commission

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सत्यमेव जयते

केन्द्रीय सतर्कता आयोग
CENTRAL VIGILANCE COMMISSION



सतर्कता भवन, जी.पी.ओ. कॉम्प्लेक्स,
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सं./No.....005/CRD/19/480241

दिनांक / Dated.....06.04.2021.....

Circular No. 04/04/21

Subject: Transparency in Works/Purchase/Consultancy contracts awarded on nomination basis.

Reference:

- | | | |
|-------|---------------------------------------|------------------|
| (i) | Commission's Circular No.15/05/06 | dated 09.05.2006 |
| (ii) | Commission's Office Order No.23/07/07 | dated 05.07.2007 |
| (iii) | Commission's Office Order No.19/05/10 | dated 19.05.2010 |
| (iv) | Commission's Circular No.18/12/12 | dated 11.12.2012 |
| (v) | Commission's Circular No.06/07/18 | dated 11.07.2018 |

Central Vigilance Commission, as part of its drive to ensure transparency, to promote healthy competition and to provide fair and equitable treatment to all interested parties in matters of public procurement, has issued guidelines from time to time emphasizing on the need to adopt tendering process as a basic requirement, before award of contract to any party.

2. Tendering process or public auction is a basic requirement for award of contract by any Government agency. Any other method, especially award of contract on nomination basis would amount to a breach of Article 14 of the Constitution guaranteeing right to equality which implies right to equality to all interested parties. The award of contracts/projects/procurements on nomination basis without adequate justification amounts to restrictive practice eliminating competition, fairness and equity. Hence, award of contracts through open competitive bids should remain the most preferred mode of tendering.

3. However, in some exceptional and inevitable circumstances, the contracts may be awarded on nomination basis; for instance, during natural calamities and emergencies declared by the Government; where procurement is possible from a single source only; where the supplier or contractor has the exclusive rights in respect of the goods or services and no reasonable alternative or substitute exists; where the auction was held on several dates but there were no bidders or the bids offered were too low etc.[Ref: SPL(Civil)No. 10174 of 2006 in case of Nagar Nigam, Meerut Vs A1 Faheem Meat Export Pvt Ltd.].
4. But, it has been observed that in some cases, the guidelines issued by the Commission are not being adhered to by the organizations. Therefore, the Commission would reiterate its earlier guidelines and direct that:
- (i) All works/purchase/consultancy contracts awarded on nomination basis should be brought to the notice of following authorities for information:
 - a) the Secretary, in case of the ministries/departments;
 - b) the Board of Directors or equivalent managing body, in case of Public Sector Undertakings, Public Sector Banks, Insurance Companies, etc.;
 - c) the Chief Executive of the organization where such a managing body is not in existence.
 - (ii) The report relating to such awards on nomination basis shall be submitted to the Secretary/Board/Chief Executive/equivalent managing body, every quarter.
 - (iii) The audit committee or similar unit in the organization may be required to check at least 10% of such cases.
5. Details of all tenders awarded on nomination basis shall be posted on website of the organization concerned, in public domain, along with brief reasons for doing so.
6. The above guidelines may be noted for strict compliance.


(Rajiv Varma)
Officer on Special Duty

To

- (i) The Secretaries of all Ministries/Departments of GoI
- (ii) All Chief Executives of CPSUs/Public Sector Banks/Public Sector Insurance Companies/Autonomous Bodies etc.
- (iii) All CVOs of Ministries/Departments of GoI/CPSUs/Public Sector banks/ Public Sector Insurance Companies/Autonomous Bodies etc.
- (iv) Website of CVC

Annexure D

(This has been excised for reasons of confidentiality)

Annexure E

Extract of the “Report of the Committee on Review of regulations and relevant circulars pertaining to Market Infrastructure Institutions (MIIs) viz., Stock Exchanges, Depositories and Clearing Corporations” dated March 26, 2018

- 5.3. Any activity which is not related or incidental to exchange activity can be done through separate legal entity and as permitted by SEBI. MIIs over a period of time have gathered expertise in certain types of operations that can be applied to other activities for generating revenue. Areas like handling big data, managing transaction processing etc. are some of them. Getting into such other activities may also complement the existing activities of stock exchanges. Moreover, it is observed that every business look, for opportunities of growth, especially where there is a limited scope for deployment in related activity.
- 5.4. The principle for MIIs entering into related/unrelated activities would be that any activity related to capital market is a related activity. Activities in the nature of treasury investment would be as per their governing board approved investment policy without partaking the character of a trading activity. However, any other activity whether involving deployment of funds or otherwise would need prior permission of the regulator.

Annexure F

Extract of Regulation 38 of the SECC Regulations

(Available on SEBI website at Legal » Regulations)

Annexure G

Extract of Regulation 7(c)(i) of SEBI (Depositories and Participants) Regulations, 2018

(Available on SEBI website at Legal » Regulations)

Annexure H

Proposed amendments to RA Regulations

(Amendments shall be notified after following the due process)

Annexure I

Proposed amendment to SECC Regulations

(Amendment shall be notified after following the due process)

SEBI circular number SEBI/HO/IMD/DF1/CIR/P/2020/148 dated August 06, 2020

(Available on SEBI website at Legal » Circulars)

Proposed work allocation between SEBI and RAASB

The proposed work allocation between SEBI and RAASB shall be similar to the roles and responsibilities of IAASB, as listed in the table below.

SEBI	Proposed RAASB
1.Registration of RA – fresh registration and pursuant to change in control	<u>Activities pertaining to administration:</u> 1. Initial scrutiny of registration applications for ensuring completeness of submission of information/ documents along with recommendation on the applications to SEBI 2. Initial scrutiny of post-registration applications illustrated below for ensuring completeness of submission of information/ documents along with recommendation on the applications to SEBI: a. Change of name b. Change of address c. Change of compliance officer/ principal officer/ director/ associated person, contact details, etc. d. Change in shareholding e. Merger/amalgamation/takeover/change in control of RA f. Surrender of registration g. NOC for establishing wholly owned subsidiary/ joint venture in foreign jurisdiction, etc. 3. Approval of advertisements of RAs as per Advertisement Code issued by SEBI 4. Maintenance of database of RAs 5. Enlisting RAs in the proposed RAASB
2.Approval for post-registration applications such as –	
a.Change of name	
b.Change of address	
c. Change of compliance officer/ principal officer/ director/ associated person, contact details, etc.	
d.Change in shareholding	
e.Merger/ amalgamation/ takeover/ change in control of RA	

SEBI	Proposed RAASB
f. Surrender of registration g. NOC for establishing wholly owned subsidiary/ joint venture in foreign jurisdiction, etc.	6. Issuance of circulars/instructions/standard operating procedures, etc. to RAs for implementation of provisions of SEBI regulations/ circulars 7. Submission of periodical reports to SEBI 8. Collection and administration of fees.
3. Supervision of RAs 4. Taking enforcement action suo moto or otherwise 5. Taking disciplinary/ penal action including levying penalty on recommendation of proposed body 6. Grievance redressal	<u>Activities pertaining to supervision:</u> 9. Monitoring the activities of RAs by obtaining Annual Compliance Audit Report and other periodical/ad-hoc reports covering general details of RAs, details of customer complaints, details of clients, etc. 10. Monitoring compliance of regulations/ circulars by RAs 11. Arbitration and grievance redressal 12. Taking administrative action including imposition of penalties and issuing warning/caution letter 13. Referring to SEBI for enforcement action against RAs. In addition to the above, the proposed body may be assigned with on-site/offsite inspection of RAs, to be done on behalf of/concurrently with SEBI and any other activity as may be specified by SEBI.

Annexure L

Proposed amendments to IA Regulations

(Amendments shall be notified after following the due process)

Annexure M

(This has been excised for reasons of confidentiality)