

Amendments to Regulations to revise and revamp Nomination facilities in the Indian Securities Market

1. Objective:

1.1. *The objective of this memorandum is to revamp the framework for nominations to aid in reduction of unclaimed assets as well as smoothen the process for surviving family/beneficiaries/successors of the deceased investors. Such measures are for: (i) securities (such as shares, bonds, units of REITs/ InvITs / AIFs and other securities) held in dematerialized form in a demat account and, (ii) for units of mutual fund schemes held in non-materialized form / Statement of Account. Such measures will also usher uniformity in the facilities and procedures, and provide choices and flexibilities in nomination facilities that investors can utilize. Such measures were also subject to public consultation titled “Revise and revamp Nomination facilities in the Indian Securities Market” dated February 02, 2024 and set forth in **Annexure I**.*

1.2. *Accordingly, the objective of this memorandum is to seek approval of the Board to make amendments to the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 (“DP Regulations”) and to the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 (“Mutual Fund Regulations”) to facilitate the same and set forth in **Annexure II**. Such amendments will facilitate issuance of necessary circular/s to make operational the revamped nominations framework and set forth in **Annexure III**.*

2. Background:

2.1. *Investor protection is the key consideration for initiatives undertaken by SEBI for streamlining the functions of the Indian Securities Markets. As a way to further strengthen investor protection, reduction of unclaimed assets in the Indian Securities Markets has been identified as a key focus area¹ and various measures have been put in place in the recent past including stringent KYC, nominations requirements and simplified transmission norms, centralized mechanism for reporting the demise of an investor through KRAs, etc. to address this issue.*

¹ Report on Unclaimed Assets of Investors in Securities Markets, SEBI Bulletin November 2021.

2.2. *The Financial Stability and Development Council (FSDC) in its 27th meeting² held on May 8, 2023 highlighted the need to facilitate the settlement of unclaimed deposits and claims in the financial sector across all segments.*

2.3. *One of the primary factors contributing to creation of and an increase in unclaimed assets is incomplete nominations and/or unavailability of nominations for financial assets in the securities markets. This also feeds into and impacts the consequent transmission process of the deceased holder of assets, making transmission an ordeal for the family/beneficiaries/successors of the deceased. The same holds true in case of incapacitated investors where absence of nomination ultimately leads to creation of unclaimed assets.*

2.4. *It is in this light that the proposed revamping of the nomination framework aims to aid in reduction of unclaimed assets as well as smoothen the process for surviving family/beneficiaries/successors of the deceased investors.*

3. **Consultation Paper:**

3.1. *A consultation paper (CP) to “Revise and revamp Nomination facilities in the Indian Securities Market” dated February 02, 2024 was published on the SEBI website, inviting comments on the 23 measures proposed therein and was open for public comments till March 28, 2024³.*

3.2. *Comments were received from 17 entities/ respondents and the same have been collated as a summary (Annexure IV). The respondents include Depository, Mutual Fund, Stock Brokers, Industry Associations, Chartered Accountant and individuals. The respondents are broadly in agreement with the proposed measures. The 23 measures are regrouped into categories, viz A) reiteration, B) improvements and C) deferment and the summary of the respondents agreeing / partially agreeing / disagreeing to these measures, category wise, are summarized as under:*

Summary of measures and response received

Sr. No.	Measures Description	In number (and in %)			
		Agree	Partially Agree	Disagree	Total count
A: Items that are reiterated in the proposed circular to bring uniformity in practice across the securities market					

² Press release dated May 8, 2023 (<https://pib.gov.in/PressReleasePage.aspx?PRID=1922566>)

³ After extension

Sr. No.	Measures Description	In number (and in %)			
		Agree	Partially Agree	Disagree	Total count
1	Rule of survivorship in case of joint holdings	0 (0%)	1 (50%)	1 (50%)	2
2	Upon the death of all joint holders together, then transmission to be made to the nominee. If no nominee, the rules of intestate succession shall apply for transmission and succession	0 (0%)	2 (67%)	1 (33%)	3
3	Norms for operation in case of demise of Karta of Hindu Undivided Family (HUF)	0 (0%)	0 (0%)	2 (100%)	2
4	Nominee as trustee of legal heir of investor	0 (0%)	1 (50%)	1 (50%)	2
5	No rights for the legal heir of the nominee	0 (0%)	0 (0%)	1 (100%)	1
6	Rights of surviving nominee(s)	0 (0%)	5(62.5%)	3 (37.5%)	8
7	Rights of Creditors to take precedence before onward transmission to nominee / legal heir	0 (0%)	1 (50%)	1 (50%)	2
8	Choice of nomination – nomination optional for joint demat accounts & Mutual Fund folios	0 (0%)	2 (50%)	2 (50%)	4
9	Norms / mode for providing and changing nomination, guardrails for its integrity / authenticity / verifiability	0 (0%)	2 (50%)	2 (50%)	4
11	Acknowledgement of Nomination and maintenance of record	0 (0%)	1 (50%)	1 (50%)	2
12	No restriction on number of times for changing nominee	0 (0%)	0 (0%)	1 (100%)	1
13	Information on nomination to be made available to the investor	0 (0%)	3 (50%)	3 (50%)	6
15	Apportionment of assets to surviving nominees	1(25%)	0 (0%)	3 (75%)	4
17	Option to specify guardian(s) when nominee(s) is a minor	0 (0%)	0 (0%)	2 (100%)	2
19	KYC of nominee to be made optional	0 (0%)	0 (0%)	2 (100%)	2
23	Transmission as per extant norms where nomination is not available	0 (0%)	0 (0%)	1 (100%)	1
B. Items in the proposed circular to improve features across the securities market					
10	Personal identifiers of nominee to be provided	1(25%)	0 (0%)	3 (75%)	4
14	Maximum number of nominees to be increased from current limit of three (3) nominees	0 (0%)	0 (0%)	5 (100%)	5
16	Choice to nominees to continue as joint holders upon demise of the investor having multiple nominees	0 (0%)	0 (0%)	1 (100%)	1
20	Allowing nominees to act on behalf of incapacitated investors	1 (20%)	3 (60%)	1 (20%)	5

Sr. No.	Measures Description	In number (and in %)			
		Agree	Partially Agree	Disagree	Total count
21	Transmission to nominee with minimal documentation	0 (0%)	1 (33%)	2 (67%)	3
22	Transmission to joint-holder(s) with minimal documentation	1 (50%)	0 (0%)	1 (50%)	2
C. Item in Consultation Paper but not included in the proposed circular					
18	Successive Nominee(s)	2 (50%)	0 (0%)	2 (50%)	4

3.3. The suggestions received pursuant to public consultation and views of SEBI thereon are detailed at **Annexure V**. The description of each of the above items, category wise is given in subsequent paragraphs.

A. Items that are reiterated to bring uniformity in practice across the securities market:

(1) Rule of survivorship in case of joint holdings (Item no. 1 in table above):

Extant legal/regulatory provisions:

In case of joint accounts having joint holding/ownership, the rule of survivorship applies. Accordingly, when two or more persons have opened a demat account or jointly own units of mutual fund schemes, on death of any one of them, the right, title and interest to the demat account or the units of mutual fund schemes is transmitted to the surviving joint holders/owners. Surviving joint holders/owners are entitled to continue with, change or cancel the nominations made previously. The mode of operation (of the joint account), namely that of the first named holder OR anyone or survivor OR either or survivor basis OR joint, etc., will be unaffected by the rule of survivorship.⁴

It may be noted that basis a SEBI advisory to the depositories that the liability of the Depository Participant (DP) shall be discharged in case of transmission to the surviving holders(s), subject that the DP “Makes it clear to the survivor(s) that he/she would be receiving securities of the deceased as a trustee of the legal heirs of the deceased demat account holder”⁵. Accordingly, the depositories amended their Operating Instructions / Compliance Manual for DPs.

⁴ As per the Indian Succession Act, 1925; NSDL Bye Law No. 9.1.7; NSDL circular no. NSDL/POLICY/2022/053 titled, “Operational Guidelines w.r.t. Mode of Operation in joint demat accounts” dated April 08, 2022; NSDL Business Rule No. 4.5.4 and CDSL Bye Laws No. 13.9.3

⁵ Point no. 2(x)(c) of SEBI Letter ref. no. MRD2/DDAP/OW/P/2021/8567/1 dated April 09, 2021.

Proposal:

The current legal/ regulatory position on rule of survivorship shall be reiterated for the sake of clarity and for bringing uniformity in practice across the securities market. The anomaly in the Operating Instructions / Compliance Manual for DPs as issued by depositories will also be advised to be rectified.

- (2) Upon the death of all joint holders together, then transmission to be made to nominee. If no nominee, the rules of intestate succession shall apply for transmission and succession (Item no. 2 in table above):**

Extant legal/regulatory provisions:

In case of demise of all joint holders simultaneously, the assets shall be transmitted to the nominee(s) for effecting due discharge of the depository and the concerned mutual fund/s.⁶

In absence of nomination(s), the transmission shall be as per the rules of intestate succession.⁷

Proposal:

The current legal/ regulatory position shall be reiterated for the sake of clarity and for bringing uniformity in practice across the securities market.

- (3) Norms for operation in case of demise of Karta of Hindu Undivided Family (HUF) (Item no. 3 in table above):**

Extant legal/regulatory provisions:

In case of demat accounts/holdings of units of mutual fund schemes of a Hindu Undivided Family, on the death of the karta as recorded, the new karta as constituted under applicable law, would be entitled to operate such an account/transact in such units.⁸

Proposal:

In response to this item in the Consultation Paper, feedback was received from 2 individuals. One individual has expressed an inchoate dissent while the other has not provided any rationale for the dissent. Hence, the current legal / regulatory

⁶ CDSL Bye Laws No. 13.9.1, NSDL Business Rules

⁷ In accordance with applicable personal laws

⁸; SEBI Circular No. SEBI/HO/MRD/MRD-PoD-2/P/CIR/2023/166 titled, "Master Circular for Depositories" dated October 06, 2023; NSDL Bye Law No. 9.10.2.1, NSDL Business Rule No. 12.6.4.1 & 12.6.4.6 and CDSL Operating Instructions no. 2.3.4.2.

position shall be reiterated for the sake of clarity and for bringing uniformity in practice across the securities market.

(4) Nominee as trustee of legal heir of investor (Item no. 4 in table above):

Extant legal/regulatory provisions:

In case of sole account/ sole holder/sole owner, on death of such sole holder/owner, the right, title and interest to the demat account or the units of mutual fund schemes will be transmitted to the nominee/s for the purpose of effecting due discharge of the depository and the concerned mutual fund/s.⁹

As such, the Will and testament of the deceased sole holder / sole owner or his/her legal heir/s or legal representative/s as per the rules of intestate succession shall continue to govern the succession.¹⁰

Proposal:

The current legal/ regulatory position shall be reiterated for the sake of clarity and for bringing uniformity in practice across the securities market.

(5) No rights for the legal heir of the nominee (Item no. 5 in table above):

Extant legal/regulatory provisions:

Death of a nominee during the lifetime of an investor shall not entitle the legal heir/s or legal representative/s of such deceased nominee to any right, title or interest in the demat account or units of mutual fund schemes of the investor upon the investor's death solely by virtue of such nomination.¹¹

Proposal:

In response to this item in the Consultation Paper, feedback was received from one individual who has not provided any rationale for dissent. Hence, the current legal/ regulatory position shall be reiterated for the sake of clarity and for bringing uniformity in practice across the securities market.

(6) Rights of surviving nominee(s) (Item no. 6 in table above):

⁹SEBI Circular Ref. No. SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2022/65 titled, "Simplification of procedure and standardization of formats of documents for transmission of securities" dated May 18, 2022; NSDL Bye law; CDSL Bye law no. 13.9.4

¹⁰ In accordance with applicable personal laws.

¹¹ Supreme Court Judgment in the matter of Shakti Yezdani & Anr. Vs. Jayanand Jayant Salgaonkar & Ors. has concluded that "....Therefore, offering a discharge to the entity once the nominee is in picture is quite distinct from granting ownership of securities to nominees instead of the legal heirs. Nomination process therefore does not override the succession laws..." Thus, the heirs of a nominee does not have any right over the assets of the holder....

Extant legal/regulatory provisions:

In case more than one nominee has been specified, upon a nominee predeceasing the investor, and on the investor's death and when no successive nominee has been specified, the right, title and interest in the demat account or the units of the mutual fund scheme will be transmitted to the surviving nominees for effecting due discharge of the depository and the concerned mutual fund/s¹² and will be undertaken as follows:

- a. by equal division among surviving nominees notwithstanding any percentage specification that may have been made, or*
- b. division on a proportionate basis among the surviving nominees in the proportion of their original percentages as specified by the investor, (including the portion attributable to deceased nominee)*

As such, the Will and testament of the deceased sole holder / sole owner or his/her legal heir/s or legal representative/s as per the rules of intestate succession shall continue to govern the transmission and succession.¹³

Proposal:

Upon demise of an investor and one of the nominees, the right, title and interest in the demat account or the units of the mutual fund scheme shall be transmitted to the surviving nominees in the same proportion of their original percentages, as specified by the investor, including the portion attributable to deceased nominee. An illustration on this attribution is given in Annexure V. This existing market practice is suitably incorporated in the proposed circular for the sake of clarity (along with the aforesaid illustration) and for bringing uniformity in practice across the securities market.

(7) Rights of Creditors to take precedence before onward transmission to nominee / legal heir (Item no. 7 in table above):

Current market practice:

Any subsisting credit facilities availed by the investor that are secured by a duly created pledge over the demat account or units of the mutual fund scheme will

¹² SEBI Circular Ref. No. SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2022/65 titled, "Simplification of procedure and standardization of formats of documents for transmission of securities" dated May 18, 2022; CDSL Bye law no. 13.9.4

¹³ As per AMFI, the rules of intestate succession shall be applicable for transmission of the % of units that were nominated in favour of the deceased nominee.

require due discharge from the creditors¹⁴ in terms of the credit agreement and pledge agreement. Transfer to the nominees, and onward transmission to the legal heir/s or legal representative/s of the sole holder/owner as per the Will and testament or rules of intestate succession shall be subject to such due discharge.

Proposal:

The current market practice shall be reiterated for the sake of clarity and for bringing uniformity in practice across the securities market.

(8) *Choice of nomination - nomination optional for joint demat accounts & Mutual Fund folios (Item no. 8 in table above):*

Extant legal/regulatory provisions:

All new investors / unitholders shall continue to be required to mandatorily provide the 'Choice of Nomination' for demat accounts/ Mutual Fund Folios (except for jointly held Demat Accounts and Mutual Fund Folios)¹⁵.

It may be noted that IMD vide circular dated April 30, 2024¹⁶ made the requirement of nomination optional for jointly held Mutual Fund folios. Subsequently, MIRSD vide circular dated June 10, 2024¹⁷ reiterated the option vis-à-vis joint accounts and made the requirement of nomination optional for jointly held Mutual Fund folios and Demat Accounts.

Proposal:

The current legal/ regulatory position shall be reiterated for the sake of clarity and for bringing uniformity in practice across the securities market. Additionally, in case of single demat accounts / Mutual Fund folios without nominee, the facility to 'Opt-out' of nomination shall be available to investors only through Offline process. This will discourage investors to choose the default option of opting-out of nomination when they open a new demat account/ folio online. This would be made applicable prospectively and not apply to existing nominations.

¹⁴ Discharge can be secured by due payment of outstanding amounts by the nominee/s or in the absence of due payment within a specified period, the creditor exercising the pledge and appropriating the realizations towards outstanding amounts.

¹⁵ SEBI Circular No. SEBI/HO/MIRSD/POD-1/P/CIR/2024/81 titled, "(a) Ease of Doing Investments- Non-submission of 'Choice of Nomination', (b) Only 3 fields to be provided mandatorily for updating Nomination Details" dated June 10, 2024.

¹⁶ SEBI Circular No. SEBI/HO/IMD/IMD-PoD-1/P/CIR/2024/29 titled, "Nomination for Mutual Fund Unit Holders – exemption for jointly held folios" dated April 30, 2024.

¹⁷ Circular No. SEBI/HO/MIRSD/POD-1/P/CIR/2024/81 titled, "(a) Ease of Doing Investments- Non-submission of 'Choice of Nomination', (b) Only 3 fields to be provided mandatorily for updating Nomination Details" dated June 10, 2024.

(9) Norms / mode for providing and changing nomination, guardrails for its integrity / authenticity / verifiability (Item no. 9 in table above):

Extant legal/regulatory provisions:

Nominations should be made, changed or canceled in a safe, secure, verifiable manner; i.e., by use of digital signature certificate or Aadhaar based eSign or physical signatures of the investors or through two factor or multiple factor authentication. If nomination is done by affixing a thumb impression, the same shall be in presence of two independent witnesses.¹⁸

Proposal:

The current legal/ regulatory position shall be reiterated for the sake of clarity and for bringing uniformity in practice across the securities market.

(10) Acknowledgement of Nomination and maintenance of record (Item no. 11 in table above):

Extant legal/regulatory provisions:

Due acknowledgement of making or changing or canceling nomination shall be provided to the investor/s. Due records of the same shall be maintained by the regulated entities for prescribed period.¹⁹

Proposal:

The current legal/ regulatory position shall be reiterated for the sake of clarity and for bringing uniformity in practice across the securities market.

(11) No restriction on number of times for changing nominee (Item no. 12 in table above):

Extant legal/regulatory provisions:

¹⁸ SEBI Circular ref. no. SEBI/HO/IMD/IMD-II DOF3/P/CIR/2022/82 titled, "Nomination for Mutual Fund Unit Holders" dated June 15, 2022; SEBI Circular ref. no. SEBI/HO/MIRSD/RTAMB/CIR/P/2021/601 titled, "Nomination for Eligible Trading and Demat Accounts" dated July 23, 2021; SEBI Circular No. SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2022/23 titled, "Nomination for Eligible Trading and Demat Accounts –Extension of timelines and relaxations for existing account holders" dated February 24, 2022; SEBI Circular ref. no. SEBI/HO/MRD/MRD-PoD-2/P/CIR/2023/166 titled, "Master Circular for Depositories" dated October 06, 2023; NSDL Business Rule 12.6.3.1 and CDSL Operating Instructions 3.4.2.

¹⁹ As per Annexure-A: Format for providing Nomination of SEBI Circular No. SEBI/HO/MIRSD/POD-1/P/CIR/2024/81 titled, "(a) Ease of Doing Investments- Non-submission of 'Choice of Nomination', (b) Only 3 fields to be provided mandatorily for updating Nomination Details" dated June 10, 2024; NSDL Business Rules no. 16.1.1 (xiii), 12.6.3.5, 12.6.3.6 and Annexure 3.2 of CDSL Operating Instructions.

Nomination facilities may be made, changed or cancelled at any time without any restrictions as to number of times such facilities are utilized.²⁰

Proposal:

In response to this item in the Consultation Paper, feedback was received from one individual who has not provided any rationale for dissent. The flexibility to change nominee without any restriction will be beneficial for those investors who need this facility. Hence, this feature to allow an investor to change his/her nominee/s without any restriction on the number of instances, is suitably incorporated in the proposed circular.

(12) *Information on nomination to be made available to the investor (Item no. 13 in table above):*

Extant legal/regulatory provisions:

Due information on nomination shall be made available by the regulated entities to investors in periodic statement of holding. The account statement provided by the regulated entities shall print the information only to the extent of whether or not nomination has been made by the investor and shall not print the name of the nominee(s).²¹

Proposal:

Nomination related information shall be made available to an investor either only to the extent of whether or not nomination has been made by the investor or the name of the nominee(s), in the periodic statement issued by the AMC or Depository / DP to the holders, as per the choice exercised the investor. This will ensure confidentiality of information related to the investor as per investor's choice. Hence, it is suitably incorporated in the proposed circular.

(13) *Apportionment of assets to surviving nominees (Item no. 15 in table above):*

Extant legal/regulatory provisions:

At the time of nomination, an investor shall specify the percentage share for each nominee. In the absence of percentages, the presumption shall be equal

²⁰ AMFI - As per standard operational procedure and SAI/SID, NSDL Bye Law no. 9.11.7, NSDL Business Rules no. 13.6.3.3 and CSDL Bye Law 13.9.1.

²¹ AMFI - As per standard operational procedure, NSDL & CDSL – No specific provision

apportionment to nominees²². Upon demise of the investor and one of the nominees prior to the demise of the other nominees, the assets shall be distributed to the surviving nominees on pro rata basis.²³

Nominees shall continue to be trustees for legal heirs and successors and this is only for sake of convenience.

Proposal:

The current legal/ regulatory position shall be reiterated for the sake of clarity and for bringing uniformity in practice across the securities market.

(14) Option to specify guardian(s) when nominee(s) is a minor (Item no. 17 in table above):

Extant legal/regulatory provisions:

Investor/s shall have the option to specify guardian/s when nominee/s are minor/s²⁴.

Proposal:

In response to this item in the Consultation Paper, feedback was received from two entities who have expressed their dissent. One of the entities suggested that in case the nominee is a minor, then the investor should be allowed to determine the age or year upto which the money will not be made available to the minor.

The other entity suggested that guardian should be made mandatory for all nominees who are minors. This suggestion has been expressed by many as the key reason for lack of nomination. The investor dithers on whom to name as guardian for his/her minor child/children in the nomination form and thus, postpones making of nomination. Removing the need for explicitly naming guardian will incentivize such investor to come forward and make nomination. The key implication of no guardian is that a minor nominee may not be able to affect a transfer of the securities or redemption of the mutual fund until attaining the age of majority. This

²² As per Annexure-A: Format for providing Nomination of SEBI Circular No. SEBI/HO/MIRSD/POD-1/P/CIR/2024/81 titled, "(a) Ease of Doing Investments- Non-submission of 'Choice of Nomination', (b) Only 3 fields to be provided mandatorily for updating Nomination Details" dated June 10, 2024; NSDL Business Rule No. 12.6.3.2 & 12.6.3.8 & and CDSL Operating Instructions no. 3.4.2.

²³ As per AMFI, the rules of intestate succession shall be applicable for transmission of the % of units that were nominated in favour of the deceased nominee.

²⁴ Guardian details (in case of minor) falls under non-mandatory details in the Nomination form as provided in Annexure-A: Format for providing Nomination of SEBI Circular No. SEBI/HO/MIRSD/POD-1/P/CIR/2024/81 titled, "(a) Ease of Doing Investments- Non-submission of 'Choice of Nomination', (b) Only 3 fields to be provided mandatorily for updating Nomination Details" dated June 10, 2024; CDSL Operating instruction no. 3.4.2 and NSDL Bye Law no. 9.11.3.

is no different from a minor inheriting immovable property and not being able to deal with the same until attaining the age of majority.

Hence, it is proposed that the provision shall provide choice to the investor and benefit to those who wish to avail this facility, and investor will be given an option to specify minor nominee/s without specifying guardian/s for investor convenience and for bringing uniformity in practice across the securities market.

(15) KYC of nominee to be made optional (Item no. 19 in table above):

Extant legal/regulatory provisions:

Completion or updating of KYC of the nominee/s during the lifetime of the investors shall be optional.²⁵

Proposal:

In response to this item in the Consultation Paper, feedback was received from two entities who have expressed their dissent. One of the entities stated that KYC of nominee should be made mandatory while the other entity did not provide any rationale for dissent.

The flexibility and choice to provide KYC of nominee(s) will encourage investors to avail this facility, whilst the perception of having to mandatorily provide KYC may cause them to not do so. Hence, investors to be given the choice in furnishing the KYC of the nominee, but not mandated, for investor convenience and for bringing uniformity in practice across the securities market.

(16) Transmission as per extant norms where nomination is not available (Item no. 23 in table above):

Extant legal/regulatory provisions:

In absence of nomination, the legal heir/s or legal representative/s shall be required to follow the procedures prescribed (under applicable law) in terms of a Will and testament or intestate succession for the purpose of effecting transmission in their favour.²⁶

²⁵ As per Annexure-A: Format for providing Nomination of SEBI Circular No. SEBI/HO/MIRSD/POD-1/P/CIR/2024/81 titled, "(a) Ease of Doing Investments- Non-submission of 'Choice of Nomination', (b) Only 3 fields to be provided mandatorily for updating Nomination Details" dated June 10, 2024.

²⁶ SEBI Circular No. SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2022/65 titled, "Simplification of procedure and standardization of formats of documents for transmission of securities" dated May 18, 2022 and AMFI Circular Ref. No. 135/BP/110/2023-24 titled, 'AMFI Best Practices Guidelines: Updated Guidelines on Transmission of Units' dated January 31, 2024.

In response to this item in the Consultation Paper, feedback was received from one individual only who expressed inchoate dissent stating that legal heirs, as per SDM issued Surviving Member Certificate, should be recognized if nominee is not specified since SDM Court / Revenue Court is more efficient than Judicial Court.

Surviving Member Certificate is equivalent to Legal Heirship Certificate. Legal Heirship Certificate or equivalent certificate' (emphasis supplied) is one of the valid documents for transmission for physical securities and demat accounts²⁷, w.e.f. April 25, 2022, vide SEBI (Listing Obligations and Disclosure Requirements) (Fourth Amendment) Regulations, 2022 ("LODR Amendment Regulations"). The suggestion is already implemented by the Board.

Proposal:

Hence, the current legal/ regulatory position shall be reiterated for the sake of clarity and for bringing uniformity in practice across the securities market.

B. Items to improve features across the securities market:

(1) Personal identifiers of nominee to be provided (Item no. 10 in table above):

Issue under consideration:

- (i) *Prospectively, when an investor opts to make nomination/s, then personal identifiers (such as name of either parent and/or number of any Government issued ID - PAN, Passport, Aadhaar, etc.) and Contact details of the nominee/s (such as physical address, email address, telephone / mobile number) should be provided by the investor/s.*

This serves to aid contact-ability and identification of the nominee/s upon death of the investor. Existing investors can be provided an option to update such personal identifiers. This is not to be construed as requiring KYC of the nominees.

- (ii) *The relationship of the nominee to the investor can be optionally captured in the nomination form.*

Proposal:

²⁷ For MF, Legal Heirship Certificate or equivalent certificate' recognized as a valid document vide AMFI Circular Ref. No. 135/BP/110/2023-24 titled, 'AMFI Best Practices Guidelines: Updated Guidelines on Transmission of Units' dated January 31, 2024.

Upon demise of investor, the regulated entity [viz. Asset Management Companies (AMCs) and their Registrar to an Issue and Share Transfer Agents (RTAs) for Mutual Fund folios and Depository Participants (DPs) for demat accounts] should have the contact details to reach out to the nominee(s) to commence the process of transmission in order to prevent creation of unclaimed assets.

Hence, it is proposed that information viz. (a) full contact details of nominee(s) such as address, mobile number and email address, and (b) relationship of nominee(s) with the investor, shall be provided by an investor at the time of nomination under 'Mandatory Details'. In case the nominee is a minor, additional information viz. date of birth of nominee and guardian details may be provided by an investor under 'Optional Details'. Additionally, proof of identity, as stipulated in SEBI KYC Master Circular dated October 12, 2023²⁸, shall be furnished by the investor if the nominee is not a parent, spouse, children or sibling. These measures are suitably incorporated in the proposed circular and revised Nomination Form.

(2) Maximum number of nominees to be increased from current limit of three (3) nominees (Item no. 14 in table above):

Issue under consideration:

Nomination facilities will permit multiple nominee/s and be increased from current limit of three (3) to very high two digits or to very high three digits (i.e. 99 or 999), which are large and sufficiently high to address ordinary requirements of individual investors.

Proposal:

In response to this item in the Consultation Paper, feedback was received from 5 entities who have expressed their dissent, inter alia, stating that it would further complicate the nomination procedure. These entities include Mutual Fund, Stock broker, Industry Associations and individual. It appears that the entities have expressed their dissent solely based on implementation aspect without considering the requirements of ordinary individual investors.

²⁸ SEBI Circular Ref. No. SEBI/HO/MIRSD/SECFATF/P/CIR/2023/169 titled, 'Master Circular on Know Your Client (KYC) norms for the securities market' dated October 12, 2023.

A situation may arise when an investor wants to nominate more than 3 persons, but ends up not making any nomination in view of the existing upper limit of only 3 nominees. Such accounts /folios without nomination eventually turn into unclaimed assets. To address such a situation and in order to provide greater flexibility to investors, it is proposed that the number of nominees shall be increased to ten (10) from existing limit of three (3) nominees, which could be considered sufficient to address ordinary requirements of individual investors.

(3) Choice to nominees to continue as joint holders upon demise of the investor having multiple nominees (Item no. 16 in table above):

Issue under consideration:

Upon demise of the investor having multiple nominees, during transmission, the nominees shall have the option to either continue as joint holders with other nominees or open separate single demat account / Mutual Fund folio for each nominee.

Proposal:

In response to this item in the Consultation Paper, feedback was received from one individual who, inter alia, stated that nominee should not be made joint holder automatically. The individual has expressed an inchoate dissent as the proposed measure is to provide an option to investor to either continue as joint holders with other nominees or open separate single account / folio for each nominee upon demise of investor.

As such this measure would provide flexibility and choice to the nominees during transmission. Hence, this measure is recommended to be implemented.

(4) Allowing nominees to act on behalf of incapacitated investors (Item no. 20 in table above):

Issue under consideration:

Option to the investor to specify that on an investor being permanently or temporarily incapacitated, the nominee/s can conduct transactions²⁹. In case of a single nominee, such nominee will be authorized to conduct the transactions. In case of multiple nominee/s, the investor can specify which nominee will be

²⁹ Reference is drawn to the NSDL Circular No.: NSDL/POLICY/2012/0087 dated September 4, 2012 for the procedure followed in case client is not able to sign due to various reasons.

authorized to conduct the transactions³⁰. This provision will provide the investors/s an option of specifying that in case an investor is incapacitated, the nominee/s can conduct transactions, in the following manner:

- a) In case of multiple nominee/s, the investor can specify if the first named nominee or any one of the nominees or a specified nominee will be authorized to conduct the transactions, upon furnishing the additional documents as follows.
- b) In case of such an incapacitated investor who
 - i) has the 'capacity to contract', then a Power of Attorney (POA) or a mandate letter or authorization letter may be used

OR

- ii) does not have the 'capacity to contract', then guardianship certificate from court would be required.

AND

- iii) provision of a doctor's certificate, in-person verification by the relevant depository or registrar, obtaining of thumb impression of investor instead of signature / on-line login credentials.

Additional safeguards in this behalf may be suggested.

Proposal:

From the experience gained in Covid pandemic, this feature of allowing nominees to act on behalf of incapacitated investors is a desirable one and hence, the same is proposed to be implemented for the benefit of investors. In this regard, the safeguards and practice followed in the banking sector and by NSDL are suitably adapted and incorporated in the proposed circular.

Accordingly, an investor shall have the option of indicating if the nominee can operate the account/ folio on his/her behalf, in case the former is incapacitated. Further, there shall be no restriction on the number of instances an investor can change the nominee who can operate the account/ folio on his/her behalf.

The broad guidelines to be followed by the regulated entities in case of an incapacitated investor who still retains capacity to contract are listed below:

³⁰ It is noted that in case of a joint holding/ownership, if one of the joint holders/owners is incapacitated, the other joint holders/owners would be able to conduct the transactions.

- (a) *Obtain a written request from the incapacitated investor clearly stating the reasons of his or her inability to operate the account/ folio, with adequate proof.*
- (b) *In case the incapacitated investor is unable to put wet signature, obtain thumb or toe impression or a mark of the incapacitated investor on the written request.*
- (c) *Take all steps to ascertain and independently verify the capacity to contract of the investor and the authenticity of request, including through an in-person visit by a responsible official along with an independent witness. .*
- (d) *In case where thumb or toe impression of the incapacitated investor could not be obtained, the intermediary shall obtain a mark from the client as well as an independent verification from two identified witnesses known to the intermediary, one of whom should be a responsible official.*
- (e) *In case where thumb or toe impression or a mark of the incapacitated investor is obtained, the intermediary shall obtain an independent verification from two identified witnesses known to the intermediary, one of whom should be a responsible official.*
- (f) *The responsible official who has ascertained the capacity to contract of the investor and the authenticity of request must put his/her name, signature and suitable remarks to the effect that “Thumb impression / toe impression / mark affixed in my presence” on the request of the client.*

Further, regulated entities may also act on the instruction/s of any guardian/s appointed by a court of competent jurisdiction, subject to such conditions as the court may specify from time to time.

In case the investor does not have the ‘capacity to contract’, then guardianship certificate from court would be required along with provision of a doctor’s certificate, in-person verification by the relevant regulated entity.

Additionally, in order to have uniformity for dealing with investors with special needs or sick or old investors in the securities market, the Depositories and Association of Mutual Funds in India (AMFI) will be directed to put in place common Standard Operating Procedure (SOP) with inputs from Industry Standards Forum (ISF). The SOP shall have adequate guardrails to prevent misuse or abuse. Such SOP be made available on their websites as well as that of their constituents.

(5) Transmission to nominee with minimal documentation (Item no. 21 in table above):

Issue under consideration:

Transfer to the nominee/s shall require:

- a) Copy of death Certificate of the deceased investor*
- b) due completion of KYC, or updating or reaffirming of the KYC*
- c) due discharge from the creditors if there are subsisting credit facilities secured by a duly created pledge*

No other documentation including affidavits, indemnities, undertakings, attestations or notarizations shall be required from the nominee/s.

No claims in respect of such transfer shall subsist against the depository participants (DPs) or the mutual funds or their Registrars to an Issue and Share Transfer Agents (RTAs), and any claim or contestation shall be among the nominee/s and the claimants without reference to the DPs or the mutual funds or their RTAs.

Proposal:

The current legal/ regulatory provision due to lack of clarity has led to disparate practices and insistence on several documents by the regulated entities from nominee/s during transmission.

In this regard, the personal identifiers of the nominee (as detailed in paragraph B 1), that are available with the regulated entity, shall provide the guard rails for transmission. The regulated entity shall seek KYC of the nominee only if the same has not already been furnished by the investor.

Hence, it is proposed to simplify transmission process by reducing the documentation requirements from nominee/s, which will benefit investors across the securities market.

Further, and for sake of clarity, the regulated entity shall obtain suitable declaration from the nominee/s while effecting transmission, as follows:

- (a) I / we are receiving the assets of the deceased's demat account / MF Unit holder as a trustee to his / her legal heir(s).*
- (b) I / we shall extend all co-operation in transferring such assets to the legal heir(s), either suo moto or when approached by the latter.*

(c) In case I / we fail to discharge my / our liability, or if there is any dispute between me / us and the legal heir(s) of the deceased, then the AMC and / or its RTA or Depository Participant, shall not be party to such disputes.

Finally, the regulated entity shall facilitate / extend co-operation to transfer assets from the nominee/s to the legal heir/s of an investor, as and when approached by either party. The Depositories and Association of Mutual Funds in India (AMFI) will be directed to put in place common Standard Operating Procedure (SOP) for this purpose with inputs from ISF. The SOP shall have adequate guardrails to prevent misuse or abuse. Such SOP shall be made available on their websites as well as that of their constituents.

(6) Transmission to joint-holder(s) with minimal documentation (Item no. 22 in table above):

Issue under consideration:

In case of joint holdings, death of joint holder/s and the rule of survivorship being applicable, except copy of Death Certificate of the deceased investor, no documentation including related to KYC, indemnities or undertakings shall be required from the surviving joint holders/owners. It may be mentioned that the KYC of the joint holders is already available with the regulated entity and therefore there is no need for any other document other than Death Certificate, as mentioned above.

Proposal:

The current legal/ regulatory provision due to lack of clarity has led to disparate practices during transmission.

Hence, it is proposed to simplify transmission process for joint holdings by removing those inconsistent practices, which will benefit investors across the securities market.

With the various guardrails as described i.e., the personal identifiers of the nominee that are available with the regulated entity, transmission to nominee/s with valid KYC and also only as trustee for the legal heirs being affirmed in writing and for joint holdings, availability of the KYC of the joint holders with the regulated entity and only requiring a

Death Certificate, fraud risk is considerably mitigated. Further operational safeguards would also be instituted from time to time as required.

C. Item in Consultation Paper but not included in the proposed circular:

(1) Successive Nominee(s) (Item no. 18 in table above):

Issue under consideration:

Option to the investor/s to specify successive nominee/s which takes effect on nominee/s predeceasing the investors. Successive nominee/s can be mapped to specific nominee/s and to percentage specification if any made for such nominee/s or be specified when there is a single nominee.

Proposal:

This measure may be very useful to investors in certain specific situations. This protective measure is available to the members of Provident Funds vide proviso to 5 (1) (b) of the Provident Funds Act, 1925. However, in the absence of legal anchor in securities laws for successive nominee, it is felt that implementation of this feature may considered at a later date.

4. Proposal for amendment to certain Regulations:

4.1. In view of the above, it is proposed that suitable amendments may be carried out to the Regulations listed at paragraph 1.2, as elaborated as under:

Amendment of SEBI (Mutual Funds) Regulations, 1996:

4.1.1. Replace the phrase “in the manner specified in Fourth Schedule” with “in the manner as may be specified from time to time” in Regulation 29A in sub-regulation (1) of SEBI (Mutual Funds) Regulations, 1996. Accordingly, the form for nomination provided in the Fourth Schedule will stand deleted.

4.1.2. The existing sub-regulation (2) shall be renumbered as sub-regulation (3).

4.1.3. In regulation 29A, after sub-regulation (1), the following sub-regulation shall be inserted, namely:

“(2) The unitholder shall have an option to nominate, in the manner as may be specified, a person who shall be authorized to conduct transactions on behalf of the unitholder in the event of incapacitation of the unitholder.”

4.1.4. *Insert the following as Clause (4) in Regulation 29A of Mutual Fund Regulations, 1996:*
An asset management company or its Registrar to an Issue and Share Transfer Agent shall not be liable for any action taken on the basis of nomination made by the unitholder.

Amendment of SEBI (Depositories and Participants) Regulations, 2018:

4.1.5. *Insert the following norms for nomination as Regulation 60A and Clause 5A in SEBI (Depositories and Participants) Regulations, 2018.*

Chapter VII: Rights and obligations of depositories, participants, issuers, manner of surrender of certificate of security and creation of pledge or hypothecation

Nomination

60A. (1) *Every participant shall provide an option to the beneficial owner to nominate, in such manner as may be specified by the Board, person(s) to whom the securities held by him shall vest in the event of his death.*

(2) *Every participant shall provide an option to the beneficial owner(s) to nominate, in the manner as may be specified, person(s) who shall be authorized to conduct transactions on behalf of the beneficial owner(s) in the event of the incapacitation of the beneficial owner.*

(3) *Where the account is held in the name of more than one person jointly, the joint beneficial owners may together nominate, in the manner specified, a person upon whom the securities held by them shall vest, in the event of the death of all the joint beneficial owners*

(4) *A depository and participant shall not be liable for any action taken and on the basis of nomination made by the beneficial owner.”*

4.1.6. *Issuance of operating circular(s) based on the above recommendations from the public consultation process at paragraph 3 above, with or without changes.*

4.1.7. *The Board is requested to consider and approve the proposals as contained in the Memorandum and authorize the Chairperson to make consequential and incidental changes and take necessary steps to give effect to the decisions of the Board.*

Enclosures:

Annexure I: Public consultation titled “Revise and revamp Nomination facilities in the Indian Securities Market” dated February 02, 2024

The consultation paper is available at the following link:

https://www.sebi.gov.in/reports-and-statistics/reports/feb-2024/consultation-paper-to-revise-and-revamp-nomination-facilities-in-the-indian-securities-market_81023.html

Annexure II: Text of Amendments of Regulations

The Amendments shall be notified after following the due process

Annexure III: Circular on Nomination

The Circular shall be issued after following the due process

Annexure IV: Summary of Public Comments

Proposal No.	Proposal Description	In number (and in %)				Type of respondent (and in number)	
		Agree	Partially Agree	Disagree	Total count	Agree / partially agree	Disagree
1.	Rule of survivorship in case of joint holdings	0 (0%)	1 (50%)	1 (50%)	2	Mutual Fund (1)	Individual (1)
2.	If all joint holders perish together, then transmission to be made nominee. If no nominee, the rules of intestate succession shall apply for transmission and succession	0 (0%)	2 (67%)	1 (33%)	3	Stock broker (1), Industry association (1)	Individual (1)
3.	Norms for operation in case of demise of Karta of Hindu Undivided Family (HUF)	0 (0%)	0 (0%)	2 (100%)	2	-	Individual (2)
4.	Nominee as trustee of legal heir of investor	0 (0%)	1 (50%)	1 (50%)	2	Industry association (1)	Individual (1)
5.	No rights for the legal heir of the nominee	0 (0%)	0 (0%)	1 (100%)	1	-	Individual (1)
6.	Rights of surviving nominee(s)	0 (0%)	5 (62.5%)	3 (37.5%)	8	Mutual Fund (1), Stock broker (2), Industry association (1), Individual (1)	Individual (3)
7.	Rights of Creditors to take precedence before onward transmission to nominee / legal heir	0 (0%)	1 (50%)	1 (50%)	2	Mutual Fund (1)	Individual (1)
8.	Choice of nomination – nomination optional for joint demat accounts & Mutual Fund folios	0 (0%)	2 (50%)	2 (50%)	4	Stock broker (1), Individual (1)	Individual (2)

Proposal No.	Proposal Description	In number (and in %)				Type of respondent (and in number)	
		Agree	Partially Agree	Disagree	Total count	Agree / partially agree	Disagree
9.	Norms / mode for providing and changing nomination, guardrails for its integrity / authenticity / verifiability	0 (0%)	2 (50%)	2 (50%)	4	Stock broker (1), Individual (1)	Individual (2)
10.	Personal identifiers of nominee to be provided	1 (25%)	0 (0%)	3 (75%)	4	Mutual Fund (1)	Stock broker (1), Individual (2)
11.	Acknowledgement of Nomination and maintenance of record	0 (0%)	1 (50%)	1 (50%)	2	Stock broker (1)	Individual (1)
12.	No restriction on number of times for changing nominee	0 (0%)	0 (0%)	1 (100%)	1	-	Individual (1)
13.	Information on nomination to be made available to the investor	0 (0%)	3 (50%)	3 (50%)	6	Industry association (1), Individual (2)	Individual (3)
14.	Maximum number of nominees to be increased from current limit of three (3) nominees	0 (0%)	0 (0%)	5 (100%)	5	-	Mutual Fund (1), Stock broker (1), Industry association (2), Individual (1)
15.	Apportionment of assets to surviving nominees	1 (25%)	0 (0%)	3 (75%)	4	Stock broker (1)	Individual (3)
16.	Choice to nominees to continue as joint holders upon demise of the investor having multiple nominees	0 (0%)	0 (0%)	1 (100%)	1	-	Individual (1)
17.	Option to specify guardian(s) when nominee(s) is a minor	0 (0%)	0 (0%)	2 (100%)	2	-	Stock broker (1), Individual (1)
18.	Successive Nominee(s)	2 (50%)	0 (0%)	2 (50%)	4	Individual (2)	Individual (2)
19.	KYC of nominee to be made optional	0 (0%)	0 (0%)	2 (100%)	2	-	Individual (2)
20.	Allowing nominees to act on behalf of incapacitated investors	1 (20%)	3 (60%)	1 (20%)	5	Depository (1), Mutual Fund (1), Industry association (1), Individual (1)	Individual (1)
21.	Transmission to nominee with minimal documentation	0 (0%)	1 (33%)	2 (67%)	3	Industry association (1)	Mutual Fund (1), Chartered Accountant (1)
22.	Transmission to joint-holder(s) with minimal documentation	1 (50%)	0 (0%)	1 (50%)	2	Individual (1)	Individual (1)
23.	Transmission as per extant norms where nomination is not available	0 (0%)	0 (0%)	1 (100%)	1	-	Individual (1)

Annexure V : Summary of Public Comments and analysis

1. Background:

1.1. The consultation paper (CP) on Nomination dated February 02, 2024 was published on the SEBI website, inviting comments on the proposals covered under Chapters 4 & 5 of the CP. Chapter 4 has two sections *viz.* ‘General Rules’ which has 8 proposals/ items and ‘Guardrails and Additional Measures’ which has 15 proposals/ items.

1.2. Chapter 5 of the CP deals with ‘Measures required to be taken by the relevant regulated entities’ and contains 15 proposals/ items, which are corollary to the 15 items in Chapter 4. Hence, in this analysis, these 15 items in Chapters 4 & 5 are consolidated to have a holistic view.

2. Summary of each proposal/ item in the CP:

For each of the 23 proposals/ items in the CP, 1) the issue under consideration, 2) comments/ suggestions received and 3) analysis / proposal are as under:

2.1. Rule of survivorship in case of joint holdings:

Issue under consideration:

In case of joint accounts having joint holding/ownership, the rule of survivorship would continue to apply. Accordingly, when two or more persons have opened a demat account or jointly own units of mutual fund schemes, on death of any one of them, the right, title and interest to the demat account or the units of mutual fund schemes will be transmitted to the surviving joint holders/owners. Surviving joint holders/owners are entitled to continue with, change or cancel the nominations made previously. The mode of operation (of the joint account), namely that of the first named holder OR anyone or survivor OR either or survivor basis OR joint, etc. will be unaffected by the rule of survivorship.

Comments / suggestions received:

In response to this item in the CP, feedback was received from 2 entities where, one entity has partially agreed and the other has disagreed to the proposal. The entity agreed to the proposal of rule of survivorship, but suggested that if the joint holder does not want to claim, transmission should be permitted in favour of registered nominee (if available) or as per will of the first holder by obtaining NOC from joint holder.

Analysis / Proposal:

It may be noted that basis a SEBI advisory to the depositories that the liability of the Depository Participant (DP) shall be discharged in case of transmission to the surviving holders(s) subject that the DP “*Makes it clear to the survivor(s) that he/she would be receiving securities of the deceased as a trustee of the legal heirs of the deceased demat account holder*”. Accordingly, the Depositories amended their Operating Instructions / Compliance Manual for DPs.

The current legal position on rule of survivorship shall be reiterated for the sake of clarity and for bringing uniformity in practice across the securities market. The anomaly in the Operating Instructions / Compliance Manual for DPs, as issued by Depositories, shall also be advised to be rectified.

2.2. If all joint holders perish together, then transmission to be made to nominee. If no nominee, the rules of intestate succession shall apply for transmission and succession:

Issue under consideration:

In case of joint accounts when all joint holders/owners simultaneously pass away, the right, title and interest to the demat account or the units of mutual fund schemes will be transferred to the nominee/s for effecting due discharge of the depository and the concerned mutual fund/s. *As such, the Will and testament of the younger³¹ of the joint holders/owners who perished or his/her legal heir/s or legal representative/s as per the rules of intestate succession shall continue to govern the transmission and succession.*

Comments / suggestions received:

In response to this item in the CP, feedback was received from 3 entities where, 2 entities have partially agreed and one entity has disagreed to the proposal. One of the entities, who partially agreed to the proposal, opined that in the event of simultaneous death of the joint account holder, to avoid any disputes, the decision of transmission should be based on the succession certificate issued by Court or it should be allowed

³¹ Based on the commorientes rule, which is also reflected in section 21 of the Hindu Succession Act: *Presumption in cases of simultaneous deaths. —Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other then, for all purposes affecting succession to property, it shall be presumed, until the contrary is proved, that the younger survived the elder.*

on the basis of joint NOC or Affidavit submitted by all descendant legal heir of all joint holder.

The other entity, who partially agreed to the proposal, stated that the handling of simultaneous deaths of all joint holders does require clarification, but the condition where, ‘if no nominee is specified, the Will and testament of the younger joint holder would govern the transmission and succession’ seems arbitrary or open to interpretation.

Analysis / Proposal:

As per Section 21 of the Hindu Succession Act, “*Presumption in cases of simultaneous deaths. —Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other then, for all purposes affecting succession to property, it shall be presumed, until the contrary is proved, that the younger survived the elder.*” Hence, in case of demise of all joint holders simultaneously, the assets shall be transmitted to the nominee(s) and in its absence, to the legal heir of the youngest holder. This norm is suitably incorporated in the proposed circular.

2.3. Norms for operation in case of demise of Karta of Hindu Undivided Family (HUF):

Issue under consideration:

In case of demat accounts/holdings of units of mutual fund schemes of a Hindu Undivided Family, on the death of the karta as recorded, the new karta as constituted under applicable law, would be entitled to operate such an account/transact in such units.

Comments / suggestions received:

In response to this item in the CP, feedback was received from 2 entities and both of them have disagreed to the proposal. One of the entities have suggested that the declaration for name of the new Karta should be made possible as it will save time taken in getting the new Karta appointed through legal process. The other entity has not provided any rationale for disagreement to the proposal.

Analysis / Proposal:

At the time of appointment of new Karta of HUF, there may not be any legal basis to make such decision. Further, Karta is not a nominee but the beneficial owner of assets and has superior rights compared to a nominee. Hence, the existing practice of allowing the new Karta, as constituted under applicable law, to operate an account/ folio upon demise of old Karta of HUF, is reiterated in the proposed circular for the sake of clarity and for bringing uniformity in practice across the securities market.

2.4. Nominee as trustee of legal heir of investor:

Issue under consideration:

In case of sole account/ sole holder/sole owner, on death of such sole holder/owner, the right, title and interest to the demat account or the units of mutual fund schemes will be transferred to the nominee/s for effecting due discharge of the depository and the concerned mutual fund/s. *As such, the Will and testament of the sole holder / sole owner who perished or his/her legal heir/s or legal representative/s as per the rules of intestate succession shall continue to govern the transmission and succession.*

Comments / suggestions received:

In response to this item in the CP, feedback was received from two entities where one entity partially agreed to the proposal and the other entity disagreed to the proposal. The entity who partially agreed to the proposal, *inter alia*, stated that clarity needs to be provided regarding transfer of units in the name of nominee by the mutual fund company (or the depository participant) and this should not in any manner affect the transmission and succession as per the Will and testament of either of the joint holders or legal heirs or legal representatives, as per the rules of intestate succession for either of the joint holders. The entity who disagreed to the proposal has not provided any rationale for the same.

Analysis / Proposal:

As it is a mere reiteration of legal status of nominee, the existing practice is included in the proposed circular for the sake of clarity and for bringing uniformity in practice across the securities market.

2.5. No rights for the legal heir of the nominee:

Issue under consideration:

Death of a nominee during the lifetime of an investor shall not entitle the legal heir/s or legal representative/s of such deceased nominee to any right, title or interest in the demat account or units of mutual fund schemes of the investor upon the investor's death solely by virtue of such nomination.

Comments / suggestions received:

In response to this item in the CP, feedback was received from one entity only, who disagreed to the proposal. However, the entity has not provided any rationale for disagreement to the proposal.

Analysis / Proposal:

As it is a mere reiteration of the existing legal position, the existing practice is reiterated in the proposed circular for the sake of clarity and for bringing uniformity in practice across the securities market.

2.6. Rights of surviving nominee(s):

Issue under consideration:

In case more than one nominee has been specified, upon a nominee predeceasing the investor, and on the investor's death and when no successive nominee has been specified, the right, title and interest in the demat account or the units of the mutual fund scheme will be transferred to the surviving nominees for effecting due discharge of the depository and the concerned mutual fund/s and will be undertaken as follows:

- a. by equal division among surviving nominees notwithstanding any percentage specification that may have been made, or
- b. division on a proportionate basis among the surviving nominees in the proportion of their original percentages as specified by the investor, (incorporating the portion attributable to deceased nominee)

As such, the Will and testament of the sole holder / sole owner who perished or his/her legal heir/s or legal representative/s as per the rules of intestate succession shall continue to govern the transmission and succession.

Comments / suggestions received:

In response to this item in the CP, feedback was received from 8 entities where, 5 entities have partially agreed and 3 entities have disagreed to the proposal. Four entities

who partially agreed to the proposal stated that equal division is incorrect and division on a proportionate basis should be available.

Analysis / Proposal:

Upon demise of an investor and one of the nominees, the right, title and interest in the demat account or the units of the mutual fund scheme shall be transferred to the surviving nominees in the same proportion of their original percentages, as specified by the investor, incorporating the portion attributable to deceased nominee. This measure is suitably incorporated in the proposed circular for the sake of clarity and for bringing uniformity in practice across the securities market.

For illustration purpose, let us consider that at the time of nomination, an investor has specified % share for each of the 3 nominees – A, B & C as 60%, 30% & 10% respectively. Upon demise of investor and demise of nominee ‘A’, A’s share shall be redistributed among B & C in the ratio of 3:1 i.e. 45% of assets shall be apportioned to B and 15% to C, as tabulated below.

Table 1: Illustration of Rights of surviving nominee(s)

% share as specified by investor at the time of nomination		% assets to be apportioned to surviving nominees upon demise of investor and nominee ‘A’			
Nominee	% share	Nominee	% initial share	% of A’s share to be apportioned	Total % share
A	60%	A	0	0	0
B	30%	B	30%	45%	75%
C	10%	C	10%	15%	25%
Total	100%	-	40%	60%	100%

2.7. Rights of Creditors to take precedence before onward transmission to nominee / legal heir:

Issue under consideration:

Any subsisting credit facilities availed by the investor that are secured by a duly created pledge over the demat account or units of the mutual fund scheme will require due discharge from the creditors³². Transfer to the nominees, and onward transmission to

³² Discharge can be secured by due payment of outstanding amounts by the nominee/s or in the absence of due payment within a specified period, the creditor exercising the pledge and appropriating the realizations towards outstanding amounts.

the legal heir/s or legal representative/s of the sole holder/owner as per the Will and testament or rules of intestate succession shall be subject to such due discharge.

Comments / suggestions received:

In response to this item in the CP, feedback was received from 2 entities where, one entity has partially agreed and the other has disagreed to the proposal.

Analysis / Proposal:

Nomination and eventual transmission does not overrule the rights of a creditor to the investor. Accordingly, the existing norm is reiterated in the proposed circular for the sake of clarity and for bringing uniformity in practice across the securities market.

2.8. Choice of nomination – nomination optional for joint demat accounts & Mutual Fund folios:

Issue under consideration:

Making of nominations will remain optional for the investors. However, only in the case of single holding³³, the investor will be required to expressly declare that he/she does not desire making a nomination.

Comments / suggestions received:

In response to this item in the consultation paper, feedback was received from 4 entities where, two entities have partially agreed and two entities have disagreed to the proposal. The entities who partially agreed to the proposal, *inter alia*, stated that simultaneous demise of joint holders is a rare event and hence, nomination may not be made compulsory for joint holdings. One of the entities also suggested that declaration requirement should not be waived off, rather process of nomination / opt-out for joint holder accounts should be simplified. Two entities who disagreed to the proposal stated that if an investor opts out of nominating individuals, default nominees could be assigned based on a hierarchy such as the first default nominee would be the spouse, followed by children, grandchildren, parents, and then siblings.

Analysis / Proposal:

³³ Mutual Fund units and demat holding in joint mode, it is proposed to remove the existing need to either nominate or provide declaration to 'opt-out' given the applicability of the rule of survivorship

It is pertinent to note that IMD vide circular dated April 30, 2024³⁴ made the requirement of nomination optional for jointly held Mutual Fund folios. Subsequently, MIRSD vide circular dated June 10, 2024³⁵ reiterated the option vis-à-vis joint accounts and made the requirement of nomination optional for jointly held Mutual Fund folios and Demat Accounts. In concurrence with the aforesaid MIRSD circular, it is proposed that the status quo may continue in this regard i.e. mandatory nomination or declaration to ‘opt-out’ may continue to be optional for jointly held MF folios and demat accounts. Hence, the existing norm is reiterated in the proposed circular for the sake of continuity.

However, for opening of new single account / folio, it is proposed that opting-out of nomination may be made by investors only through Offline process in view of the data from ‘Table 2’ below.

Table 2: Data on nomination provided by AMFI and Depositories (as on December 31, 2023)

Nomination	Single Holding				Joint Holding			
	Mutual Fund Folios		Demat Accounts		Mutual Fund Folios		Demat Accounts	
	Number	%	Number	%	Number	%	Number	%
I. Nomination is available	7,64,32,610	85.82%	3,75,35,969	27.52%	70,46,032	65.85%	14,87,243	62.79%
1) with 1 nominee	7,44,00,904	83.54%	3,69,03,654	27.05%	63,85,602	59.68%	14,14,229	59.71%
2) with 2 nominees	17,98,056	2.02%	5,52,383	0.40%	6,28,929	5.88%	68,471	2.89%
3) with 3 nominees	2,33,648	0.26%	79,932	0.06%	31,501	0.29%	4,543	0.19%
II. ‘Opted out of Nomination	54,19,906	6.09%	9,51,08,489	69.73%	7,44,648	6.96%	7,35,500	31.05%
III. No Nomination & No ‘Opt-Out’	72,06,945	8.09%	37,58,398	2.76%	29,09,743	27.19%	1,45,696	6.15%

³⁴ Circular No. SEBI/HO/IMD/IMD-PoD-1/P/CIR/2024/29 titled, “Nomination for Mutual Fund Unit Holders – exemption for jointly held folios” dated April 30, 2024.

³⁵ Circular No. SEBI/HO/MIRSD/POD-1/P/CIR/2024/81 titled, “(a) Ease of Doing Investments- Non-submission of ‘Choice of Nomination’, (b) Only 3 fields to be provided mandatorily for updating Nomination Details” dated June 10, 2024.

Nominati on	Single Holding				Joint Holding			
	Mutual Fund Folios		Demat Accounts		Mutual Fund Folios		Demat Accounts	
	Number	%	Number	%	Number	%	Number	%
Total eligible Folios/ Accounts (I+II+III)	8,90,59,4 61	100.00 %	13,64,02, 856	100.00 %	1,07,00,4 23	100.00 %	23,68,4 39	100.00 %

It is noted that large % of demat accounts/ folios without nomination is due to lethargy on part of the investor while opening account online. In case of single holding demat accounts, 69.73% of investors have opted-out of nomination and 2.76% have neither provided nomination nor opted-out of it whereas, for single holding MF folios, the figures stand at 6.09% & 8.09% respectively³⁶. While opening account/ folio online, if the investor opts for nomination, then he/she has to provide the nominee details which requires spending additional time of 2 or 3 more minutes. Whereas, the investor can opt-out of nomination by just clicking on this choice. Investors have shown reluctance to provide nomination despite multiple extension of dates for providing nomination. Hence, the circular dated June 10, 2024³⁷ has removed the obligation of investors of existing accounts and folios to mandatorily provide nomination or declaration to opt-out.

On the other hand, accounts/ folios without nomination mutate into unclaimed assets and complications in transmission of accounts/ folios without nomination is an avoidable burden on SEBI's grievance redressal. Besides, occasional pilfering of unclaimed assets by staff of regulated entities imposes needless enforcement burden on SEBI.

Hence, to counter the large number of single accounts/folios without nominee, it is proposed that 'Opt-out' of nomination can be made only through Offline process. This will provide the nudge to investors to opt for nomination when they open a new demat account/ folio online. This norm is suitably incorporated in the proposed circular to

³⁶ Data on nomination provided by AMFI and Depositories (as on December 31, 2023).

³⁷ MIRSD Circular Ref. No. SEBI/HO/MIRSD/POD-1/P/CIR/2024/81 titled, "(a) Ease of Doing Investments- Non-submission of 'Choice of Nomination', (b) Only 3 fields to be provided mandatorily for updating Nomination Details" dated June 10, 2024.

bring uniformity in practice across the securities market and would be made applicable prospectively.

2.9. Norms / mode for providing and changing nomination, guardrails for its integrity / authenticity / verifiability:

Issues under consideration:

Nominations should be made, changed or cancelled in a safe, secure, verifiable manner; i.e., by use of digital signature certificate or Aadhaar based eSign or physical signatures of the investors or through two factor or multiple factor authentication³⁸. If nomination is done by affixing a thumb impression, the same shall be in presence of two independent witnesses. *This serves to address non-repudiation risk and aid verifiability if so required.*

Comments / suggestions received:

In response to this item in the CP, feedback was received from 4 entities where, two entities have partially agreed and two entities have disagreed to the proposal. One of the entities who partially agreed to the proposal did not provide any rationale for the same. The other entity who partially agreed to the proposal, *inter alia*, stated that the dependency of eSign should be relaxed as all the updates are done by the customer by way of two factor authentication (2FA) login on the internet trading platform for Stock Brokers/Depository Participants providing such services. The entities who disagreed to the proposal did not provide any rationale for the same.

Analysis / Proposal:

Conferring investors the right to make or change nomination any number of times and to receive acknowledgement for each instance will contribute towards investor welfare. Further, e-sign³⁹ facility to authenticate online nomination will protect the interest of investors. Hence, it is suitably incorporated in the proposed circular for reiteration.

2.10. Personal identifiers of nominee to be provided:

Issues under consideration:

³⁸ These can include the use of One Time Password sent to registered mobile number and/or email, biometrics, PKI or hardware tokens.

³⁹ Circular No. SEBI/HO/MIRSD/POD-1/P/CIR/2024/81 titled, “(a) Ease of Doing Investments- Non-submission of ‘Choice of Nomination’, (b) Only 3 fields to be provided mandatorily for updating Nomination Details” dated June 10, 2024.

- (iii) Prospectively, when an investor opts to make nomination/s, then personal Identifiers (such as name of either parent and/or number of any Government issued ID - PAN, Passport, Aadhaar, etc.) and Contact details of the nominee/s (such as physical address, email address, telephone / mobile number) should be provided by the investor/s. This serves to aid contact-ability and identification of the nominee/s upon death of the investor. Existing investors can be provided an option to update such personal identifiers.

- (iv) The relationship of the nominee to the holder can be optionally captured in the nomination form.

Comments / suggestions received:

In response to this item in the CP, feedback was received from 4 entities where, one entity has agreed and 3 entities have disagreed to the proposal. The entity in agreement to the proposal further suggested that existing investors can be provided an option to update such personal identifiers.

One of the entities, who disagreed to the proposal, *inter alia*, stated that some investors may deliberately opt-out of nomination in certain cases *viz.* (a) where the official name of intended nominee does not match the full name in PAN, (b) where there is no option to select relatives such as nephew, etc. as nominee. The other entity who disagreed to the proposal reiterated that collection of personal identifiers would further discourage the investors to opt for nomination.

Another entity who disagreed to the proposal stated that capturing relationship of nominee with the investor should be mandatory and this is in parity with Insurance products as well.

Analysis / Proposal:

Upon demise of investor, the regulated entity [*viz.* Asset Management Companies (AMCs) and their Registrar to an Issue and Share Transfer Agents (RTAs) for Mutual Fund folios and Depository Participants (DPs) for demat accounts] should have the contact details to reach out to the nominee(s) to commence the process of transmission in order to prevent the creation of unclaimed assets. Hence, it is proposed that information *viz.* (a) full contact details of nominee(s) such as address, mobile number

and email address, and (b) relationship of nominee(s) with the investor, shall be provided by an investor at the time of nomination under 'Mandatory Details'. In case the nominee is a minor, additional information *viz.* date of birth of nominee and guardian details may be provided by an investor under 'Optional Details'. Additionally, proof of identity, as stipulated in SEBI KYC Master Circular dated October 12, 2023⁴⁰, shall be furnished by the investor if the nominee is not a parent, spouse, children or sibling. These measures are suitably incorporated in the proposed circular and revised Nomination Form.

2.11. Acknowledgement of Nomination and maintenance of record:

Issue under consideration:

Due acknowledgement of making or changing or canceling nomination shall be provided to the investor/s. Due records of the same shall be maintained by the regulated entities for prescribed period.

Comments / suggestions received:

In response to this item in the CP, feedback was received from 2 entities where, one entity has partially agreed and one entity has disagreed to the proposal. The entity who partially agreed to the proposal suggested that period of storage of the change in nomination should be made specific. The entity who disagreed to the proposal did not provide any rationale for the same.

Analysis / Proposal:

Conferring investors the right to make or change nomination any number of times and to receive acknowledgement for each instance will enhance investor welfare. Hence, it is suitably incorporated in the proposed circular.

Accordingly, the regulated entities [*viz.* Asset Management Companies (**AMCs**) and their Registrar to an Issue and Share Transfer Agents (**RTAs**) for MF folios and Depository Participants (**DPs**) for demat accounts] shall provide acknowledgement to the investor for each and every instance of nomination, irrespective of the mode of nomination (i.e. for both online and physical/offline nomination). Further, these regulated entities shall maintain records of nomination for a period of seven years after

⁴⁰ Circular Ref. No. SEBI/HO/MIRSD/SECFATF/P/CIR/2023/169 titled, 'Master Circular on Know Your Client (KYC) norms for the securities market' dated October 12, 2023.

transmission of the folio / account. These measures are incorporated in the proposed circular for the sake of clarity and for bringing uniformity in practice across the securities market.

2.12. No restriction on number of times for changing nominee:

Issue under consideration:

Nomination facilities may be made, changed or cancelled at any time without any restrictions as to number of times such facilities are utilized.

Comments / suggestions received:

In response to this item in the CP, feedback was received from 1 entity who disagreed to the proposal. However, the entity has not provided any rationale for disagreement to the proposal.

Analysis / Proposal:

The flexibility to change nominee without any restriction will be beneficial for those investors who need this facility. Hence, this feature to allow an investor to change his/her nominee/s without any restriction on the number of instances, is suitably incorporated in the proposed circular.

2.13. Information on nomination to be made available to the investor:

Issue under consideration:

Due information on nominee/s and the extent of their share, if any specified, shall be made available on request to the investor/s (including through the account aggregator service).

Comments / suggestions received:

In response to this item in the CP, feedback was received from 6 entities where, 3 entities have partially agreed and 3 entities have disagreed to the proposal. The entities who partially agreed to the proposal stated that nomination details should be printed on the account statements / common account statements / transaction statement. They also suggested that if required, an option may be given to the investor to opt-out of publishing or mask the character name.

Two entities who disagreed to the proposal stated that only Y/N on whether nomination is registered (and not name of the nominee) should be printed on the statement sent to account holder.

Another entity who disagreed to the proposal suggested that enabling clauses regarding procedure for knowing the names and allocated percentages in favour of nominees by heirs/ family, etc. on demise of the investors should be incorporated as it is required during filing the Probate Petition or LOA Petition, as the case may be.

Analysis / Proposal:

The availability of this feature will help the investors in making nomination where he/she may have missed it due to oversight. Hence, this feature to make nomination information available to investor in periodic statement of holding furnished to the investors by the intermediaries and also, through Account Aggregator, as and when permitted to do so by the RBI, is suitably incorporated in the proposed circular. Additionally, nomination related information shall be made available to an investor only to the extent of whether or not nomination has been made by the investor and not the name of the nominee(s), in the periodic statement issued by the AMC or Depository / DP to the holders. This will ensure confidentiality of information related to the investor. Hence, it is suitably incorporated in the proposed circular.

2.14. Maximum number of nominees:

Issue under consideration:

Nomination facilities will permit multiple nominee/s and be increased from current limit of three (3) to very high two digits or to very high three digits (i.e. 99 or 999), which are large and sufficiently high to address ordinary requirements of individual investors.

Comments / suggestions received:

In response to this item in the CP, feedback was received from 5 entities. All of them have disagreed to the proposal, *inter alia*, stating that increasing the limit of number of nominees would further complicate the nomination procedure.

Analysis / Proposal:

From the data on nomination provided by AMFI and Depositories (as on December 31, 2023), it is observed that about 86% of eligible single holding MF folios have nomination, about 6% of the folios have 'opted-out' of nomination and the remaining about 8% have neither provided nomination nor 'Opted-out'. In the case of demat accounts, the respective figures are about 28%, 70% & 3%, respectively. Further, in case of single holdings, the percentage of Folios and Accounts in which 3 nominees are mentioned is very low i.e. 0.26% and 0.06%, respectively.

For the aforesaid data on nomination, please refer to **Table 2** at para no. 2.8: 'Choice of nomination - nomination optional for joint demat accounts & Mutual Fund folios'.

However, a situation may arise when an investor wants to nominate more than 3 persons, but ends up not making any nomination in view of the existing upper limit of only 3 nominees. Such accounts / folios without nomination eventually mutate into unclaimed assets. To address such a situation and in order to provide flexibility to investors, the number of nominees shall be increased to ten (10) from existing limit of three (3) nominees, which could be considered sufficient to address ordinary requirements of individual investors. This has been suitably incorporated in the proposed circular and revised Nomination Form.

2.15. Apportionment of assets to surviving nominees:

Issue under consideration:

Nomination facilities will permit specification of percentage share of nominees, in absence of which or upon any nominee predeceasing the investors without specification of successive nominees, for purposes of transfer as per the nomination/s, the percentage share in the demat account or the units of the mutual fund scheme will be equally divided among all the nominees or be proportionately divided in the ratio specified by the investors incorporating the portion attributable to the deceased nominee.

Comments / suggestions received:

In response to this item in the CP, feedback was received from 4 entities where, one entity has agreed and 3 entities have disagreed to the proposal. The entities, who disagreed to the proposal, have categorically stated that equal division is incorrect and instead, it should be proportionately divided among the nominees.

Analysis / Proposal:

Upon demise of an investor having two or more nominees, disputes may arise among the nominees during transmission regarding the percentage share of each nominee. Hence, it is proposed that at the time of nomination, an investor shall specify the percentage share for each nominee. In the absence of percentages, the presumption shall be equal apportionment to nominees. Upon demise of the investor and one of the nominees prior to the demise of the other nominees, the assets shall be distributed to the surviving nominees on pro rata basis, as illustrated in paragraph 2.6 above. These norms are suitably incorporated in the proposed circular as well as revised Nomination Form to bring uniformity across the securities market.

2.16. Choice to nominees to continue as joint holders upon demise of the investor having multiple nominees:

Issue under consideration:

In case of two or more nominees, such nominees shall not constitute joint holders/owners unless all such nominees agree to be constituted as joint holders/owners.

Comments / suggestions received:

In response to this item in the CP, feedback was received from 1 entity who disagreed to the proposal. The entity stated that new account should be opened by the nominees where holdings can be transferred and hence, nominee should not be made joint holder automatically.

Analysis / Proposal:

Upon demise of the investor having multiple nominees, during transmission, the nominees shall have the option to either continue as joint holders with other nominees or open separate single account / folio for each nominee so as to provide them flexibility and choice. This measure is suitably incorporated in the proposed circular.

2.17. Option to specify guardian(s) when nominee(s) is a minor:

Issue under consideration:

Option to the investor/s to specify guardian/s when nominee/s are minor/s⁴¹.

⁴¹ At times investor/s struggle to identify suitable guardian/s, which inhibits making of nominations when the proposed nominees are minors. Ordinarily, the minors may become majors during the lifetime of the investor/s, obviating the need for guardian/s. As such, it is noted that minors are able to own real estate or other properties and can enjoy rights, title, interest

Comments / suggestions received:

In response to this item in the CP, feedback was received from 2 entities who have disagreed to the proposal. One of the entities in disagreement to the proposal suggested that in case the nominee is a minor, then the investor should be allowed to determine the age or year upto which the money will not be made available to him. The other entity suggested that guardian should be made mandatory for all nominees who are minors.

Analysis / Proposal:

There could arise a situation when the dithers on whom to name as guardian for his/her minor child/children in the nomination form and thus, postpones making of nomination. Removing the need for explicitly naming guardian will incentivize such investor to come forward and make nomination. The key implication of no guardian is that a minor nominee may not be able to affect a transfer of the securities or redemption of the mutual fund until attaining the age of majority. This is no different from a minor inheriting immovable property and not being able to deal with the same until attaining the age of majority.

Given that the provision provides choice to the investor and benefits those who wish to avail this facility, without any imposition on those who may not want to specify guardian for minor nominee. Hence, given the choice to the investor to specify minor nominee/s without specifying guardian/s, the said flexibility and choice shall be provided for investor convenience and for bringing uniformity in practice across the securities market.

2.18. Successive Nominee(s):**Issue under consideration:**

Option to the investor/s to specify successive nominee/s which takes effect on nominee/s predeceasing the investors. Successive nominee/s can be mapped to specific nominee/s and to percentage specification if any made for such nominee/s or be specified when there is a single nominee.

and ensuing benefits if any. Thus, the benefits arising from the ownership of demat accounts or units of the mutual fund schemes can also be available to and enjoyed by minors. By virtue of the Indian Contract Act, minors cannot enter into contracts and cannot assume any obligations or responsibilities nor sell or transfer the properties. Furthermore, in absence of appointment of a guardian, the Hindu Minority and Guardianship Act or the Guardians and Wards Act, as the case may be, will have applicability.

Comments / suggestions received:

In response to this item in the CP, feedback was received from 4 entities where, two entities have agreed and two entities have disagreed to the proposal. The entities have not provided any rationale for the same.

Analysis / Proposal:

This measure may be very useful to investors in certain specific situations. This protective measure is available to the members of Provident Funds vide proviso to 5 (1) (b) of the Employees Provident Fund Act, 1925. However, in the absence of legal anchor in securities laws for successive nominee, it is felt that implementation of this feature may be deferred.

2.19. KYC of nominee to be made optional:

Issue under consideration:

Completion or updating of KYC of the nominees during the lifetime of the investors will be optional.

Comments / suggestions received:

In response to this item in the CP, feedback was received from 2 entities and both have disagreed to the proposal. One of the entities stated that KYC of nominee should be made mandatory. The other entity did not provide any rationale for the same.

Analysis / Proposal:

The flexibility and choice to provide KYC of nominee(s) will encourage investors to avail this facility. Hence, this feature is suitably incorporated in the proposed circular and revised Nomination Form under 'Optional information to be provided by an investor'.

2.20. Allowing nominees to act on behalf of incapacitated investors:

Issue under consideration:

Option to the investor to specify that on an investor being permanently or temporarily incapacitated, the nominee/s can conduct transactions⁴². In case of a single nominee,

⁴² Reference is drawn to the NSDL Circular No.: NSDL/POLICY/2012/0087 dated September 4, 2012 for the procedure followed in case of certain types of incapacitation.

such nominee will be authorized to conduct the transactions. In case of multiple nominee/s, the investor can specify which nominee will be authorized to conduct the transactions⁴³. Enabling the investors/s an option of specifying that on such an investor being incapacitated, the nominee/s can conduct transactions. In case of a single nominee, such nominee will be authorized to conduct the transactions.

- c) In case of multiple nominee/s, the investor can specify if the first named nominee or anyone of the nominees or a specified nominee will be authorized to conduct the transactions.
 - d) In case of an incapacitated investor who
 - i) has the ‘capacity to contract’, then a Power of Attorney (**POA**) or a mandate letter or authorization letter may be used
- OR
- ii) does not have the ‘capacity to contract’, then guardianship certificate from court would be required.

AND

- iii) provision of a doctor’s certificate, in-person verification by the relevant depository or registrar , obtaining of thumb impression of investor instead of signature / on-line login credentials .

Additional safeguards in this behalf may be suggested.

Comments / suggestions received:

In response to this item in the CP, feedback was received from 5 entities where, one entity has agreed, three entities have partially agreed and one entity has disagreed to the proposal. One of the entities, *inter alia*, stated that NSDL provisions cover procedure to be followed in case a client is not able to sign due to medical reasons, old age, etc. while norms for incapacitated persons who are unable to put the thumb impressions on their own have been covered by RBI. In similar lines, another entity also pointed out NSDL circular which deals with procedure to be followed in cases of incapacitation and also referred to some media articles on this issue. One entity agreed to the proposal suggesting that KYC and sign of the nominee should be registered at the time of such declaration by the investor. Another entity, *inter alia*, suggested certain additional measures to be taken such as video In-Person Verification (**IPV**) by intermediary, in-person collection of consent of the investor and expiry date for such

⁴³ It is noted that in case of a joint holding/ownership, if one of the joint holders/owners is incapacitated, the other joint holders/owners would be able to conduct the transactions.

consent, etc. In contrary to the aforesaid suggestion, an entity stated that IPV is advisable but should not be made mandatory.

Analysis / Proposal:

From the experience gained in Covid pandemic, this feature of allowing nominees to act on behalf of incapacitated investors is a desirable one and hence, the same may be implemented for the benefit of investors. In this regard, the safeguards and practice followed in the banking sector and by NSDL are suitably adapted and incorporated in the proposed circular as follows.

Accordingly, an investor shall have the option of indicating if the nominee can operate the account/ folio on his/her behalf, in case the former is incapacitated. Further, there shall be no restriction on the number of instances an investor can change the nominee who can operate the account/ folio on his/her behalf.

The broad guidelines to be followed by the AMCs / their RTAs or DPs in case of an incapacitated investor are listed below:

- (g) Obtain a written request from the incapacitated investor clearly stating the reasons of his or her inability to operate the account/ folio, with adequate proof.
- (h) In case the incapacitated investor is unable to put wet signature, obtain thumb or toe impression or a mark of the incapacitated investor on the written request.
- (i) Take all steps to ascertain and independently verify the capacity to contract of the client, including through an in-person visit by a responsible official along with an independent witness and along with the authenticity of request.
- (j) In case where thumb or toe impression of the incapacitated investor could not be obtained, the intermediary shall obtain a mark from the client as well as an independent verification from two identified witnesses known to the intermediary, one of whom should be a responsible official.
- (k) In case where thumb or toe impression or a mark of the incapacitated investor is obtained, the intermediary shall obtain an independent verification from two identified witnesses known to the intermediary, one of whom should be a responsible official.
- (l) The responsible official who has ascertained the aforesaid must put his/her name, signature and suitable remarks to the effect that “Thumb impression / toe impression / mark affixed in my presence” on the written request of the client.

Further, regulated entities may also act on the instruction/s of any guardian/s appointed by a court of competent jurisdiction, subject to such conditions as the court may have specified from time to time.

Additionally, in order to have uniformity for dealing with investors with special needs or sick or old investors in the securities market, the Depositories and Association of Mutual Funds in India (AMFI) will be directed to put in place common Standard Operating Procedure (SOP). The SOP shall have adequate guardrails to prevent misuse or abuse and be made available on their websites as well as that of their constituents.

2.21. Transmission to nominee with minimal documentation:

Issue under consideration:

Transfer to the nominee/s shall require:

- d) due completion, updating or reaffirming of the KYC
- e) due discharge from the creditors if there are subsisting credit facilities secured by a duly created pledge

No other documentation including affidavits, indemnities, undertakings, attestations or notarizations shall be required from the nominee/s. No claims in respect of such transfer shall subsist against the depositories or the mutual funds or their registrars, and any claim or contestation shall be among the nominee/s and the claimants without reference to the depositories or the mutual funds or their registrars.

Comments / suggestions received:

In response to this item in the CP, feedback was received from 3 entities where, one entity has partially agreed and two entities have disagreed to the proposal. The entity who partially agreed to the proposal, *inter alia*, stated that in case nominee is already an investor with proper KYC, there should be no need to reaffirm the same for transmission purposes. One of the entities who disagreed to the proposal stated that documentation such as affidavit or indemnity may be needed in certain situations involving change in official name of nominee and other similar incidents to safeguard the interest of nominee as well as organization. Another entity who disagreed to the proposal stated that the entire process should be digitized and the claim process should be online through simple login for nominees so that the brokers or depositories do not

delay or create hassle, especially for nominees who are older and are living in small towns and villages of India or are staying abroad.

Analysis / Proposal:

As nomination is a potent tool to achieve the goal of stalling the generation of unclaimed assets, it is felt that the process of transmission should be as friction free as possible. In this regard, MF circular dated December 24, 2019⁴⁴, *inter alia*, states that “AMCs shall implement image based processing wherever the claimant is a nominee or a joint holder in the investor folio....” The same may be made applicable to demat accounts as well by including this in the proposed circular.

Hence, transfer to the nominee(s) shall require only the following:

- (a) due completion, updating or reaffirming of the KYC, and
- (b) due discharge from the creditors if there are subsisting credit facilities secured by a duly created pledge.

No other documentation including affidavits, indemnities, undertakings, attestations or notarizations shall be required from the nominee(s). No claims in respect of such transfer shall subsist against the DPs or the mutual funds or their RTAs, and any claim or contestation shall be among the nominee(s) and the claimants without reference to the DPs or the mutual funds or their RTAs.

Additionally, it is proposed to incorporate the following declaration to be obtained by the AMCs / DPs, from the nominee(s), to facilitate the smooth transfer of financial assets to the legal heir(s) of the investor, as follows;

- (a) I / we are receiving the assets of the deceased’s demat account / MF Unit holder as a trustee to his / her legal heir(s).
- (b) I / we shall extend all co-operation in transferring such assets to the legal heir(s), either suo moto or when approached by the latter.
- (c) In case I / we fail to discharge my / our liability, or if there is any dispute between me / us and the legal heir(s) of the deceased, then the AMC and / or its RTA or Depository Participant, shall not be party to such disputes.

⁴⁴ Circular No. SEBI/HO/IMD/DF3/CIR/P/2019/166 titled, ‘Investment in units of Mutual Funds in the name of minor through guardian and ease of process for transmission of units’ dated December 24, 2019.

Finally, the regulated entity shall facilitate / extend co-operation to transfer assets from the nominee/s to the legal heir/s of an investor, as and when approached by either party. The Depositories and Association of Mutual Funds in India (AMFI) will be directed to put in place common Standard Operating Procedure (SOP) for this purpose. The SOP shall have adequate guardrails to prevent misuse or abuse and be made available on their websites as well as that of their constituents.

2.22. Transmission to joint-holder(s) with minimal documentation:

Issue under consideration:

In case of joint holdings and rule of survivorship being applicable, no documentation including related to KYC, indemnities or undertakings shall be required from the surviving joint holders/owners.

Comments / suggestions received:

In response to this item in the CP, feedback was received from 2 entities where, one entity has agreed and one entity has disagreed to the proposal. The entity in agreement to the proposal in the CP stated that in case of demat account/mutual fund units held in physical form, with mode of operation either or survivor, there should be no need to open a separate demat account/separate folio for mutual fund units in case of death of a holder other than the first holder. The entity, who disagreed to the proposal in the CP, did not provide any rationale for the same.

Analysis / Proposal:

The current legal/ regulatory provision due to lack of clarity has led to disparate practices during transmission. Hence, it is proposed to simplify transmission process for joint holdings by removing those inconsistent practices, which will benefit investors across the securities market.

2.23. Transmission as per extant norms where nomination is not available:

Issue under consideration:

In absence of nominations, the legal heir/s or legal representative/s in terms of a Will and testament or intestate succession shall be required to produce due evidence and follow the procedures prescribed (under applicable law) for the purpose of effecting transmission in their favour.

Comments / suggestions received:

In response to this item in the CP, feedback was received from one entity who disagreed to the proposal in the CP. The entity suggested that legal heirs, as per SDM issued Surviving Member Certificate, should be recognized if nominee is not specified since SDM Court / Revenue Court is more efficient than Judicial Court.

Analysis / Proposal:

Surviving Member Certificate is equivalent to Legal Heirship Certificate. And Legal Heirship Certificate or equivalent certificate' (emphasis supplied) is one of the valid documents for transmission for physical securities and demat accounts, w.e.f. April 25, 2022, vide SEBI (Listing Obligations and Disclosure Requirements) (Fourth Amendment) Regulations, 2022 ("LODR Amendment Regulations"). The suggestion is already implemented by the Board. Accordingly, the existing regulatory norms for Transmission, as per SEBI circular dated May 18, 2022 for Depository Participants and physical securities is reiterated in the proposed circular for the sake of clarity and for bringing uniformity in practice in the securities market.
