

## National E-Repository Limited

### *Bye laws*

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**National E-Repository Limited**

**Registered Office:**

Ackruti Corporate Park, 1<sup>st</sup> Floor,  
Near G.E. Garden, L.B.S. Marg,  
Kanjurmarg (West), Mumbai - 400 078.

**Tel. (B)** (+91-22) 6244 1500  
**Fax** (+91-22) 6244 1501  
**Toll Free Number:** 1800 209 6007

**Website:** <http://www.nerlindia.com>  
**Email:** [help@nerlindia.com](mailto:help@nerlindia.com)  
**CIN No:** U93090MH2017PLC291035

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## 1. SHORT TITLE AND COMMENCEMENT

- 1.1. These Bye Laws are framed by the National E-Repository Limited in exercise of the powers conferred upon it under Clause 13 of Guidelines on Repositories and Creation and Management of Electronic Negotiable Warehouse Receipts dated October 20, 2016 ("Guidelines on Repository") issued by the Warehousing Development and Regulatory Authority ("WDRA" or the "Authority") constituted under the provisions of Warehousing (Development and Regulation) Act, 2007.
- 1.2. These Bye Laws shall be called the Bye Laws of National E-Repository Limited
- 1.3. These Bye Laws shall come into effect from the date on which the Bye laws and any amendments thereof, are approved by the Authority.

## 2. DEFINITIONS

Unless the context otherwise requires

- 2.1.1 **"Board or Board of Directors"** means the Board of Directors of National E-Repository Limited;
- 2.1.2 **"Business Rules"** means and includes such guidelines, circulars and manuals, containing the practices, procedures, functional and operational parameters, relating to each of the core services of the Repository System as approved and notified by the Board of the Repository from time to time;
- 2.1.3 **"Clearing House"** means a division of the Exchange or any agency identified by the Exchange or any independent entity such as clearing corporation set up or engaged to act as a facilitator for processing, clearing and settlement of transactions between clearing members /trading members and participants of the recognized Exchange, for transactions effected by them on such exchange(s).
- 2.1.4 **"Client"** means a person who has opened an account with the Repository either directly or through the Repository Participant, for availing the core services offered by the Repository.
- 2.1.5 **"Certificate of Commencement of Business of Repository Participant"** means the Certificate issued by Repository to the Repository Participant (RP) for commencement of business of its core services in accordance with the Act, Rules and Regulations of the Authority.
- 2.1.6 **"Company"** means any entity formed and registered under Companies Act, 1956 (1 of 1956) or Companies Act, 2013(18 of 2013).
- 2.1.7 **"Limited Purpose E-Auction"** means the process of limited purpose E-Auction as may be prescribed by the Repository for the purpose of conducting Auction on an online electronic platform.
- 2.1.8 **"Electronic Balance"** with reference to Client shall mean the net balance arrived after debit and credit of Electronic Warehouse Receipts issued by the Warehouseman as reflected in the Repository Account of the Client.
- 2.1.9 **"Extinguishment of Electronic Warehouse Receipt"** means cancellation of the Electronic Warehouse Receipt issued by the Warehouseman for which an electronic credit balance is reflected in the Repository Account on withdrawal of the Goods represented in the said Warehouse Receipt.
- 2.1.10 **"Financial Institution"** includes a Scheduled Commercial Bank as listed under Schedule 2 (as amended) of the Reserve Bank of India Act, 1934

- 2.1.11 **"Information"** includes data, message, text, images, sound, voice, codes, computer programs, software and databases or micro film or computer generated micro fiche or any other electronic form;
- 2.1.12 **"Key Managerial Person"** shall means–
- a. the Chief Executive Officer or the Managing Director or the manager;
  - b. A Whole-Time Director;
  - c. the Chief Financial Officer;
  - d. the Company Secretary; and
  - e. any other official by whatever name called, who performs the functions of any of the aforesaid officials or functions of a similar nature.
- 2.1.13 **"Electronic Negotiable Warehouse Receipt"** means an electronic Warehouse Receipt issued through the Repository by a Warehouseman in an electronic form, to the account of a Depositor/Client maintained by the Repository or Repository Participant, as the case may be, under which the goods represented therein are to be deliverable to the Depositor/Client or order, the endorsement of which has the effect of transfer of goods represented thereby and the endorsee for which takes a good title.
- 2.1.14 **"Electronic Non-negotiable Warehouse Receipt"** means an electronic Warehouse Receipt other than an Electronic Negotiable Warehouse Receipt.
- 2.1.15 **"External Person"** as defined in 'Guidelines on Repositories and Creation and Management of Electronic Negotiable Warehouse Receipts', as issued by the Authority in 2016 and as modified from time to time.
- 2.1.16 **"Pledgee"** means the person having an account with the repository in whose favor the Client/Depositor has pledged the goods as security for the financial assistance.
- 2.1.17 **"Relevant Authority"** shall mean the Board of Directors or any Person or authority identified and notified as Relevant Authority for the specified purposes by the Repository.
- 2.1.18 **"Repository Account"** means the account of the Client opened with the Repository directly or through a Repository Participant, for the purposes of dealing with the Electronic Warehouse Receipts issued by the Warehouseman.
- 2.1.19 **"Repository System"** means the electronic system of the Repository for the purposes including but not limited to safe and accurate creation, storage, maintenance, cancellation, transfer of Electronic Negotiable Warehouse Receipts and for creation and removal of pledge and limited purpose e-auction thereof;

Words and expressions used but not defined in the Bye Laws but defined under the Warehousing (Development and Regulation) Act, 2007 (37 of 2007), Rules and Regulations issued by Warehousing Development and Regulatory Authority (the "Authority"), the Guidelines on Repository the Companies Act, 2013, the Securities Contracts (Regulation) Act, 1956, and any amendments, modifications thereto, shall have the same meaning respectively assigned to them under the aforesaid Acts, Guidelines, Rules and Regulations.

### **3. BOARD OF DIRECTORS**

- 3.1 The Board of Directors of National E-Repository Limited, constituted in accordance with the provisions of the Companies Act, 2013 and Articles of Association of the Company, may organize, maintain, control, manage, regulate and facilitate the operations of the Repository and of transactions in the Electronic Negotiable Warehouse Receipts representing the goods, through the Repository Participants of the Repository, subject to the provisions of the Act,

Rules, Regulations and Guidelines on Repositories and any other applicable laws, for the time being in force, governing the Repository and its functions.

- 3.2 The Board of Directors shall have the authority to formulate, amend, repeal the Bye Laws and Business Rules which are required for effective and smooth functioning, operation and regulation of Core Services of Repository
- 3.3 The Board of Directors may delegate, from time to time, to an Advisory Committee or Executive Committee or such other Committees or to the Managing Director or to any person or persons, such of the powers vested in it and upon such terms and conditions as it may think fit, and cancel, withdraw, alter or vary all or any of such powers so delegated.
- 3.4 The Board of Directors shall have the authority to issue directives from time to time to the Executive Committee or Advisory Committee or such other Committees or Managing Director or any other person or persons to whom any powers have been delegated by the Board of Directors, and such directives shall be binding on the Executive Committee, Advisory Committee, other Committees, Managing Director or such other person/ persons as the case may be

#### **4. POWER OF THE BOARD TO FRAME AND AMEND BYE-LAWS AND BUSINESS RULES**

- 4.1 The Board of Directors of the Repository shall be entitled to frame and amend the Bye-Laws either on its own or upon the directives of the Authority, as the case may be. Such Bye-Laws and any amendments thereof shall be implemented only after obtaining prior approval of the Authority.
- 4.2 The Board of Directors of the Repository shall be entitled to frame and amend Business Rules of the Repository from time to time. Such Business Rules shall be implemented only after obtaining prior approval of the Authority.
- 4.3 Without prejudice to the generality of the foregoing, the Board of Directors of the Repository shall have power to make Bye laws and Business Rules, amongst other purposes, for all or any of the following matters:
  - a) Conditions for admission as Repository Participants of the Repository;
  - b) Hardware and software requirements;
  - c) Procedure for account opening and other transactions within the Repository;
  - d) Manner of dealing with Warehouseman and creation of Electronic Negotiable Warehouse Receipts balances in the Repository system;
  - e) Procedure for reconciliation;
  - f) Procedure for ensuring safeguards to protect the interests of Repository Participants and Clients;
  - g) Manner of creating and invoking pledges;
  - h) Manner of rectification of errors and omissions;
  - i) Manner of inter-repository transactions
  - j) Manner of reconciliation of records with the warehouseman and between repositories
  - k) Inter se rights and obligations between the Repository and its Clients;
  - l) Fees and charges;
  - m) Procedure for grievance redressal including conciliation and Arbitration;
  - n) Internal control standards including procedure for auditing, reviewing and monitoring;
  - o) Record keeping;
  - p) Inspections, and audit including systems audit;

- q) Manner of initiating actions against Repository Participants (RP) for failure to perform their duties as per the provisions of the Act, Rules, Regulations and Guidelines made thereunder and the Bye-Laws of the Repository;
  - r) Forms for submitting various instructions;
  - s) Forms and conditions of contracts to be entered into, and the time, mode and manner of performance of contracts;
  - t) Time, place and manner for transacting business on the Repository;
  - u) Scale of fees or service charges or the like which Repository Participants can charge;
  - v) Settlement of disputes, complaints, claims involving Repository, its Clients subject to the Business Rules and Bye laws including settlement by arbitration in accordance with the Business Rules and Bye laws in force from time to time;
  - w) Appointment of Committee or Committees for any purposes of the functioning of the Repository; and
  - x) Any other matter not specified above but required for the smooth operation of the Repository System either on its own or as may be directed by the Authority.
- 4.4 The Board of Directors of the Repository shall have power to repeal, delete, amend and/or alter the Bye-Laws and Business Rules or any part thereof from time to time. The Board of Directors of the Repository shall submit copy of the draft of Bye-Laws and Business Rules or the draft of amendment to or modification thereof, as the case may be, to the Authority for its prior approval and shall be effective from the date as notified therein.
- 4.5 Without prejudice to the generality of Bye Law 4.2 above, Repository shall frame Business Rules inter alia, with respect to:
- 4.5.1 mode of functioning, operation and processes in the Repository System;
  - 4.5.2 norms which shall be required to be followed by the Clients of the Repository System;
  - 4.5.3 for such other matters not specified hereunder but are required for effective operations to provide Core Services of the Repository.
- 5. EXECUTIVE COMMITTEE**
- 5.1 An Executive Committee may be constituted by the Board of Directors for the purpose of managing the day to day affairs of the Repository.
- 5.2 The Board of Directors of Repository may constitute, re-constitute an Executive Committee to manage the whole or part of the affairs of the Repository in accordance with these Bye-Laws, Business Rules and the terms of reference for Executive Committee could be set out by the Board of Directors of the Repository. The Board of the Repository may also decide to supersede and/or abolish the Executive Committee, if deemed appropriate in public interest.
- 5.3 The Executive Committee shall consist of not more than 5 members possessing requisite knowledge, experience or qualification on such terms and conditions of appointment, as may be prescribed by the Board from time to time.
- 5.4 The Executive Committee of the Board of Repository shall consist of :
- 5.4.1 The Managing Director of the Company shall be the ex-officio Chairman of the Executive Committee.
  - 5.4.2 The market participants or professionals or academicians having knowledge of Agri Industry, Financial Technology Industry, Agri Tech industry etc.

- 5.5 The Board of Directors of Repository may give such directives from time to time, in relation to the conduct of the affairs of the Company, and such directives shall be binding upon the Executive Committee.
- 5.6 The Executive Committee may subject to the terms and conditions of delegations by the Board of the Repository and to the extent of such delegation exercise all such powers and do all such acts and things as may be exercised or done by the Board of Repository.
- 5.7 The Executive Committee may from time to time, constitute sub-committees consisting of two or more of its members which shall report to it on such matters as it may deem fit. The constitution, quorum, and responsibilities of such sub-committees will be determined by the Executive Committee.

## **6. ADVISORY COMMITTEE**

### **6.1 CONSTITUTION**

- 6.1.1 An Advisory Committee shall be constituted by the Board of Directors of the Repository for advising the Board and/or the Executive Committee in the matters relating to the management of day to day affairs of the Repository.
- 6.1.2 The Advisory Committee shall consist of not less than nine members.
- 6.1.3 The norms regarding the eligibility and other criteria for appointment to the Advisory Committee shall be prescribed by the Board of the Repository from time to time.
- 6.1.4 The Advisory Committee appointed by the Board of Directors shall consist of:
- a. the Managing Director of the Repository;
  - b. one person to be nominated in that behalf by the Board of Directors of the Repository from the each of the categories i.e. Depositors, Clients, Financial Institutions, Exchanges, Clearing Houses, Warehousemen, Repository Participants or any other person to whom the Repository provides core services to be known as Client Representatives.

### **6.2 POWERS OF THE ADVISORY COMMITTEE**

- 6.2.1 The Advisory Committee may exercise such of the powers that may be delegated by the Board of Directors in accordance with the provisions of these Bye Laws.
- 6.2.2 The Advisory Committee shall advise the Executive Committee or the Board of Repository as the case may be on the matters governing the powers of the Board of Repository as 4.3 above or such other matters incidental thereto as may be required by the Board of Repository.

### **6.3 CLIENT'S REPRESENTATIVES:**

- 6.3.1 Subject to the provisions of Bye Law 6.4.1, the Board of Directors shall nominate on the Advisory Committee from time to time, not more than eight persons from amongst the Client's Representatives. The persons from amongst the Client's Representatives so nominated by the Board of Directors shall hold office for a period of two years and shall be eligible for re-nomination subject to Bye Law 6.4.2.
- 6.3.2 Any vacancy caused by the resignation, removal, death, insolvency or otherwise of such a nominated person shall be filled in by the Board of Directors by a suitable nomination.



## 6.4 ELIGIBILITY OF CLIENT'S REPRESENTATIVES TO BECOME ADVISORY COMMITTEE MEMBERS

6.4.1 No Client Representative shall be eligible to be nominated as a member of the Advisory Committee:-

- a. unless the Client satisfies the requirement, if any, specified in that behalf by the Authority under the Act or the Rules, Guidelines framed thereunder and such other directives or Regulations as may be prescribed from time to time by the Repository;
- b. unless he is a Client Representative and has adequate experience as a market intermediary;
- c. if he is an associate of a Client Representative, who is already a member of the Advisory Committee;
- d. if he has at any point of time been declared as defaulter or failed to meet his liabilities in the ordinary course of business or compounded with his creditors;
- e. if he has been expelled or suspended by the Disciplinary Action Committee of the Repository or any other regulatory authority.

6.4.2 A Client Representative nominated for two consecutive terms as a member on the Advisory Committee shall not be eligible to be re-nominated to the Advisory Committee unless a period of two years has elapsed since expiry of his last term.

6.4.3 Any vacancy caused in the Client's Representatives shall be filled in by the Board of Directors by a suitable nomination.

## 7. OFFICE BEARERS OF THE COMMITTEE/S (EXECUTIVE COMMITTEE AND ADVISORY COMMITTEE) CONSTITUED UNDER THESE BYE-LAWS

7.1 The Committee/s shall, from time to time, have the following office bearers namely,

- 7.1.1 A Chairman and a Vice Chairman;
- 7.1.2 The Managing Director of the Repository shall be the Chairman of the Committee/s.
- 7.1.3 The Committee/s may elect one among themselves as the Vice Chairman.
- 7.1.4 The Vice Chairman so elected shall hold office for a period of one year and shall be eligible for re-election.
- 7.1.5 In the event of any casual vacancy arising in the office of the Chairman, the Vice Chairman shall act as the Chairman to fill the casual vacancy, and the Committee/s shall nominate, from amongst the members, an acting Vice Chairman to fill in the casual vacancy so caused in the post of the Vice Chairman.
- 7.1.6 In the event of any casual vacancy arising in the office of the Vice Chairman, the Committee/s may nominate any person to act as the acting Vice Chairman during the period of such casual vacancy. Such acting Vice Chairman shall hold office for the same period as the office bearer in whose place he holds office.

## 8. MEETINGS OF THE COMMITTEE/S

- 8.1 The Chairman of the Committee/s may, at any time, convene a meeting of the Committee/s.
- 8.2 The Committee/s shall meet at least once in every two months for the dispatch of business, adjourn and otherwise regulate its meetings and proceedings, as it thinks fit.
- 8.3 The quorum for a meeting of the Executive Committee shall be Three and for Advisory Committee shall be Five.

Provided that where at any time, the number of interested members exceeds two thirds of the total strength, then the number of remaining members, i.e., the number of members not interested shall be the quorum for the meeting.

**Explanation:** An interested member means any member who is directly or indirectly concerned or interested in the issue or matter to be dealt with at the meeting of the Committee/s and whose presence shall not count for the purpose of forming the quorum of such meeting.

- 8.4 Questions arising at any meeting of the Committee/s shall be decided by a majority of the votes cast by members present and voting.
- 8.5 In the case of equality of votes, the Chairman of the Committee/s shall have a second or casting vote.
- 8.6 At all meetings of the Committee/s, the Chairman shall ordinarily preside and in his absence, the Vice-Chairman shall preside. If the Vice-Chairman is also not present at the meeting, the members of the Committee/s present shall choose one from among themselves to be the Chairman of such meeting.

## **9. POWERS OF THE CHAIRMAN OF THE EXECUTIVE COMMITTEE**

The Chairman of the Executive Committee shall be entitled to exercise any or all of the powers, exercisable by the Committee/s whenever he is of the opinion that immediate action is necessary, subject to such action being ratified by the Committee/s within the time stipulated by the Committee/s.

## **9A. STATUTORY COMMITTEES**

### **9A.1. Constitution**

- (a) A Statutory Committee shall be constituted by the Board of Directors in accordance with Guideline 11 of the Corporate Governance Guidelines for the Repositories registered for Creation and Management of electronic Negotiable Warehouse Receipts issued on April 23, 2019 as may be amended from time to time.
- (b) Terms of reference of the respective statutory committee shall be as approved by the Board of Direct

### **9A.2. Composition**

- (a) A Statutory Committee shall consist of not less than Four (4) members.
- (b) A Statutory Committee appointed by the Board of Directors shall consist of:
- At least one Independent External Expert;
  - At least one Independent Director;
  - At least one Shareholder Director and
  - Managing Director & Chief Executive Officer of the Repository

### **9A.3. Quorum**

Quorum for the meeting of the committee will be at least three members, Independent External Expert being a mandatory member.

### **9A.4. Frequency**

Meeting of the Committee shall be held as and when required.

*\*Inserted Byelaw 9A as per the Repository Circular No. NERL/Compliance-002/2020/024 dated August 13, 2020*

## **10. BUSINESS RULES**

- 10.1 The Board of Directors shall formulate Business Rules for providing the Core Services of the Repository and to regulate the functioning and operations of the Clients of the Repository with powers to amend and / or alter such Business Rules.

Provided however that, no Business Rules shall come into operation except as provided under Bye law 4.3.

10.2 Without prejudice to the generality of Bye Law 10.1 above, the Board of Directors may formulate Business Rules inter alia, with respect to :-

10.2.1 Determination from time to time, as to the fees, system usage charges, deposits, margins and other monies payable to the Repository by Clients.

10.2.2 Norms and procedures for approval of Clients other than Repository Participant.

10.2.3 Norms, terms and conditions which shall be required to be followed and complied by the Clients while acting as such;

10.2.4 administration, maintenance and investment of the corpus of the Fund(s) set up by the Repository, including the Contingency/Client Protection Fund;

10.2.5 dissemination of information, announcements to be placed on the Repository system; manner in which the accounts of the Repository Participant shall be reconciled with the records of the Repository on a daily basis;

10.2.6 requirements for submission of periodic returns by Repository Participant to the Repository on its activities in relation to the Repository;

10.2.7 manner and form in which the Repository Participant shall maintain electronic means of communication with the Repository

10.2.8 manner and format in which every Repository Participant shall submit various requests and periodic returns to the Repository;

10.2.9 administration and operation of the reserves created by the Repository including "Client Protection Reserve";

10.2.10 any other matter as may be decided by the Board of Directors.

10.3 The Advisory Committee may, from time to time, recommend to the Board of Directors, any additional requirements in the Business Rules in the interest of the Clients.

## **11. REPOSITORY PARTICIPANT**

A Repository, may avail the services of a Repository Participant for the following purposes:

1. to identify through documentary and/ or physical verification, on behalf of the Repository, the identity and address of the Depositor in whose favor a Warehouseman intends to issue an Electronic Negotiable Warehouse Receipt;
2. to facilitate the opening, management and closing of accounts of Clients on the Repository;
3. to facilitate the issue, modification, transfer, pledge and limited purpose e-auction of Electronic Negotiable Warehouse Receipts; and
4. to facilitate the issue and modification of Electronic Negotiable Warehouse Receipts; and
5. such other incidental and ancillary purposes as may be specified by the Repository from time to time.

### **11.1 ADMISSION OF A REPOSITORY PARTICIPANT**

11.1.1 Any person desiring to become a Repository Participant shall file an application with Repository for grant of certificate of commencement of services of Repository Participant, in the prescribed manner as notified by the Repository from time to time.

11.1.2 The application shall be accompanied by such fees, security deposits and/or such other sums of money as specified by the Repository from time to time.

11.1.3 Every applicant whose application has been received by the Repository within such time as may be prescribed in the Business Rules and meeting the norms and criteria

as may be prescribed by the Repository shall be eligible to become a Repository Participant.

Provided that if the applicant is already registered as a Repository Participant through another Repository, the Repository may admit such Repository Participant subject to such norms and criteria as may be prescribed by the Repository from time to time.

- 11.1.4 An application which is not complete in all respects and does not conform to the instructions specified shall be rejected. The Repository may, before rejecting any application, give the applicant, in writing, an opportunity to remove the objections, within such time as may be recommended by the Advisory Committee.
- 11.1.5 The Repository may require the applicant to furnish such further information or clarification as may be required within such time as it may specify. On failure to provide any information within the time provided or such further time as may be granted, the application will be deemed to have been rejected.
- 11.1.6 The Managing Director of the Repository or Executive Committee of the Repository may approve or reject any application as it may deem fit in its absolute discretion. The applicant may appeal to the Board of Directors of the Repository against the decision of the Managing Director or the Executive Committee or any officer authorized by the Executive Committee in this regard and the decision of the Board in this regard shall be final.
- 11.1.7 The applicant shall become a Repository Participant with effect from the date on which the Managing Director or the Executive Committee or Board of Directors, as the case may be, approves the admission of such applicant and issues the Certificate of Commencement of Service of Repository Participant.
- 11.1.8 *The Repository may accept or reject such application and shall, if the application is rejected, set out in writing the grounds for such rejection. The Repository shall convey the grounds on which the application has been rejected to the applicant. The applicant may appeal to the Board of Directors against such rejection and the decision of the Board of Directors in this regard shall be final.*

## 11.2 ADMISSION CRITERIA

- 11.2.1 An applicant shall be eligible to become a Repository Participant of the Repository, provided it meets the criteria as set forth thereof in the Business Rules by the Repository from time to time, if any.
- 11.2.2 The Repository may specify the fit and proper criteria for Repository Participants from time to time, and the Repository Participants shall be bound by the same.
- 11.2.3 A Repository may appoint as its Repository Participants any of the following –
  - a. a bank, or financial institution licensed under the Banking Regulation Act, 1949 and the Reserve Bank of India Act, 1934;
  - b. any intermediary registered with the Securities and Exchange Board of India;
  - c. a warehouseman meeting the requirements that the Repository may specify, after such requirements for warehouseman have been approved by the Authority; and
  - d. any entities regulated by PFRDA, IRDA, or any other class of persons permitted to act as a Repository Participant by the Authority from time to time.
- 11.2.4 The eligibility criteria for admission as a Repository Participants shall be such as may be notified by the Repository from time to time.
- 11.2.5 Notwithstanding the eligibility criteria as specified in Bye-Law 11.2, the Applicant:
  - a. shall furnish information and details of its business history including the background and experience of directors and promoters of the applicant in the manner and format as may be prescribed.
  - b. shall not have been convicted in any of the five years immediately preceding the filing of the application in any matter involving misappropriation of funds and securities, theft, embezzlement of funds, fraudulent conversion or forgery;

- c. shall not have been expelled, barred or suspended by the Authority, Securities and Exchange Board of India, self-regulatory organization, or any recognized stock exchange; provided however that, if a period of three years or more has elapsed since such punishment was imposed, the Repository may, in its discretion consider such application;
  - d. shall meet the minimum net worth as may be specified by the Repository from time to time.
  - e. shall be required to furnish details of its Board of Directors/ authorized officials, who shall be responsible for acting on behalf of the Repository Participant;
  - f. shall submit an undertaking that the applicant is aware of the operational, functional and technical aspects of the Repository and is competent to perform the functions of the Repository Participant.
  - g. shall appoint a compliance officer meeting the qualifications and experience as may be specified by the Repository with such time as may be permitted.
  - h. shall have adequate office space exclusively for Repository operations. The applicant shall also furnish details of its main office, address, fax, and phone number(s). Provided however, it shall be the sole discretion of the Repository to decide whether in its opinion, the applicant has adequate infrastructure facilities at the time of granting admission;
  - i. shall make adequate arrangements for conducting effective and safe Repository operations including security measures, software and hardware requirements, risk containment and insurance requirements, as specified by the Repository;
  - j. In case of warehouses, being appointed as Repository Participant, such Repository Participant shall segregate its operations as the Repository Participant from its warehouse operations completely, which includes both at the technology and operational level.
- 11.2.6 for the purpose of satisfying itself regarding the eligibility of the applicant to become a Repository Participant, the Repository may carry out an inspection of the office and facilities of the applicants either on its own or through such other agency as may be appointed in accordance with the norms prescribed by the Board of Directors of Repository;
- 11.2.7 The repository may conduct entrance examination and/or interviews to examine the knowledge of Repository Participants.

**Explanation:** Applicant for the purpose of this Bye law shall include any person or individual who is a partner of a partnership firm under the Partnership Act or the LLP, a director of company formed under companies Act 2013 and includes the Key Managerial Persons.

### 11.3 RIGHTS AND OBLIGATIONS OF REPOSITORY PARTICIPANT

- 11.3.1 Every Repository Participant found eligible for admission as a Repository Participant shall execute an Agreement as prescribed by the Repository as the case may be within such time as may be specified by the Repository.
- 11.3.2 The Repository Participant shall execute any supplemental agreement or fresh agreement as may be required by the Repository from time to time.
- 11.3.3 A Repository Participant while conducting any business with a Client shall act diligently and shall be responsible for all its acts to the Repository.
- 11.3.4 The Repository Participant shall be liable to the Client for all its acts and deeds which in the opinion of the Repository is detrimental to the interest of the Clients and shall be subject to such claims, penalty or disciplinary action or both as the case may be with respect to any or all matters arising while dealing with the Client.

- 11.3.5 The Repository Participant shall maintain separate books of account for all its activities as a Repository Participant and prepare separate financial statements for Repository activities.
- 11.3.6 The Repository Participant shall provide and maintain at all times such performance guarantee/s or any revision as may be specified by the Repository.
- 11.3.7 The Repository Participant shall adhere to any specific additional requirements regarding financial management, insurance, accounting and record-keeping as may be prescribed by the Repository from time to time.
- 11.3.8 The Repository Participant shall adhere to the norms and guidelines issued by the Repository from time to time, for each of the Core Services permitted by the Repository.
- 11.3.9 The Repository Participant shall strictly adhere to the norms, procedures and processes prescribed by the Repository for dealings with Warehousemen in the Repository system.
- 11.3.10 The Repository Participant shall follow the procedure for onboarding of Clients as may be prescribed by the Authority or the Repository from time to time.
- 11.3.11 The Repository Participant shall follow the process of creating, releasing and invoking pledges as may be prescribed by the Authority or the Repository from time to time.
- 11.3.12 The Repository Participant shall initiate the limited purpose e-auction in the manner as may be prescribed by the Authority or the Repository as the case may be.
- 11.3.13 The Repository Participant shall carry out rectification of errors and omissions in the manner as may be prescribed by the Authority or the Repository from time to time.
- 11.3.14 The Repository Participants shall submit the following returns to the Repository:-
- a. net worth certificate computed in a manner laid down in the Business Rules, duly certified by a Chartered Accountant on the annual audited accounts of the Repository Participant.
  - b. the Repository Participant shall ensure that the aggregate value of electronic negotiable Warehouse Receipts issued by the Warehouseman to the Clients shall be within the limit as specified by the Authority from time to time and if it so exceeds on any given day, the Repository Participant shall forthwith inform the Repository about it. The Repository shall have the power to give such instructions to the Warehouseman through the Repository Participant, as it deems fit in order to reduce the aggregate value of such electronic negotiable Warehouse Receipts of the Clients.
  - c. in case the Repository Participant is registered with any Regulatory authority or is a clearing member of the Clearing Corporation of any Exchange or member of the Exchange, the details regarding any suspension/termination of its membership or defaults or any disputes in relation to its dealings with *such Regulatory authority* or Exchange or clearing corporation within two working days of such an event;
  - d. Number of complaints received from Clients, their nature, status and manner of redressal once every month;
  - e. number of transfers effected for off-market settlement of trades at the end of the last working day of every week.
- 11.3.15 It shall be the responsibility of each Repository Participant to promptly check and reconcile with its own records the details of such advices, statements and reports and to promptly notify the Repository of any error or omission contained in such advices, statements and reports within the time specified by the Repository in Business Rules.
- 11.3.16 Any advice, statement or report provided by the Repository shall in the absence of manifest error, be conclusive as to its subject matter. Except as otherwise agreed by the Repository, the failure of a Repository Participant to inform the Repository of any error or omission in any advice, statement or report within the time frame stipulated by the Repository shall constitute a waiver in favor of the Repository by such Repository Participant of any right to require rectification.

- 11.3.17 The Repository may if it is satisfied that it is in the interest of the Clients may entertain a late request by a Repository Participant to rectify an error or omission as aforesaid.
- 11.3.18 Every Repository Participant shall reconcile its records with those of the Repository on a daily basis.
- 11.3.19 The Repository may at any time require a Repository Participant to provide on demand, collateral or additional collateral securities in such form, extent and manner as is determined by the Repository to be appropriate with reference to, inter alia, the level of un-reconciled balance in case of transfer of its account to other repository or excess credit balance of Electronic Warehouse Receipts due to any fraud, error or omission on the part of its officers, agents and employees. The collateral shall be in addition to and independent of any security which the Repository may at any time hold for the obligations and liabilities of such Repository Participant.
- 11.3.20 Without prejudice to the above, the Repository may, for the purposes of deciding whether or not to require a Repository Participant to provide collateral, specify exposure limits on a Repository Participant.
- 11.3.21 A Repository Participant shall not create or permit the creation of any mortgage, charge or other encumbrance over all or any of the assets provided as collateral, security or such similar purpose to the Repository.
- 11.3.22 The Repository may apply all or any of the collateral or security (including all rights and entitlements thereto, if any) at any time without prior notice to a Repository Participant in or towards satisfaction of the obligations and liabilities of such Repository Participant to the Repository or such Repository Participant's obligations and liabilities to any Client.
- 11.3.23 In respect of any sums received by the Repository from a Repository Participant as collateral or security, the obligation of the Repository to such Repository Participant shall be to the extent of the amount remaining after satisfaction of all obligations and liabilities (actual or contingent) of such Repository Participant to the Repository and such Repository Participant's obligations and liabilities to its Clients.
- 11.3.24 A Repository Participant shall, before opening any account or while acting upon the instruction of any Client:
- a. make such inquiries as may be necessary and exercise due care and caution in ascertaining the bonafides of the prospective Client inter alia, by carrying out appropriate due diligence.
  - b. scrutinise the authenticity of the documents produced by the Client for opening the account.
  - c. in case of joint owners of Goods, obtain authority in writing from all such joint owners.
  - d. any other requirement/s as may be prescribed/directed by the Repository or the Authority from time to time.
- 11.3.25 Each Repository Participant including a Warehouseman when functioning as a Repository Participant shall indemnify the Repository and its officers and employees and hold each of them harmless against all costs, fees, expenses, liabilities, taxes, actual losses and damages of any nature whatsoever suffered or incurred by any of them directly or indirectly as a result of or in connection with the following matters:-
- a. the participation in the Repository system by the Repository Participant and /or its activities in the Repository including the provision of Core Services by the Repository Participant to the Clients and provision of services by the Repository Participant to Repository and all matters relating thereto as contemplated in the Bye Laws;
  - b. the failure by the Repository Participant to comply with the provision of the Bye Laws and the Repository Participant agreement (including without limitation, the representations and warranties contained therein) or to comply with any directions or procedures of the Repository;

- c. the acts by the Repository or its officers and employees done by placing reliance upon instructions or communications of the Repository Participant and believing in good faith by any of them to have been given by or on behalf of the Repository Participant (including, but not limited to, the giving of effect to such instructions or communications by any of them) or the failure of the Repository Participant to give instructions to the Repository as contemplated in the Bye Laws or the Business Rules made thereunder;
- d. the acceptance of Goods deposited by the Depositor by the Warehouseman through the Repository Participant and giving effect to transactions relating thereto in accordance with the Bye Laws, Business Rules and withdrawal of eligible goods thereunder by the Clients or Depositors, as the case may be;
- e. the failure by the Depositor or the Client as the case may be, to deliver eligible Goods, or to perform such other duties or obligations contemplated in the Bye Laws.

Nothing contained herein above shall apply to the extent the Repository or its employees are guilty of gross negligence, willful misconduct or fraud on their part and are responsible for the losses.

- 11.3.26 For the purpose of determining whether a Repository Participant is liable for any acts or omissions under these Bye Laws, the acts or omissions, whether done intentionally or not, by its officers, employees, agents and representatives, shall be deemed to be acts or omissions of the Repository Participant.
- 11.3.27 Notwithstanding anything to the contrary in the Bye Laws, the Repository shall not be bound to effect any transaction or take any other action upon the instructions of a Repository Participant if it would violate any applicable law, decree, court order, regulation or order of any government or other competent authority or if the Repository determines that it will not be in the interests of the Repository, Repository Participant(s), Clients
- 11.3.28 Notwithstanding anything to the contrary in the Bye Laws, the Repository shall have the right to initiate a transaction or to take any other action in order to give effect to the order or judgment of a court of law or the Central or State Government or any other competent statutory authority.
- 11.3.29 The Repository reserves the right to rectify any erroneous transaction in the accounts of a Client and shall thereafter inform the concerned Repository Participant of such rectification.
- 11.3.30 Without prejudice to any other right the Repository may have, if as a result of rectification by the Repository of any erroneous credit entries to the accounts of a Client pursuant to these Bye Laws, a negative balance arises, the Repository may:
- a. require the Repository Participant to replace the relevant eligible Goods in this connection;
  - b. require the Repository Participant to pay to it forthwith a cash sum of such amount as the Repository considers appropriate as collateral and the only obligation of the Repository in respect of such sum so paid by the Repository Participant shall be to pay such Repository Participant an amount equal to the balance remaining after satisfaction of all obligations & liabilities (actual or contingent) of such Repository Participant to the Repository.
- 11.3.31 Repository Participant shall not assign its business as a Repository Participant to any other person except with the prior written approval of the Repository which may notify from time to time the terms and conditions subject to which it may assign its business as a Repository Participant to any other person.
- 11.3.32 Where a Repository Participant (hereinafter referred to as "Transferor Participant") seeks to transfer the Repository Participant business carried on by it to any transferee



(hereinafter referred to as “Transferee Participant”), the assignment of the business or functions of the Transferor Participant to the Transferee Participant shall be regarded as complete and effectual only upon:-

- a. the Transferee Participant meeting all applicable eligibility criteria prescribed for conduct of business as a Repository Participant;
- b. the Transferor Participant giving written notice to each of its Clients about the proposed transfer providing each Client an option as provided in Business Rules, which may be exercised within a period of not less than 60 days from receipt of such notice; and
- c. the Transferor Participant and the Transferee Participant publishing a joint advertisement of the notice of the proposed transfer in such form as may be prescribed by the Repository in one English national daily, one Hindi national daily with wide circulation and a local language daily with wide circulation at the place where the concerned Warehouses are situated.

11.3.33 Upon receipt of such notice, each Client shall have a right to elect in writing either (i) to continue as a Client by becoming a client of the Transferee Participant on the same terms and conditions of services from the Transferor Participant; or (ii) to terminate its existing arrangement with the Transferor Participant and provide to the Transferor Participant details of the new Participant selected by the Client for shifting of all electronic Warehouse Receipts/credits of Goods held through the Transferor Participant.

*Provided that nothing mentioned above will be applicable where the Repository decides to terminate a Repository Participant and assigns the accounts of the clients of the said Repository Participant to any other Repository Participant.*

Failure to issue such written election within the prescribed option period shall be deemed an election by the Client to continue as a Client of the Transferee Participant. Nothing contained herein shall restrict the ability of the Client to terminate its relationship with the Transferee Participant.

11.3.34 Subject to compliance with the foregoing, the Transferee Participant and the Clients electing to continue with the relationship shall be bound in the same manner and on the same terms and conditions as if the Transferee Participant had itself originally opened the accounts of the Clients. Such assignment from the Transferor Participant to the Transferee Participant shall be subject to the rights and liabilities to which the parties were subject as at the date of the transfer. After such transfer, the Transferee Participant shall notify the Clients in writing as regards the completion of the assignment of the business in favor of the Transferee Participant.

11.3.35 Subject to the provisions of any other law, every Repository Participant shall preserve for a minimum period of five years or such other period as may be prescribed by the Authority or Repository, all original documents, electronic or otherwise such as account opening forms, agreements with Clients and/or the Clients, documents / forms containing acknowledgements of Clients of receipt of rights and obligations documents, request forms for issuance of Electronic Negotiable Warehouse Receipt and cancellation of Electronic Balances and documentary evidence of various instructions received from the Clients.

11.3.36 Every Repository Participant shall be primarily responsible for payment to Repository of all charges, fees, dues, and penalties in respect of all transactions carried out by or through that Repository Participant in Repository irrespective of whether the Repository Participant has recovered any such amount from the concerned Client or not, such recovery from the Client being the sole responsibility of the Repository Participant.

- 11.3.37 Every Repository Participant shall carry out instructions received from any Client on the same day in as far as may be possible and failing that before the close of working hours of the immediately succeeding working day with the prior approval of the client.
- 11.3.38 The Repository Participant shall, upon discovering any loss of any Goods, instruments, or documents, that may have come into the hands of the Repository Participant in the course of its business, forthwith notify Repository, and the concerned Client in that behalf.
- 11.3.39 In respect of any sums received by Repository from a Repository Participant as security, the obligation of Repository to such Repository Participant shall be to the extent of the amount remaining after satisfaction of all obligations and liabilities (actual or contingent) of such Repository Participant to Repository, Clients, Clients, Clearing Corporation and other Repository Participants.
- 11.3.40 Notwithstanding anything to the contrary in these Bye Laws, Repository shall not be bound to give effect to any transaction or take any other action upon the instructions of a Repository Participant if it would violate any applicable law, decree or order of a competent court or tribunal or an order of the Central or State Government or the Authority or other competent authority.
- 11.3.41 Any order of a Court, Tribunal, Government or other competent authority relating to freezing of a Client account or taking any action in relation to a Client's account which is within the purview of obligations cast on a Repository under the Act and/or Regulations, shall be effected by Repository or Repository Participant only on receipt from such order of a Court, Tribunal, Government or other competent authority.
- 11.3.42 Nothing herein contained shall prevent Repository from effecting any transaction or refusing to give effect to any transaction in compliance with any decree or order of a competent court or tribunal or an order of the Central or State Government or SEBI or that of any other competent authority.  
*Provided that where any encumbrance by way of pledge is existing in the account, the Repository Participant shall intimate the status of prior charge existing in the account to the concerned Authority and seek instructions*
- 11.3.43 Repository reserves the right to rectify any erroneous transaction made to the account of any Client with a Repository Participant. In the event of Repository carrying out any rectification, it shall inform the concerned Repository Participant and the Client of such rectification.
- 11.3.44 Repository Participant shall use Repository system only for the activities and purposes as permitted by Repository and shall not use or permit any other person or entity to use Repository system without specific permission from Repository.
- 11.3.45 Repository Participant shall not change its place of business without prior written approval of Repository.
- 11.3.46 Repository Participant shall not change its constitution or shareholding without prior written approval of Repository. This shall not apply if the Repository Participant is a company listed on any of the recognized stock exchange/s.
- 11.3.47 Repository Participant shall open Repository Account whenever any request is received by it from any Client who is eligible to open Repository Account subject to compliance of Know Your Customer norms (KYC) as may be prescribed by Repository and/or the Authority from time to time.
- 11.3.48 Repository Participant shall enter into an agreement with each Client in the format as prescribed by Repository from time to time.
- 11.3.49 Repository Participant shall have sufficiently trained staff to open, maintain and operate Repository Accounts.
- 11.3.50 Repository Participant shall comply with all the applicable laws as well as the rules, regulations, guidelines, directions as prescribed or issued by Repository and/or the Authority from time to time.

- 11.4 RIGHTS AND OBLIGATIONS OF REPOSITORY PARTICIPANT/S AND CLIENT/S:
- 11.4.1 Every Repository Participant shall provide the Rights and Obligations Document and obtain an acknowledgement thereof from the Client in the form and manner prescribed in the Business Rules.
  - 11.4.2 The Repository Participant shall thereafter open separate account for each of its Clients for holding Electronic Balances on behalf of its Clients.
  - 11.4.3 Every Repository Participant shall provide a statement of accounts including transaction statement and holdings statement to the Clients in such form and manner as specified under the Business Rules.
  - 11.4.4 The Repository Participant shall act on the instructions of the Client in the manner laid down under the Business Rules.
  - 11.4.5 The Repository Participant shall maintain a separate account for each of its Client and ensure that the holdings of Warehouse Receipts of the Clients are not mixed with its own Warehouse Receipts.
  - 11.4.6 In the event of multiple instructions received from the Client relating to transfer of holding which exceed the balance in the account of the Clients maintained with the Repository Participant, the sequence of execution of instructions by the Repository Participant shall be as follows:
    - a. in the event of the Client specifying the sequence of execution of instructions, in the same sequence as specified by the Client to the extent it can be executed with the balance available in that Client's account with the Repository Participant;
    - b. in the absence of specific instructions from the Client in the chronological order in which such instructions are received from the Client, to the extent it can be executed with the balance available in that Client's account with the Repository Participant.
  - 11.4.7 In the event of the termination of the services of the Repository Participant by the Repository or by the Repository Participant itself, any obligations whatsoever, of the Repository Participant shall continue and survive the Agreement and shall not be discharged unless specifically discharged by the Repository.
  - 11.4.8 Repository Participants have an obligation to inform the Repository about any acts of their Clients which in their opinion are fraudulent and amount to unfair trade practices or such other information/practices as may be construed as being detrimental to the efficient operations of the Repository or as may be required under the Act and Business Rules and Regulations framed thereunder.
- 11.5 Termination of Services of Repository Participant
- 11.5.1 Except for the circumstances as below mentioned Sub-clause (1), (2), (3), (4), (10), (13), (14) and (16) the Repository may at any time and on such conditions as it thinks and deem fit, by giving not less than thirty days' notice in writing, terminate the services of a Repository Participant under the following circumstances:-
    1. the Repository Participant no longer meets the eligibility criteria to be a Repository Participant;
    2. in the event of the death, incapacity of a Repository Participant being an individual or the dissolution of a Repository Participant being a partnership;
    3. in the event of a Repository Participant being a body corporate when it is wound up or an official liquidator or provisional liquidator or interim resolution professional or resolution professional appointed under the relevant applicable law.
    4. in the event of a Repository Participant ceasing to do business which relates to the core services as required by the Repository;

5. the Repository has reasonable grounds to believe that the Repository Participant is approaching financial difficulty or will be unable to meet its obligations to the Repository;
6. in the event of any distress, execution or other process being levied or enforced or served upon or against any property of a Repository Participant;
7. in the event of bankruptcy, liquidation or winding up of a Repository Participant or the initiation of any proceedings in relation thereto (including but not limited to the Insolvency and Bankruptcy Act or if the Executive Committee and/or Advisory Committee considers in its absolute discretion that the occurrence of such events are imminent or likely;
8. in the event of the appointment of a receiver or administrator over the assets of a Repository Participant or if a Repository Participant suffers a composition with its creditors or if a scheme of arrangement is approved by the National Company Law Tribunal (other than for the purposes of reconstruction or amalgamation) or if the Executive Committee and/or Advisory Committee considers in its absolute discretion that the occurrence of such events are imminent or likely;
9. in the event of failure to pay security deposit, fees or any other charges as required under the Bye Laws and Business Rules or the agreement between the Repository and the Repository Participant despite 30 days' notice in writing for such payment;
10. in the event of failure of a Repository Participant to fulfill the obligations arising out of the indemnification of the Repository by the Repository Participant;
11. the Repository has reasonable grounds to believe that the Repository Participant has been responsible for negligence, fraudulent or dishonest conduct or has made a material misstatement or omitted to state a material fact in any statement made to the Repository;
12. the Repository Participant has violated any Business Rule, procedure or made any breach of the agreement entered with the Repository;
13. the Repository Participant's registration granted by Repository within the purview of the Act and the Guidelines of the Authority or by any other governmental agency has been suspended or cancelled;
14. if the Repository Participant *is registered with any other Regulatory Authority* or is a member of any Exchange and *has been debarred by such Regulatory Authority or has been expelled or declared defaulter*, or its trading privileges have been suspended by the Regulatory Authority /Exchange;
15. the Repository Participant has failed to redress grievances of Clients to the satisfaction of Repository;
16. Repository has reasonable grounds to believe that the Repository Participant has been carrying on its activities in a manner which is detrimental to the interest of Repository, its Clients or that the termination of relationship with the Repository Participant is necessary for the protection of Clients or other Repository Participants or to facilitate the orderly performance of services rendered by Repository.
17. the Repository Participant has or is likely to expose itself to risks, which, in the opinion of Repository, are not commensurate with the Repository Participant's net worth.
18. the quality of the services rendered by a Repository Participant is not satisfactory in the opinion of Repository as evidenced by the complaints of the Clients and other Repository Participants

Provided however, any action under this Bye Law as above shall be subject to the following conditions:

- a) that Repository shall not take any action as aforesaid unless and until Repository shall have issued a show-cause notice to the Repository Participant setting out the grounds on which the agreement with the Repository Participant is sought to be terminated and the Repository Participant shall have been given a reasonable opportunity of being heard by any officer or a Committee authorized by Repository in that behalf and Repository being satisfied on the strength of the report of such officer or Committee that it is necessary to terminate the agreement with such Repository Participant.
- b) that no amount is due, owing or payable by the Repository Participant to Repository inter alia by way of fees, charges, penalties or interest.
- c) that Repository may, if it so considers it fit and proper in the facts and circumstances of any case, before issuing the show-cause notice as aforesaid, issue notice calling upon the Repository Participant to rectify or remedy the breach or default within such period and on such terms and conditions as Repository may deem fit.

However, provided the Agreement with any Repository Participant shall be terminated forthwith under the circumstances as enumerated in Sub-clause (1), (2), (3), (4), (10), (13), (14) and (16) mentioned above, unless specifically allowed to be continued by the Repository.

11.5.2 The Repository Participant shall forthwith inform Repository of the occurrence of any of the circumstances mentioned herein above.

11.5.3 Notwithstanding anything mentioned above or any agreement between a Repository and a Repository Participant, the Authority may in public interest direct a Repository to terminate its agreement with a Repository Participant, and the Repository shall immediately comply with such direction.

## 11.6 SUSPENSION WITHOUT NOTICE

Without prejudice to any other rights, the Repository may have and notwithstanding anything to the contrary in the Bye Laws, the Repository may suspend with immediate effect, the services of a Repository Participant on the grounds enumerated in Bye Law 11.5.1 above except Sub-clause 11.5.1 (1), (2), (3), (4), (10), (13), (14) and (16) before issuance of any notice or pending the notice period and/or enquiry under these Bye Laws.

## 11.7 WITHDRAWAL BY A REPOSITORY PARTICIPANT

11.7.1 The Repository may cease to provide any service or act for a Repository Participant, on receiving a notice of not less than thirty days from the Repository Participant that the Repository Participant no longer wishes to act as such. The Repository shall notify the Authority, Repository Participant, other Repository Participants and Clients of Repository Participant and other Repository Participants within seven days of the Repository Participant ceasing to act as such. Repository shall be entitled to require the Repository Participant to continue its business as a Repository Participant in Repository for such further period not exceeding three months from the expiry of such notice if Repository shall deem it necessary to do so in the interest of the Clients.

11.7.2 No Repository Participant shall be permitted to withdraw as a Repository Participant from Repository unless and until such Repository Participant shall have provided satisfactory evidence to Repository that:

- a. the Repository Participant has issued notice of its intended withdrawal to all Clients holding accounts with it;

- b. all accounts of Clients held with the Repository Participant have been closed either by transfer of Electronic Warehouse Receipts to any other Repository Participant(s) of the Client choice in Repository or with other Repository and/or by withdrawal of the Goods underlying such electronic Warehouse Receipts, stored at the Warehouse;
- c. there remain no pending instructions or unresolved grievances of Clients or the Repository or that the Repository Participant has otherwise made satisfactory arrangements in that regard;
- d. no amount is due, owing or payable by the Repository Participant to Repository, as the case maybe, inter alia by way of fees, charges, penalties or interest.
- e. the Repository Participant has complied with such other terms and conditions as Repository may have specified in that behalf.

## 11.8 CONSEQUENCES OF TERMINATION OR WITHDRAWAL OF CORE SERVICES BY REPOSITORY PARTICIPANT

- 11.8.1 On termination or withdrawal of core services by a Repository Participant, the Repository and/or its Executive Committee shall, unless as otherwise provided in the Bye Laws, cause to be returned to or make available Electronic Balance of its clients and details of all the transactions done and collaterals held by the said Repository Participant. Provided that the Repository and/or its Executive Committee shall have the right (without affecting and without prejudice to any other rights Repository may have) to set off amounts due or, which may become due to Repository, other Repository Participant/s, and Clients from the Repository Participant, if applicable. Provided further that the Repository shall refund surplus amount or amounts to the Repository Participant after a period of six months from the date of cancellation of the certificate of commencement of business issued by the Repository or after resolving pending investor grievances, if any, against the Repository Participant, to the satisfaction of the Repository, whichever is later.
- 11.8.2 The termination or withdrawal of core services in the Repository will not affect any rights and liabilities of the Repository Participant arising out of matters which have taken place prior thereto and for the purpose of settlement of any such rights or liabilities of the Repository Participant, the Repository may continue to treat the Repository Participant as such.
- 11.8.3 Without prejudice to the provisions of Bye Law (11.8.1 and 11.8.2) above, the Repository shall be entitled to set off any earlier claims or rights of the Repository Participant against any amount due to the Repository or Clients or any other person entitled for any claim through the Repository irrespective of the fact that such counter claim has arisen after the date of termination of the core services of the Repository Participant.
- 11.8.4 In the event of the termination or withdrawal of participation by the Repository Participant or the receipt of notification to terminate or request of withdrawal from Repository Participant, the Repository shall, as soon as practicable, notify the Authority, other Repository Participants, Clients and initiate such suitable steps as may be required for protection of the interests of Clients with such Repository Participant.
- 11.8.5 The Repository shall notify/inform the Authority, Clients and other Repository Participants within seven days of the termination, suspension or withdrawal of core services of the Repository Participant under Bye Laws 11.5, 11.6 and 11.7 above. The Repository Participant shall also be obliged to inform all its Clients of such termination within a period of seven days from the date on which it receives notice of such termination.
- 11.8.6 The Repository Participant shall be required to meet all its outstanding obligations to the Repository while the Repository Participant was acting as such or incurred

thereafter but arising out of any action, transaction or dealings by the Repository Participant during that period and the Client shall have the option of either getting the electronic Warehouse Receipt held with the Repository Participant transferred to another Repository Participant, or get the goods withdrawn. Notwithstanding anything stated above even after such termination, the Repository Participant shall act as a Repository Participant for the limited purpose of either getting the electronic Warehouse Receipt held with the Repository Participant transferred to another Repository Participant or get the goods withdrawn.

11.8.7 Upon termination of the agreement with a Repository, the Repository Participant shall give notice in writing to all Clients holding accounts with such Repository Participant calling upon the Clients to have their accounts transferred to any other Repository Participant within 30 days from the receipt of such notice. In case Clients do not respond to the advice on the Repository Participant herein, the Repository Participant may request the Repository to manage the accounts of such Clients on its behalf, on such terms and conditions as may be prescribed by the Repository, from time to time. Provided further that the Repository may, on its own, decide to manage the accounts of the Clients of the Repository Participant so as to enable the Clients to get the electronic Warehouse Receipts transferred to another Repository Participant.

11.8.8 The Repository Participant, upon cancellation of the certificate of commencement of Core Services by the Repository, shall issue a public notice in one national English daily newspaper and in one vernacular daily newspaper where the respective Warehouse is situated, informing the public about the closure of its Repository Services. In case of termination of Core Services of the Repository Participant by the Repository, such public notice may be issued by the Repository at the cost of the Repository Participant.

## 11.9 RIGHTS AND OBLIGATIONS OF CLIENTS

11.9.1 A Client may open one or more Repository account with one or more Repository Participants of the Repository and may close one or more Repository account with any or all Repository Participants or transfer his Electronic Balances in one account with a Repository Participant to another account with the same Repository Participant or with any other Repository Participant.

11.9.2 The Client shall pay such fees, charges and deposits to the Repository Participant, as may be mutually agreed upon, for the purpose of opening and maintaining the Repository account, for carrying out the instructions and for rendering such other services as are incidental or consequential to the Client's holding Electronic Balance in and transacting through the said account with the Repository Participant. The Repository Participant shall be entitled to change or revise the said fees, charges or deposits from time to time subject to such prior notice as may be specified by the Repository from time to time.

11.9.3 Every Client shall be primarily responsible for:

- a. the veracity of all statements and particulars set out in the Repository Account opening form.
- b. the authenticity and genuineness of all documents submitted to the Repository Participant at the time of opening of a Repository Account with the Repository Participant.
- c. representation as to the title to the Goods deposited with the Warehouseman and submitted to the Repository Participant for issuance of Electronic Warehouse Receipt.
- d. ensuring that the Electronic Balance to the credit of the Repository account are sufficient to meet the instructions issued to the Repository Participant for effecting any transaction.

- e. informing the Repository Participant at the earliest of changes in the Repository Account such as address, bank details, status, authorizations, mandates, nomination, signature, etc.
  - f. furnishing the accurate identification details.
  - g. complying with the terms and conditions of the Clients Rights and Obligations Document and agreement.
- 11.9.4 Every Client shall be entitled to a statement of his account from his Repository Participant, at a periodicity and mode as prescribed by Repository.
- 11.9.5 In the event of dispute between the Client and his Repository Participant where the Repository Participant is not furnishing the statement of account, Repository shall provide directly or cause to provide through such Repository Participant a statement of account to such Client for such period as requested by the Client.
- 11.9.6 Every Client shall scrutinize every statement of his account received from Repository Participant for the accuracy and veracity thereof and shall be obliged to point out any mistakes, inaccuracies or discrepancies to the Repository Participant within a fortnight of the receipt of such statement.
- 11.9.7 Subject to the Repository Participant's right of lien and subject to any orders, injunctions, directions or instructions issued by a court, tribunal, the Authority, SEBI, Central or State Government or other authority empowered in that behalf or by Repository, every Client shall be entitled to have the valid instructions issued by him to the Repository Participant with whom such Client has an account to be carried out with utmost care and have such instructions executed on the same day on which the instructions are issued and failing that before the close of working hours of the immediately succeeding working day. Provided however that, subject to the above, the Client may issue standing instructions to the Repository Participant for crediting or debiting his account in accordance with the instructions.
- 11.9.8 In case the Client is a farmer or a Farmer Producer's Organization (FPO) or like organizations, the Repository shall prescribe such specific processes for admission, process for deposit of Goods and their transactions on the Repository System with the prior approval from the Authority.

#### 11.10 CLOSURE OF ACCOUNT BY CLIENT

- 11.10.1 The Client, may close the Repository Account held with the Repository Participant without assigning any reason therefor by calling upon the Repository Participant to close the account, provided there are no Electronic Balances lying in the account and no instructions are pending or unexecuted and no fees or charges remain payable by the Client to the Repository Participant.
- 11.10.2 In such event the Client shall make an application to the Repository Participant in the format specified by Repository in that behalf. The Client may close his Repository account by executing the account closing form. In case any Electronic Balances exist in the account which is sought to be closed, the Repository account may be closed in one of the following ways:
- a. by extinguishment of Electronic Balance in his account in the manner as prescribed by the Repository;
  - b. by transfer of all existing Electronic Balances in his Repository account to one or more of his other Repository account/s held with any other Repository Participant/s;
  - c. The Repository Participant shall initiate the procedure for transfer of Electronic Balances within a period not exceeding 30 days from the date of receipt of instructions from the Client in that behalf.
  - d. The Repository Account of the Client shall not be closed if there exist any Electronic Balance in the Repository Account of the Client which are pledged or



hypothecated or the account is not reconciled or if the closure of such Repository Account would result in breach or violation of any decree or order or injunction of any court, tribunal or statutory or revenue authority.

#### 11.11 CLOSURE OF REPOSITORY ACCOUNT BY REPOSITORY PARTICIPANT

The Repository Participant shall be entitled to forthwith close the Repository account of the Client in the event of the Client:

- 11.11.1 submitting for issuance of Warehouse Receipt, any Goods or documents to the title of Goods which are forged, fabricated, counterfeit or stolen or have been obtained by forgery or the transfer whereof is restrained or prohibited by any direction, order or decree of any court, tribunal, Central or State Government, SEBI, the Authority or any statutory or revenue authority or under any covenant or undertaking given to any statutory authority;
- 11.11.2 committing or participating in any fraud or other act of moral turpitude in his dealings with the Repository Participant;
- 11.11.3 otherwise for misconduct in any manner which is detrimental to the regulatory compliances of the directions issued by the Authority or the Repository as the case may be;
- 11.11.4 The Repository Participant may also close the Repository account of the Client, for any reason whatsoever, provided the Repository Participant shall have given a notice of not less than 30 days to the Client in this behalf;
- 11.11.5 In the event of the Repository Participant closing the Repository account, the Repository Participant shall call upon the Client to specify whether it desires to have the Electronic Balances in its account transferred to its Repository account with another Repository Participant or opt for extinguishment of the Electronic Balances in the manner specified in these Bye Laws and the Repository Participant shall accordingly close the Repository account of the Client;
- 11.11.6 Where the Repository account of a Client is closed for any reason not attributable to the Repository and the Client desires to transfer his Electronic Balance to another Repository Participant, then, the cost, charges and expenses involved in the transfer of the Client's account to any other Repository Participant or extinguishment of Electronic Balance in such account shall be borne by the Repository Participant.
- 11.11.7 If upon receipt of notice from the Repository Participant for closure of the Repository account, the Client fails to specify the account with any other Repository Participant to which the existing Electronic Balances are to be transferred or if the Client fails to take necessary steps to have the Electronic Balance in such account transferred to the Client's account with some other Repository Participant, Repository shall nominate any other Repository Participant to whom such account shall stand transferred for the time being, provided however that no transaction in respect of Electronic Balances in such transferred account shall be effected until such time as the Client shall have acknowledged receipt of and shall have thereby agreed to be bound by Client's Rights and Obligations Document to the Repository Participant to whom such account is so transferred by Repository.
- 11.11.8 Notwithstanding closure of the Repository account by either the Client or the Repository Participant, the provisions of the agreement or Client's Rights and Obligations Document, as the case may be, and all mutual rights and obligations arising therefrom shall, continue to be binding on the Client or the Repository Participant in respect of all acts, deeds, matters and things done and transactions effected during the operation of the agreement or Client's Rights and Obligations Document. Provided however that the provisions of the Client's Agreement /Rights and Obligations Document shall not be binding on the parties if rights or obligations arising therefrom are contrary to and/or inconsistent with such closure.

## **12. TRANSACTIONS**

### **12.1 EXCHANGE RELATED SETTLEMENT**

In respect of Exchange related Settlement, Repository shall debit and/or credit the account of the Client as per the procedure laid down in Business Rules.

### **12.2 CLIENT TO CLIENT TRANSFER**

In respect of Client to Client transactions, Repository shall debit and/or credit the account of the Client entitled to such credit or debit, as the case may be, after receipt of instructions from the delivering Client and the confirmation from the receiving Client through their respective Repository Participants.

### **12.3 INTER-REPOSITORY TRANSFER**

Repository shall enter into an agreement with every other Repository inter alia providing for inter-Repository transactions, settlement schedules and procedures, reconciliation of records, resolutions of disputes, differences or claims between Repositories or between Repository Participants or Client in different Repositories through arbitration as may be mutually agreed in that behalf. No such agreement shall come into force unless the same shall have been previously approved by the Authority.

### **12.4 LIMITED PURPOSE E-AUCTION**

The Repository shall prescribe in its Business Rules such norms and procedures for the purpose of facilitating limited purpose E-Auction subject to the approval of the Board of Repository. Such norms and procedures shall be subject to such amendments or modifications as may be required by the Repository from time to time.

## **13. SAFEGUARDS TO PROTECT INTEREST OF CLIENTS**

### **13.1 CONTINGENCY FUNDS**

13.1.1 The Repository may establish different contingency funds/reserves (“Contingency Fund”) for Client protection under these Bye Laws from time to time. Each Repository Participant will be required to contribute to these funds/reserves in the manner and on such terms and conditions as may be specified by the Authority or the Repository from time to time.

13.1.2 The Repository may specify in the Business Rules or by way of separate Regulations or otherwise, the procedure for setting up, operation and administration of these funds/reserves and for the purpose for which these funds/reserves may be used from time to time.

13.1.3 The Repository may also specify the persons who are entitled to make claims, the procedures for making claims and inter se priority of such claims.

13.1.4 The Contingency Fund shall be operated and administered in accordance with the Deed of Trust by the Trustees, appointed by the Board of Directors of the Repository, for the benefit of Clients.

13.1.5 The funds so established shall be held in trust by Repository for the benefit of Clients.

### **13.2 PROTECTION OF DATA**

13.2.1 The Repository shall take necessary steps to protect the transmission and storage of data under the Repository system. The data shall be protected from unauthorized

access, manipulation and destruction. The transmission of data shall be in encrypted form and will have to be decrypted at the Clients end so as to eliminate the possibility of unauthorized interception of data. The backup of data stored under the Repository System by the Repository and the Repository Participants shall be kept and maintained by the Repository and the Repository Participants respectively. The Repository shall ensure sufficient security measures, to prevent the access of unauthorized persons to the data of the Repository operations, as specified in the Business Rules from time to time.

13.2.2 The Repository shall have adequate Business Continuity Plan for data and electronic records to prevent, prepare for, and recover from any disaster.

### 13.3 PROTECTION OF ACCOUNTS OF CLIENTS

The Clients have an option to freeze their Repository Accounts with the Repository Participants in accordance with Bye law 17.1 so as to render them inoperable for a limited period of time. Once the Client opts to freeze the account, Repository Participant of such Client shall not affect any debit or credit entry or any such other transaction unless the instruction for freezing the account has been withdrawn by the Client.

### 13.4 PROVISION OF DAILY TRANSACTIONS TO THE CLIENTS ON DISPUTE

In case of a dispute between a Client and a Repository Participant with whom the Client had maintained his account, and the Repository Participant's unwillingness to give transaction statement to the Client, the Repository shall provide or cause to provide, through the Repository Participant, such details about daily transactions as might be required by the Client.

### 13.5 CLIENT PROTECTION FUND

13.5.1 Repository shall also establish and maintain a Client Protection Fund for the protection of interest of Clients.

13.5.2 The Fund so established shall be used for the purpose of indemnifying the Clients as required under these Bye-Laws.

13.5.3 The contribution to and utilization of the Client Protection Fund shall be in accordance with the norms specified by the Authority from time to time.

## 14. DEPOSIT AND WITHDRAWAL OF GOODS IN THE WAREHOUSE

14.1 The Warehouseman shall issue the Warehouse Receipt for the Goods deposited and allow the withdrawal of Goods in the manner and mode as may be prescribed by the Repository from time to time in its Business Rules.

14.2 The Client and the Repository Participant shall ensure that all the requirements as specified by the Authority or the Repository are strictly followed for the deposit and withdrawal of goods represented by Electronic Negotiable Warehouse Receipt issued in the Repository System.

14.3 The Warehouseman shall issue a copy of the Electronic Warehouse Receipt / Electronic Negotiable Warehouse Receipt for the deposits accepted as an acknowledgment of the Goods received to the depositor of Goods in the manner as prescribed by the Repository from time to time.

## 15. ISSUANCE, MODIFICATION, TRANSFERABILITY AND CANCELATION OF ELECTRONIC NEGOTIABLE WAREHOUSE RECEIPTS AND MODIFICATION THEREOF

15.1 The issuance, transferability and cancellation of the Electronic Negotiable Warehouse Receipts shall be subject to and in accordance with the provisions of the Act.

- 15.2 The Warehouseman shall not issue any paper based Negotiable Warehouse Receipt in respect of or in lieu of Electronic Negotiable Warehouse Receipt on the Repository system
- 15.3 For the purposes of issuance of electronic Negotiable Warehouse Receipt, the Warehouseman registered with the Authority shall enroll with the Repository as specified by the Authority.
- 15.4 The Warehouseman shall be required to meet such specified requirements and follow the procedure for issuance of electronic Negotiable Warehouse Receipts as may be specified by the Authority.
- 15.5 The Negotiable Warehouse Receipts issued on the Repository shall be notified by the Repository to the concerned Clients through electronic means, mobile applications, or other means as may be specified by the Authority or Repository from time to time.
- 15.6 The Electronic Negotiable Warehouse Receipts shall be issued by the Warehouseman through the Repository system in the manner and mode as prescribed by the Authority from time to time.
- 15.7 The Warehouseman shall not be entitled to make any change in the information contained in an Electronic Negotiable Warehouse Receipt unless such change is necessary to :
- a. record the pledging, transfer and withdrawals of such Electronic Negotiable Warehouse Receipt;
  - b. rectify any errors or omissions in the Electronic Negotiable Warehouse Receipt;
  - c. make modifications in the Electronic Negotiable Warehouse Receipt for any such other reasons as may be permitted by the Repository.
- 15.8 The modification to the Electronic Negotiable Warehouse Receipt as necessitated for the reasons as per sub clause (a) to (c) shall be carried out by the Repository in the following manner but not limited to and as may be further prescribed by the Authority and in compliance of the requirements specified by the Authority from time to time by-
- a. cancelling the existing Electronic Negotiable Warehouse Receipt; and
  - b. issuing a new Electronic Negotiable Warehouse Receipt with the correct information;
  - c. making modifications in the Electronic Negotiable Warehouse Receipt to reflect correct information;
- 15.9 It shall be the responsibility of the Repository and Warehouseman to notify the Client in whose favor the Electronic Negotiable Warehouse Receipt is issued of any such action as may be initiated under Bye law 15.8 above.

## **16. ELECTRONIC CREDIT AND DEBIT IN THE ACCOUNTS OF CLIENTS**

- 16.1 Debit or Credit into the Repository Account of the Client shall happen on account of deposit of Goods or withdrawal of Goods from the Warehouse or on account of transfer/transmission of Electronic Negotiable Warehouse Receipts from one Repository Account to another held with any other Repository Participant in the manner prescribed under the Business Rules.
- 16.2 The Repository Participant shall issue the statement of holdings of Electronic Balance within such time as may be specified by the Authority or the Repository, as the case may be.
- 16.3 The electronic Balances in the statement of holdings represent the electronic balance of Electronic Negotiable Warehouse Receipts and the Client shall have the right to the Goods underlying the Electronic Negotiable Warehouse Receipts.
- 16.4 The Electronic Balances in the statement of holdings shall be authentic proof of existence of such electronic negotiable Warehouse Receipts and the record of electronic negotiable Warehouse Receipts held in Repository and the corresponding Goods stored and held by the warehouseman.
- 16.5 Prior to depositing the Goods in the approved Warehouse, it shall be obligatory for the Client to open a Repository Account with any of the Repository Participant in the mode and manner as prescribed by the Repository from time to time. The Repository Participant shall create unique Repository Identification number for every Client.

- 16.6 After deposit of physical Goods in to the Warehouse by complying with the process including assaying/ as may be prescribed, the Warehouseman shall enter all such information as is necessary for the issuance of an electronic negotiable Warehouse Receipts through the Repository System and shall generate a unique lot ID against the respective Repository Identification Number of the Client. The electronic negotiable Warehouse Receipts shall be generated on the Repository by the Warehouseman in accordance with the Business Rules of the Repository and the Repository Account of the Client shall be credited for deposit of Goods made by such Client.
- 16.7 Repositories will by electronic means intimate, on a daily basis all details of debits and credits to the concerned Client, Repository Participant and warehouseman.

## **17. SUSPENSION OF OPERATION OF REPOSITORY ACCOUNT AND/OR AN ELECTRONIC WAREHOUSE RECEIPT:**

- 17.1 Every Client having a Repository Account shall have the right to suspend the operations in his account either for debits or for credits or for both so as to render it inoperable. Repository or the Repository Participant shall suspend the operations of such account of a Client maintained with it on written instructions received by it or by the Repository Participant in that regard from the Client in the manner and form prescribed under Business Rules.
- 17.2 The Client may request to suspend:
- 17.2.1 its account maintained with a Repository Participant; or
  - 17.2.2 a particular electronic Warehouse Receipt in its account; or
  - 17.2.3 specific Goods represented through Lots numbers or such as identification number represented through and held under the electronic Warehouse Receipt in its Repository Account, by giving such appropriate instruction to the Repository Participant or to the Repository as the case may be, in the form and manner prescribed under the Business Rules.
- 17.3 The Repository Participant shall suspend the operation of a Repository Account on the basis of instructions / orders received by the Repository Participant or the Repository from the Central or State Government, the Securities and Exchange Board of India, the Authority or any order passed by a Tribunal or court or any other quasi-judicial authority having the powers to pass such orders.
- 17.4 The Repository, at the request of a Repository Participant or on the basis of the request received from the Client or pursuant to the orders received from the Central or State Government, the Securities and Exchange Board of India, the Authority or any order passed by a court, tribunal or any other statutory authority, shall suspend the operation of the Repository Account and/or the electronic Warehouse Receipt and/or specific Goods represented by unique identification number as assigned to it in the electronic Warehouse Receipt and as represented in the said Repository Account of the Client.  
Provided however that any order of a Court, Tribunal, Government or other competent authority relating to suspension of a Repository Account or taking any action in relation to a Repository Account which is within the purview of obligations cast on a Repository under the Guidelines, shall be effected by Repository or the Repository Participant only on receipt from such authority, the Repository Account Identification Number or Permanent Account Number (PAN) or Aadhar coupled with specific directions if the same are not set out in such order with sufficient accuracy.
- 17.5 The Repository shall, on its own, suspend the operation of the Repository Participant's own account or its Clients and/ or the electronic Warehouse Receipts and/or specific Goods identified by such identification number to the extent of the electronic Warehouse Receipts held in the Repository Participant's name, or its Client's/Client's name and advise the Repository Participant to do so, under the following circumstances:-
- 17.5.1 on the basis of the orders received from the Central or State Government or the Securities and Exchange Board of India or any court or tribunal or any other statutory authority in this regard; or

- 17.5.2 on the basis of the orders passed by the Disciplinary Action Committee as set out in Bye Law 24; or
- 17.5.3 the Repository Participant has become insolvent, bankrupt or in case the Repository Participant is a body corporate, it being wound up.
- 17.6 An account so suspended shall be activated only on instructions in writing from the Client, where it has been suspended at the instance of a Client, or on receipt of instructions from the Repository or the Repository Participant, as the case may be, or pursuant to the passing of any order or issuance of instructions for vacating, revoking or setting aside the order of suspension by the court, tribunal or any authority as mentioned hereinabove.
- Provided further that on the account being suspended, the Repository Participant of such Client shall not affect any debit entry or any such other transaction unless the instructions or order for suspension of the account has been withdrawn, revoked, vacated, set aside or modified as aforesaid. However, the Repository or the Repository Participant shall be entitled to credit the benefits to a frozen account unless specifically prohibited by the Client or by orders of attachment/seizure/freezing of the account.

## **18. TRANSFER OF BALANCES**

- 18.1 The Repository Participant shall not execute any debit or credit in the account of the Client without authorization from such Client or his assent.
- 18.2 The mode and the form of authorization shall be specified in the Business Rules of the Repository.
- 18.3 Where there is transfer of balance from the Client of one Repository Participant to the Client of another Repository Participant, both the delivering and the receiving Repository Participants must enter instructions for delivery and receipt respectively. After the instructions are matched in the Repository system, such transfer shall be executed in the Repository Participants' accounts in the Repository and the Repository Participants shall in turn execute such transfer in the Client's account. Provided that where a client has given one-time instruction for credits, no receiving instructions shall be necessary.
- 18.4 In the event of a Repository Participant ceasing to be a Repository Participant for the Repository, the Client of that Repository Participant may, either request for cancellation of Electronic Balance or request for the transfer of Electronic Balance to its Repository Account with another Repository Participant.
- 18.5 The Repository may on receipt of a court order or for such reasons as may be allowed by the Authority transfer the balances standing in the Repository Participant's account to another Repository Participant's account.

## **19. TRANSMISSION OF WAREHOUSE RECEIPT**

- 19.1 In the event of the death of a Client holding a Repository Account, the Electronic Balance standing to the credit of such account shall be determined in accordance with law in favor of the legal heirs of the deceased against production of the necessary documents such as Probate, Letters of Administration or Succession Certificate, as may be applicable.
- 19.2 The Repository Participant shall be entitled to require the person or persons in whose favor the Electronic Balances are to be transmitted as aforesaid to open a Repository Account by following the procedure prescribed in the Operating Instructions for transmission of Electronic Balances.
- 19.3 In case the Client of a Repository Participant is declared as lunatic or adjudicated insolvent or otherwise incapable to operate his Repository Account, Repository shall, on production of the certified copy of the Order passed by the Competent Court, may either transmit the balances lying in such account to any other account or otherwise as may be ordered.
- 19.4 In the event of winding up of the Client being a body corporate, by an order of the Court, the Electronic Balances shall be transmitted to such Repository Account as may be directed in the Court order to that effect. However, if a Client being a body corporate undergoes a voluntary winding up (not subject to supervision of the Tribunal) or merger or has been acquired by

another entity, the Electronic Balances shall be transmitted to such Repository Account as provided in the resolution passed for such voluntary winding up or merger or acquisition as applicable based on the order of a competent court or authority as the case may be.

## **20. PLEDGE**

- 20.1 The Client shall be required to open and maintain a Repository Account, if the Client intends to create a pledge on Goods deposited in the Warehouse.
- 20.2 The Repository shall mark in its records a pledge on the Electronic Negotiable Warehouse Receipt in favor of the Pledgee upon being instructed to do so by both the Client and the Pledgee.
- 20.3 For the purpose of creation of the Pledge on an Electronic Negotiable/ Warehouse Receipt, the Pledger and the Pledgee shall provide such information in such forms as may be prescribed in the Business Rules, by the Repository from time to time.
- 20.4 Any Client holding an electronic Negotiable Warehouse Receipt in the Repository Account shall be entitled to get the Pledge created against the Goods represented in such electronic Negotiable Warehouse Receipt in the manner and mode as may be prescribed by the Repository in the Business Rules, from time to time.
- 20.5 The Repository Participant on receipt of the application in the manner as prescribed and after satisfaction that the Goods are available for pledge, shall create and record the pledge within such time and in such manner as may be prescribed by the Repository in the Business Rules, as the case may be from time to time.
- 20.6 The Pledgee shall have a lien on the Goods represented through the electronic Negotiable/Non-Negotiable Warehouse Receipt for the duration of the pledge and the warehouseman shall not be entitled to release the Goods from the warehouse if a pledge exists on the electronic Negotiable/ Warehouse Receipt issued against the same.
- 20.7 The Pledgee shall initiate the removal of lien in the manner and mode prescribed by the Repository in the Business Rules, from time to time.
- 20.8 Once the Pledge is invoked, the Pledgee shall register itself as Client of such Electronic Balance or shall register any other entity as decided by the Pledgee and shall amend its records accordingly. The change in the record of the Repository shall be binding on original Client, Pledgee, the Warehouseman and the Repository Participant concerned.
- 20.9 The mode and manner of creation, invocation, cancellation and/or revocation of the Pledge shall apart from those as specified under these Bye-Laws shall also be as prescribed and specified by the Authority or the Repository in the Business Rules, from time to time.
- 20.10 If the Repository Participant does not create the pledge within such period as may be required in terms of these Bye laws or Business Rules or any directive of the Repository within such time as may be prescribed, the Repository Participant shall send along with the reasons, an intimation of such non creation of Pledge to the pledger and the Pledgee.
- 20.11 The pledger or Pledgee may request cancellation of the entry of pledge made under Bye Law 20.9 in the manner as may be prescribed by the Repository in the Business Rules, from time to time.
- 20.12 The Repository Participant shall not refuse the request to create a pledge in respect of Electronic Balance available for pledge unless operations in respect of those Electronic Balance are restrained or frozen by virtue of any order or direction of any court, tribunal, Central Government, SEBI, RBI or other competent authority or by Repository itself and if the Repository Participant does not create such pledge within the prescribed time, it shall intimate the concerned Client and Pledgee of its decisions setting out the reasons for such refusal.
- 20.13 The Pledgee may invoke the pledge made under Bye Law 20.9, subject to the provisions of the pledge document and as may be prescribed by the Repository in terms of its Bye laws and Business Rules.

## **21. ACCESS TO REPOSITORY SYSTEM BY NON SPECIFIED CLIENTS**

- 21.1 The Repository may grant access to any other person not specifically covered in the definition of Clients and who may be required to be granted access to the Repository System.
- 21.2 The grant of such access as required as per Bye Law 21.1 shall be subject to the norms and procedures as may be prescribed by the Repository with specific approval of the Authority, for each of such client from time to time and subject to such approvals by such clients from regulatory authorities, if any, as may be required.

## 22. RECONCILIATION, ACCOUNTS AND AUDIT

### 22.1 Reconciliation

22.1.1 **The Repository shall ensure that it has in place at all times such systems and procedures as would enable it to co-ordinate with the Repository Participants and would facilitate reconciliation of records with Repository Participants on a daily basis.**

22.1.2 A Warehouseman shall be responsible for reconciling the physical stock of the Goods in its custody with the electronic records of the Electronic Negotiable Warehouse Receipts and Electronic Non Negotiable Warehouse Receipts generated by the Warehouseman on the Repository and such reconciliation shall be undertaken on a daily basis, or at such frequency and in such manner as the Authority or the Repository may specify from time to time.

22.1.3 The Repository shall provide the information necessary to Warehousemen to perform such reconciliation in such format and on such terms and conditions as the Authority or the Repository may prescribe from time to time.

22.1.4 A Repository shall ensure sharing of information with other Repositories in such a manner so as to enable warehousemen to perform such reconciliation.

22.1.5 The Warehouseman shall submit a reconciliation report to the Authority and the Repository after every reconciliation in the format and manner specified by the Authority or the Repository.

22.1.6 The Authority may from time to time specify requirements that Repository will have to meet in order to comply with reconciliation.

22.1.7 If there is failure of the reconciliation as specified above, the Repository may bring the status to the notice of the Authority and follow instructions thereon.

*However, in the event of any differences arising out of Reconciliation, the records of the Repository shall be considered as final.*

### 22.2 ACCOUNTING, INTERNAL CONTROL, REPORTS AND RETURNS

22.2.1 Each Repository Participant shall furnish to the Repository every year, a copy of its audited financial statements including the Directors' Report and Auditor's Report, within six months from the end of the Repository Participant's financial year.

Provided that when the Repository is satisfied that circumstances warrant an extension of time to furnish such report, it may grant such extension to the Repository Participant.

22.2.2 Every Repository Participant shall keep accounts and records in respect of the operations of the Repository which shall be distinct and independent from the records and accounts maintained by it in respect of any other activities carried out by the Repository Participant.

22.2.3 Proper accounts shall be maintained by the Repository as well as the Repository Participants and the Warehousemen in respect of the operations of the Repository in accordance with the software provided by the Repository.

22.2.4 The books of accounts and records of the Repository Participant relating to the operations of the Repository shall be open for inspection and audit to the officers of the Repository or their representatives. Such books of accounts and records shall be subjected to annual audit by Repository or their authorized representative.



- 22.2.5 Every Repository Participant shall allow persons authorized by the Repository to enter its premises during normal office hours and inspect its records relating to the operations of the Repository.
- 22.2.6 Every Repository Participant shall submit periodic returns to the Repository in the format specified by the Repository or the Bye Laws, Business Rules of the Repository as the case may be.
- 22.2.7 Every Repository Participant shall maintain the following records and documents, namely:
- a) records of all the transactions entered into with a Repository and with a Client;
  - b) details of electronic negotiable/non-negotiable Warehouse Receipts issued for which Electronic Balances have been assigned and the acknowledgment issued;
  - c) records of instructions received from Clients and statements of account provided to Clients; and
  - d) records of creation, approval, notice, entry, invocation and cancellation of pledge, as the case may be.
- 22.2.8 Every Repository Participant shall intimate the Repository, the place where the records and documents are maintained.
- 22.2.9 Subject to the provisions of any other law and unless specifically instructed, the Repository Participant shall preserve records and documents electronic or otherwise, for a minimum period of five years.  
Provided that the Repository Participant shall preserve and maintain the documents, both in physical and electronic form, copies of which have been taken by Central Bureau of Investigation, Police or any other enforcement agency during course of any investigation or enquiry conducted by them till the trial is completed.  
Every Repository Participant shall furnish to Repository such information relating to various obligations to be performed by it from time to time in such format as may be prescribed by Repository to enable the Repository to review and monitor its performance and to ascertain the level of compliance with the provisions of the Act, Rules, Regulations and Guidelines issued by Authority and the Bye Laws and Business Rules issued by the Repository from time to time.
- 22.2.10 The Repository may review and monitor the reports received from Repository Participants and issue instructions to Repository Participants to rectify the discrepancies, irregularities and non-compliances, if any, within such time limit as may be deemed fit.
- 22.2.11 In case a Repository Participant fails to comply with the provisions of the Act, guidelines, these Bye Laws and Business Rules issued by repository, and continues to ignore or disregard the instructions issued by the Repository, the matter may be placed before the Disciplinary Action Committee constituted by the Repository for such action as it may deem fit. Any action taken by the Disciplinary Action Committee shall be in addition to action, if any, taken by the Authority.

### 22.3 AUDIT

- 22.3.1 Every Repository Participant shall ensure that an internal audit in respect of its Repository operations is conducted in each financial year, every six months or as may be prescribed by the Repository by a qualified Chartered Accountant or a Company Secretary or a Cost and Management Accountant, holding a Certificate of Practice and a copy of the internal audit report shall be furnished to the Repository.
- 22.3.2 The scope of such audit shall cover the existence, scope and efficiency of the internal control system, compliance with the provisions of the Act, Bye Laws, Business Rules and guidelines, agreement and systems security in the office of the Repository Participant in respect of the operations of the Repository.
- 22.3.3 In addition, the Repository may, if it feels it is in the interests of the Clients to do so, direct that an audit of the records of the Repository Participant shall be conducted by

such auditor as may be appointed by the Repository in this regard so far the records relate to the operations of the Repository.

- 22.3.4 The Chartered Accountants, Company Secretaries or Cost and Management Accountants who are engaged in Internal Audit or Inspection of the Repository Participant in respect of its Repository operations, should not have any conflict of interest with the said Repository Participant.

## **23. INSPECTION**

### **23.1 INSPECTION AUTHORITY**

23.1.1 Where the Repository deems it necessary, it may appoint one or more persons as inspecting authority to undertake inspection of the books of accounts, other records and documents of the Repository Participants to the extent they pertain to the Repository operations for any of the purposes specified below:-

- a. as to whether the books of accounts and other records are being maintained in the manner as required;
- b. as to whether the provisions of the Guidelines and Bye Laws on creation and management of electronic Warehouse Receipts issued under the Act are being complied with;
- c. as to whether the provisions of the WDRA Act, the Rules, Regulations and the Guidelines issued by Authority made there under are being complied with;
- d. as to whether the provisions of the Bye Laws and Business Rules of the Repository and any instructions or directions issued thereunder by the Repository are being complied with;
- e. to investigate into the complaints received from the Clients, other Repository Participants or any other person on any matter having a bearing on the activities of the Repository Participant;
- f. to investigate suo moto, for any reason where circumstances so warrant an inspection into the affairs of the Repository Participant in the interest of the Clients in general;
- g. to facilitate reconciliation of records in case the records of the Repository Participant with the Repository remain un-reconciled for a period exceeding three working days;
- h. to comply with any of the directives issued in this behalf by the Authority or any court or regulatory authority including the Government.

23.1.2 The inspecting authority appointed by the Repository under Bye Law 23.1.1 above may be the officials of the Repository or any other outside professionals competent to undertake the inspection, as may be decided by the Repository from time to time.

23.1.3 When the Repository appoints outside professionals as an inspecting authority, the Repository at its discretion and as may be required from case to case basis, notify to the Repository Participants the names and addresses of the professionals or firms so appointed as an inspecting authority to carry out inspection of the Repository Participant.

23.1.4 When outside professionals are appointed as an inspecting authority, if such professionals are already related or connected in any other capacity with the Repository Participant, then such Repository Participant shall forthwith inform the Repository of such relationship.

23.1.5 Where, after the appointment of any outside professional as an inspecting authority in respect of any Repository Participant, the Repository Participant or any of its associates engages the inspecting authority for its services in any other capacity, the inspecting authority shall not engage itself with the Repository Participant or any of its

associates in any other professional capacity without the prior consent of the Repository.

## 23.2 NOTICE

- 23.2.1 Before undertaking any inspection under Bye Law 23.1.1 above, the Repository shall give a reasonable notice to the Repository Participant for that purpose;
- 23.2.2 Notwithstanding anything contained in Bye Law 23.2.1 above, where the Repository is of the opinion that no such notice should be given, it may direct in writing that the inspection of the affairs of the Repository Participant be taken up forthwith, without such notice;
- 23.2.3 The Repository officials or the inspecting authority who is directed by the Repository to undertake the inspection, shall undertake the inspection and the Repository Participant against whom an inspection is being carried out shall extend full co-operation and bound to discharge its obligations as provided under Bye Law 23.1.

## 23.3 OBLIGATIONS OF A REPOSITORY PARTICIPANT ON INSPECTION:

- 23.3.1 It shall be the duty of every Repository Participant, its directors, partners, officers and employees who is being inspected, to produce to the inspecting authority such books, accounts, records and other documents in its/his custody or control or arrange to produce where such books, accounts records and other documents when they are in any other person's custody or control and furnish him such statements and information within such time as the said inspection authority may require.
- 23.3.2 The Repository Participant shall allow the inspecting authority to have reasonable access to the premises occupied by it or by any other person on his behalf and also extend reasonable facilities for examining any books, accounts records, documents and computerized data in its possession or any other person and also provide copies of documents or other materials which in the opinion of the inspecting authority are relevant.
- 23.3.3 The inspecting authority, in the course of inspection may examine or record statements of any director, officer and employee of the Repository Participant or of any associate of such Repository Participant.
- 23.3.4 It shall be the duty of every such Repository Participant, its directors, partners, officers and employees or where an associate is examined, of such associate to give to the inspecting authority all assistance in connection with the inspection which the Repository Participant may be reasonably expected to give.
- 23.3.5 Notwithstanding the provisions above, the inspecting authority shall not have the right to examine any person or inspect any records which do not pertain to the operations of the Repository.

## 23.4 SUBMISSION OF REPORT

- 23.4.1 The inspecting authority shall, within the time prescribed by the Repository or as soon as possible, submit an inspection report to the Repository.
- 23.4.2 The inspecting authority shall maintain complete confidentiality and shall not disclose any information contained in the documents submitted to it or inspected by it to any person, firm, company or authority unless required by any law for the time being in force.
- 23.4.3 The Repository shall after consideration of the inspection report, communicate the findings to the Repository Participant to give him an opportunity of being heard before any action is taken by the Repository on the findings of the inspecting authority.
- 23.4.4 On receipt of the explanation, if any, from the Repository Participant the Repository may call upon the Repository Participant to take such measures as the Repository may deem fit in the interest of the Clients.

23.4.5 In case the report of the Inspection Authority indicates the existence of any grounds for taking disciplinary action against a Repository Participant, the Repository if so satisfied shall cause a copy of the inspection report to be handed over to the Disciplinary Action Committee for further action in this regard.

## 23.5 REPORTING BY REPOSITORY PARTICIPANTS TO ITS BOARD OF DIRECTORS

Every Repository Participant shall ensure that following items are placed before its Board of Directors in respect of its Repository operations:

1. Internal audit findings along with management comments; and
2. Inspection findings of Repository along with management comments.

## 24. DISCIPLINARY JURISDICTION

The violations of any of the provisions of the Bye laws, the Business Rules made under the said Byelaws by the Repository Participant shall attract the Disciplinary Jurisdiction.

### 24.1 DISCIPLINARY ACTION COMMITTEE

24.1.1 A Disciplinary Action Committee shall be appointed by the Board of Directors to deal with any disciplinary matters relating to the Repository Participants.

24.1.2 The maximum strength of the Disciplinary Action Committee shall be five.

24.1.3 The Disciplinary Action Committee appointed by the Board of Directors shall consist of:-

- a) independent directors, shareholder directors and officials of the Repository. For removal of doubts, Independent directors shall not be on the Board or connected with any company that is engaged in the operations of the Repository or Repository Participant, directly or otherwise.
- b) The independent directors shall form majority of the committee;
- c) A maximum of two key management personnel of the Repository can be on the committee, one of which shall necessarily be the Managing Director of the Repository.

24.1.4 The decision of the Board of Repository shall, subject to the directions of the Authority, be final and binding with respect to the appointment of the Disciplinary Action Committee.

### 24.2 POWERS OF THE DISCIPLINARY ACTION COMMITTEE

The Disciplinary Action Committee shall have such responsibilities and powers as may be delegated to it by the Board, from time to time, which may inter-alia include the following responsibilities and powers to be discharged in accordance with the provisions of these Bye Laws:

- a. suspension of a Repository Participant with or without fine;
- b. expulsion of a Repository Participant with or without fine;
- c. request the Authority to declare a Warehouse as 'ineligible' for generation of Electronic Negotiable Warehouse Receipt on the Repository;
- d. freezing the account of the Repository Participant;
- e. power to conduct an investigation/inquiry of the Clients of Repository, call for records and to issue show cause notice for suspension/expulsion.

#### 24.3 REPOSITORY PARTICIPANT'S RESPONSIBILITY FOR PARTNERS, AGENTS AND EMPLOYEES

A Repository Participant shall be fully responsible for all the acts omissions and commissions of its directors, authorized officials, authorized representatives and employees and Repository shall assume that all such acts, omissions and commissions were done by the Repository Participant itself and would be subjected to any of the penalties as provided in the Bye Laws of the Repository,

#### 24.4 SUSPENSION OF A REPOSITORY PARTICIPANT

24.4.1 The Disciplinary Action Committee may require a Repository Participant to suspend its business when it fails to meet the continuing requirements of fulfilling the criteria of admission as provided in these Bye Laws and the suspension of business shall continue until the Repository Participant furnishes satisfactory evidence of meeting the requirements.

24.4.2 The Disciplinary Action Committee may require a Repository Participant to suspend its business, in part or whole, inter- alia where:-

- a. in the opinion of the Disciplinary Action Committee, the Repository Participant's financial condition is such that it has gone below the net worth norms or the Repository Participant fails to maintain it as specified in the Business Rules and Bye Laws of the Repository;
- b. the Repository Participant violates the provisions of the Bye Laws and Business Rules.
- c. The Repository Participant does not comply with the instructions of the Client and is required to do so under the provisions of the WDRA Act, Rules, regulations and the Guidelines made thereunder and the Bye Laws and Business Rules of Repository made under the provisions of the WDRA Act.
- d. A material change has taken place in the management, constitution or control of the Repository Participant's legal entity, whether by way of alteration in its Board of Directors, or the composition of its partners or the shareholding pattern thereof or there is a change in the nature of the legal entity, and such change violates the provision of the Bye laws and the Guidelines or Regulations as notified by the Authority.

#### 24.5 EXPULSION OF A REPOSITORY PARTICIPANT

The Disciplinary Action Committee may expel a Repository Participant from the Repository under the following circumstances:

- a. in case the Repository Participant commits repeated breach of the provisions of the Bye Laws and the Business Rules, in spite of repeated reminders from the Repository in this regard;
- b. in case the Repository Participant consistently exposes itself to risks which in the opinion of the Disciplinary Action Committee is not commensurate with Repository Participant's net worth;

- c. if the quality of services rendered by the Repository Participant is not satisfactory in the opinion of the Disciplinary Action Committee as evidenced by the complaints of its Client(s);
- d. if the Repository Participant carries on the activities in a manner which is detrimental to the interests of the stakeholders of the Repository system and continued existence of the Repository as well as the interests of the Clients in general.
- e. The Repository Participant ceases to carry on the business as Repository Participant

#### 24.6 REVOCATION OF SUSPENSION

The suspension of business under the Bye Laws as stated above shall continue until the Repository Participant has been allowed by the Disciplinary Action Committee to resume business on its paying such deposit or on its doing such act or providing such evidence as the Disciplinary Action Committee may require.

#### 24.7 PROCEDURE FOR EXPULSION/SUSPENSION OR OTHER DISCIPLINARY ACTION

- 24.7.1 A Repository Participant shall appear and testify before and cause its Directors, partners, authorized representatives and employees to appear before the Disciplinary Action Committee or before such other Committee(s) or such members of Disciplinary Action Committee authorized in this behalf by Disciplinary Action Committee, officer(s) of the Repository authorized in that behalf by the Disciplinary Action Committee and shall produce before the Disciplinary Action Committee or Committee(s) or officer of the Repository authorized in that behalf, such books, correspondence, documents, papers and records or any part thereof which may be in its possession and which may be deemed relevant or material to any matter under inquiry or investigation.
- 24.7.2 The Disciplinary Action Committee shall issue show cause notice to the concerned Repository Participant who shall be required to reply within such time as may be specified in the show cause notice or within such extended time as may be granted by the Disciplinary Action Committee on an application made to it.
- 24.7.3 The concerned Repository Participant shall be entitled to a personal hearing. The Repository Participant may appear itself or through a professional counsel, attorney, advocate or other representative at any hearing given by the Disciplinary Action Committee.
- 24.7.4 The Disciplinary Action Committee shall after taking into account the pleadings written and oral explanation and arguments, shall pass a reasoned order. The Disciplinary Action Committee shall send a copy of its final order to Repository Participants, Board of Repository and the Authority.
- 24.7.5 The Repository Participant shall have the right to appeal to Board of Repository against final order of Disciplinary Action Committee.

#### 24.8 IMPOSITION OF PENALTIES

The Disciplinary Action Committee may pass an order suspending/expelling a Repository Participant for such period or on such terms and conditions as the Disciplinary Action Committee deems fit including but not limited to monetary penalties as may be applicable for each of the violations under the Bye laws and the Business Rules made thereunder.

#### 24.9 CONSEQUENCE OF SUSPENSION

- 24.9.1 The suspension of a Repository Participant shall have the following consequences namely:

- a. Suspension of Repository Participant rights: The suspended Repository Participant shall during the term of its suspension be prohibited and excluded from all the rights and privileges of a Repository Participant on the Repository;
- b. Rights of Clients unimpaired: The suspension shall not affect the rights of the Clients of the suspended Repository Participant;
- c. Rights of creditors unimpaired: The suspension shall not affect the rights of the creditors of the suspended Repository Participant including creditors which are other Repository Participants,;
- d. Rights of Pledgees unimpaired: The suspension shall not affect the rights of any Pledgee in respect of Goods of any Client who holds an account with the suspended Repository Participant;
- e. Fulfillment of obligations: The suspended Repository Participant shall be bound to fulfill obligations outstanding at the time of its suspension as directed by Disciplinary Action Committee. The Repository shall have the power to fulfill all obligations towards the Clients of the suspended Repository Participant outstanding during the time of suspension of such Repository Participant;
- f. Further business prohibited: The suspended Repository Participant shall not during the term of its suspension transact any Repository business, with or through another Repository Participant;
- g. Repository Participants not to deal: No Repository Participant shall transact business for or with the suspended Repository Participant during the term of its suspension except with the previous permission of the Disciplinary Action Committee.

24.9.2 In case of suspension of a Repository Participant, the Client shall have the option of either getting the Electronic Balances held with the Repository Participant transferred to another Repository Participant within the Repository or to a Repository Participant with the other Repository or getting the Warehouse Receipts representing the Electronic Balances extinguished.

## 24.10 CONSEQUENCES OF EXPULSION

24.10.1 The expulsion of a Repository Participant shall have the following consequences, namely:

- a. Repository Participant's rights forfeited: The expelled Repository Participant's rights as a Repository Participant shall stand forfeited and all rights and privileges as a Repository Participant shall automatically cease to exist. However, any liability of any such Repository Participant to the Repository or to any other Repository Participant of the Repository or to any of its Clients shall continue and remain unaffected by its expulsion;
- b. Office vacated: The expulsion shall create a vacancy in any office or position held by the expelled Repository Participant in the Repository;
- c. Rights of Clients unimpaired: The expulsion shall not affect the rights of the Clients who are Clients of the expelled Repository Participant;
- d. Rights of Creditors unimpaired: The expulsion shall not affect the rights of the creditors of the expelled Repository Participants including creditors which are other Repository Participants;
- e. Fulfillment of obligations: The expelled Repository Participant shall be bound to fulfill transactions outstanding at the time of its expulsion and it may with the permission of the Disciplinary Action Committee close such outstanding transactions with or through another Repository Participant. The Repository shall have the power to fulfill all

obligations towards the Clients of the expelled Repository Participant outstanding at the time of expulsion of such Repository Participant;

- f. Repository Participants not to deal: No Repository Participant shall transact business for or with expelled Repository Participant except with the previous permission of the Disciplinary Action Committee.

24.10.2 In case of expulsion of Repository Participant, the Client shall have the option of either getting the Electronic Balances held with the Repository Participant transferred to another Repository Participant or getting the Warehouse Receipts representing the Electronic Balances extinguished.

#### 24.11 EXPULSION RULES TO APPLY

When a Repository Participant ceases to carry on business otherwise than on death, the Repository Participant shall be deemed to be expelled and in that event all provisions relating to expulsion contained in these Bye Laws shall apply to such concerned Repository Participant in all respects.

#### 24.12 Notice of Suspension of Business

Notice shall be given to all other Repository Participants through the system of the Repository of the expulsion or suspension of business in relation to the operations of the Repository by a Repository Participant or of any other charges imposed on it, on its partners, authorized representatives or other employees. The Disciplinary Action Committee may, in its absolute discretion and in such manner as it thinks fit, notify or cause to be notified to the Repository Participants of the Repository and/or to the Clients and to public, that any person who is named in such notification has been expelled, suspended or has suspended its business or ceased to be a Repository Participant. No action or other proceedings shall, in any circumstances, be maintainable by such suspended/ expelled/ceased Repository Participant against the Repository or the Disciplinary Action Committee, or any member of the Disciplinary Action Committee or any employee of the Repository for the publication or circulation of such notification.

#### 24.13 PROCEDURE FOR CANCELLATION OF AGREEMENT BETWEEN CLIENTS / REPOSITORY PARTICIPANT AND REPOSITORY

24.13.1 The agreement entered into between the Clients and Repository Participant and the Repository Participant and Repository shall be cancelled under the following cases:-

- a. on the expulsion of the Repository Participant by the Disciplinary Action Committee; or
- b. on the termination of the Repository Participant or its services by the Repository in accordance with the provisions of these Bye Laws.

24.13.2 The cancellation of the agreement shall have effect only when such cancellation has been approved by the Repository. The Repository shall give approval for such cancellation only if:

- a. there exists no suspense balance in the accounts of the Clients with Repository Participants and the accounts of Repository Participant with the Repository;
- b. the accounts of all the Clients of the Repository Participant have been closed and there exist no balances;
- c. the Repository Participant has paid or settled all its outstanding dues to the Repository.



- d. The cancellation of the Agreement between the Client and the Repository Participant shall not affect the obligations of the Client and Repository and shall survive the cancellation of Agreement.

24.13.3 Such cancellation of the agreement referred to in Bye Law (24.13.1) above shall not affect any claims arising in respect of transactions effected by the Repository Participant while it was a Repository Participant of the Repository.

## **25. APPEALS**

### **25.1 RIGHT OF APPEAL**

Any Repository Participant aggrieved by the order passed by the Disciplinary Action Committee shall have the right of appeal to the Repository against the said order of the Disciplinary Action Committee.

### **25.2 PROCEDURE FOR APPEAL**

- a. An Appeal may be filed with repository, by a Repository Participant within 30 days of receipt of the order of the Disciplinary Action Committee. The Appeal may be filed with a note and memorandum of appeal stating the reasons and grounds of the appeal against the decision/order of the Disciplinary Action Committee and must also state the relief sought, if any.
- b. The Board of Repository or any Committee of Board of Repository authorized in this behalf shall after considering the order of the Disciplinary Action Committee and the appeal filed by the Repository Participant, concur with the order of the Disciplinary Action Committee or stay the operation of any order passed by Disciplinary Action Committee for such period and on such terms and conditions as the Board of Repository or Committee of Board of Repository, as the case may be, may deem fit.

### **25.3 CONSIDERATION OF APPEAL**

- a. The Appeal will be heard by the Board of Repository or Committee appointed by the Board of Repository to whom the power of hearing is delegated. At such hearing, the appellant shall be entitled to be represented by advocates, counsels, attorneys and other representatives.
- b. The time limit for the disposal of an appeal preferred to the Board of Repository or Committee appointed by the Board of Repository shall be three months from the date of making such appeal or such other extended time as may be decided by the Board of Repository.
- c. A copy of the record of the Disciplinary Action Committee and the Board of Repository, relating to the appeals, shall be furnished to the Authority upon a request being received from it.

### **25.4 THIRD PARTY CLAIMS**

#### **25.4.1 MANNER OF DEALING WITH THIRD PARTY CLAIMS**

In the event of any claim made by any person in respect of any Electronic Balances held in Repository by a Client being received in writing by the Repository Participant through whom the Electronic Balances are held by that Client, either directly from the claimant or through Repository Participant, the Repository Participant shall forthwith intimate Repository and the Client of such claim.

Provided however that, the Repository shall not act on such claim or notice in the absence of an appropriate order or directive of a competent court, tribunal or Authority in respect of such claim.

Provided further, that the Repository may, on receipt of such claim or notice, if it so deems fit, require the concerned Client to execute a suitable indemnity in favor of the Repository or Repository Participant as the case may be, as a condition to Repository permitting the Client to continue dealing with the Electronic Balances in dispute.

Where such claim is received by the Repository directly, the Repository shall forthwith intimate the Repository Participant of such claim and take all actions as aforesaid.

## **26. DISCLAIMER AND INDEMNITY**

### **26.1 DISCLAIMER**

Where any loss or damage is caused to or incurred by any party or person on account of any act of commission or omission or default in complying with the provisions of the Act or the Guidelines or these Bye Laws or the Business Rules and Operating Instructions or the agreements executed in pursuance thereof or on account of the negligence or fraud on the part of any Client, and in the event of Repository making good or being required to make good such losses or damages (or any part thereof) to such party or person, the Repository shall be entitled to recover the amount so made good by it from the defaulting Client.

### **26.2 INDEMNITY**

26.2.1 Each and every Client shall indemnify and keep indemnified, saved and harmless the Repository and every other Client from and against all harm, loss, damage, injury and penalty suffered or incurred and all costs, charges, and expenses incurred in instituting and/or carrying on and/or defending any suits, action, litigation, arbitration, disciplinary action, prosecution or any other legal proceedings suffered or incurred by the Repository or any Client on account of or as a result of any act of commission or omission or default in complying with the provisions of the Act or the Guidelines or these Bye Laws or the Business Rules and Operating Instructions or the agreements executed in pursuance thereof or on account of the negligence on the part of that Client, which may include its employees, servants or agents if any.

26.2.2 The Repository shall provide its system and services on a best effort basis and the Repository and/or its Directors, employees and agents shall not incur any liability for any loss suffered by any Client or damage caused to any Client due to malfunctioning, delayed or non-functioning or any technical snag or error beyond the control of the Repository.

26.2.3 The Repository facilitates electronic holding of Warehouse Receipts, transfers and the accounting thereof in respect of Goods held by Warehousemen. In the event of any defect in the Goods including title to the Goods, due to fraud or misconduct of any Client or Depositor or Warehouseman, the Repository and/ or its Directors, employees and agents shall not incur any liability for any loss suffered by or damage caused to any person including any Client.

## **27. CONCILIATION**

In all claims, differences and disputes, irrespective of whether the Repository is a party or not, arising out of or in relation to dealings on the Repository including any agreements, contracts and transactions made subject to the Bye Laws or Business Rules of the Repository or with reference to anything incidental thereto or in pursuance thereof or relating to their validity, construction,

interpretation, fulfillment or the rights, obligations and liabilities of the parties thereof and including any question of whether such dealings, transactions, agreements and contracts have been entered into or not, the parties shall be free to adopt conciliation proceedings subject to the provisions of Part III of The Arbitration and Conciliation Act, 1996 and amendments thereto.

## **28. ARBITRATION**

The Repository shall maintain a panel of arbitrators who will be appointed by Repository from amongst persons who have experience of handling arbitration matters in the relevant field and the Arbitration proceedings shall be held in accordance with the provisions of The Arbitration and Conciliation Act, 1996 as amended from time to time.

## **29. MANNER OF KEEPING INFORMATION AND RECORDS**

29.1 The Repository shall ensure that:

- a. a timely and accurate record of information and records is maintained;
- b. the integrity of the systems is maintained at all times;
- c. the information and records are not destroyed or tampered with;
- d. the information and records are not lost even in the event of a disaster.

29.2 A Repository shall annually report to the Authority the steps and precautions taken under clause 29.1 of this Bye Law.

29.3 The Authority may periodically call for information regarding the steps the Repository and its Repository Participants have taken to comply with the requirements of clause 29.1.

29.4 The Authority may require a Repository, by issuing directions in writing, to modify its existing systems under clause 29 of this Bye Law in the interests of the security of the Warehouse Receipts.

29.5 If the Authority issues any direction to a Repository under the sub-clause 29.4 of this Bye Law, the Repository shall comply with such direction at its own cost, and as per the time period specified in the direction.

## **30. PRESERVATION OF CONFIDENTIALITY**

30.1 The Repository or the Repository Participant shall provide access only on a need to know basis.

30.2 Access to information about electronic Warehouse Receipts shall be provided to the Clients to whom such electronic Warehouse Receipts belong to, to the Warehouseman with whom the Client has the physical deposit of goods and to the Pledgee with whom the Client intends to create a Pledge.

30.3 The Repository or a Repository Participant shall not allow access to information about electronic Warehouse Receipts to any person other than a Client, Pledgee or Warehouseman without the permission of the Client, subject to other requirements set out in these Bye-Laws.

30.4 Repository shall not share, without the prior permission of the Authority, any information received or acquired by it during the course of its working, except as required by the due process of law. Similarly a Repository Participant shall not share, without the prior permission of the Repository, any information received or acquired by it during the course of its working, except as required by the due process of law.

30.5 Repository or its Repository Participant shall, upon demand from the Authority, furnish information regarding data access, including a log identifying each staff member accessing the data, the time of access, the nature of data accessed and the purpose.

30.6 Repository shall create rights of access for different kinds of Clients, and provide access to them as per such Client rights.

- 30.7 The Authority may from time to time specify additional requirements that Repositories and Repository Participants shall have to comply with and it shall become mandatory for the Repository or the Repository Participant to comply with it.

### **31. OBLIGATIONS OF A REPOSITORY ON OUTSOURCING**

- 31.1 Repository shall not assign or outsource any of its core functions without the prior approval of the Authority.
- 31.2 Even if the core functions are outsourced after getting the approval of the Authority, the Repository shall be responsible for all the acts of the outsourced entity and for compliance with the provisions of the Act, Rules and Guidelines made thereunder.
- 31.3 Repository shall take the following due care while assigning or outsourcing its core services:
- a. that the outsourcing of any function or activity is in accordance with the internal policies and procedures of the Repository;
  - b. that there is no conflict of interest that may impair the ability of the outsourced entity to deliver to the required standard;
  - c. that a detailed review is performed of the ability of the potential outsourced entity to deliver the required functions satisfactorily;
  - d. that Repository has entered into a written agreement with the outsourced entity clearly setting out their respective rights and obligations;
  - e. that the outsourcing does not impair the quality of the systems of governance of the Repository;
  - f. that the outsourcing does not impede the ability of the Authority to monitor the functioning of the Repository;
  - g. that the outsourced entity maintains confidentiality of the data shared with or generated by it while performing the outsourced functions or activity in the same manner and to the same extent as the Repository would have maintained;
  - h. that the outsourcing does not cause an excessive increase in the risk to the Repository and the system for creation and management of electronic Warehouse Receipts; and
  - i. the outsourced entity is required to disclose any development to the Repository that may have a material impact on its ability to carry out the outsourced functions.

### **32. LIMITATION OF LIABILITY**

- 32.1 No claim whatsoever shall lie against the Repository or the Repository Participant on account of quality and quantity of Goods deposited by a Client of a Repository in any Warehouse for which an electronic Warehouse Receipt is issued.
- 32.2 The Depositor or the Client and the Warehouseman shall be solely responsible for complying with the applicable regulations laid down by authorities like Food Safety Standard Authority of India, AGMARK, BIS, etc. as also other State/Central laws and authorities issuing such regulations in this behalf from time to time, including but not limited to compliance of provisions and rates relating to GST, APMC Tax, Mandi Tax, LBT, stamp duty, etc. as applicable from time to time. The Repository shall not be responsible or liable on account of any non-compliance thereof by a Depositor or a Client.
- 32.3 The electronic Warehouse Receipt issued through the Repository System is limited to recording of parameters which are necessary for generation of electronic Warehouse Receipt by a Warehouseman and the Repository shall not be held responsible or liable for parameters not mentioned in the electronic Warehouse Receipts.
- 32.4 All claims relating to quality and quantity arising out of the deposit and/or delivery of Goods, underlying an electronic Warehouse Receipt, by a Warehouseman, shall be settled between the Depositor/Client and the Warehouseman only and the Repository shall not be party to any such a dispute.

### **33. DEALINGS ON REPOSITORY SYSTEM**

#### **33.1 JURISDICTION**

33.1.1 Any dispute that may arise between the Clients and the Repository arising out of use of the Repository system shall be deemed to have arisen at the computerized processing unit of the Repository at Mumbai and the place of contracting between the Clients shall be at Mumbai. The Clients of the Repository System shall expressly record on their contracts/agreements/SLAs that they have excluded the jurisdiction of all other Courts save and except, Civil Courts in Mumbai in relation to any dispute arising out of or in connection with or in relation to the usage of Repository System, and that only the Civil Courts at Mumbai have exclusive jurisdiction in claims arising out of such dispute. The provisions of this section shall not object the jurisdiction of any court deciding any dispute as inter-se /between other parties to which the Repository is not a party.

33.1.2 The record of the Repository as maintained by a central processing unit or a cluster of processing units or computer processing units, whether maintained in any register, magnetic storage units, electronic storage units, optical storage units or computer storage units or in any other manner shall constitute the agreed and authentic record in relation to any transaction entered into through automated trading system. For the purposes of any dispute the record as maintained by the computer processing units by the Repository shall constitute valid evidence in any dispute or claim between the Clients of the Repository inter-se or between Clients and Non- Clients of the Repository as the case may be.

#### **33.2 INDEMNITY**

- a) The Repository shall not be liable for any disputes arising between the Clients and Non Clients and the Clients shall keep the Repository indemnified for any such claims or losses arising out of such dispute.
- b) The Client/Depositor shall indemnify and keep Repository and Repository Participant Indemnified and harmless against any losses, claims or damages suffered or incurred by the Repository or Repository Participant on account of any claim, difference or dispute between Warehouseman and the Depositor/ Client relating to quality and quantity of the Goods deposited or delivered under an electronic Warehouse Receipt.

#### **33.3 Client Only the Recognized Parties**

The Repository does not recognize as parties to any deal any persons other than its Clients. Every Client is directly and wholly liable, to the extent and in accordance with the Bye Laws, Business Rules of the Repository, to every other Client with whom such Client may provide the services using the Repository System whether such usage is for the Client or for on behalf of the Client.

#### **33.4 CORE SERVICES SUBJECT TO BYE LAWS AND BUSINESS RULES**

All core services availed by the Clients through the Repository System shall be in accordance with the Byelaws of the Repository and shall always be deemed made subject to the Bye Laws and Business Rules of the Repository and this shall be a part of the terms and conditions as set out by the Repository for availing of the services and shall be subject to the exercise by the relevant authority of the powers with respect thereto as vested in it by the Bye Laws and Business Rules of the Repository.

**34. MISCELLANEOUS**

- 34.1 The Repository shall be empowered to impose such restrictions or conditions for carrying out the transactions by the Client/s if in the opinion of the Repository it is just and equitable for the fair and orderly functioning of the Repository System or if it otherwise deems advisable in the interest of trade and public interest. During the effectiveness of such restrictions, no Repository Participant/s shall, for any account in which it has an interest or for the account of any Client, engage in any transaction in contravention of such restrictions.
- 34.2 Save as otherwise specifically provided in the Bye Laws, and Business Rules or specified by the Repository, in promoting, facilitating, assisting, regulating, managing and operating the Repository, the Repository should not be deemed to have incurred any liability, and accordingly no claim or recourse in respect of or in relation to any dealing of Clients on Repository System or any matter connected therewith shall lie against the Repository or any authorized person(s) acting for the Repository.
- 34.3 Any failure to observe or comply with any requirement of this Bye Law, or any Bye Laws, Business Rules, where applicable, may be dealt with by the Relevant Authority as a violation of such Bye Laws and Business Rules.
- 34.4 No claim, suit, prosecution or other legal proceedings shall lie against the Repository and/or any authorized person(s) acting for the Repository, in respect of anything which is in good faith done or intended to be done in pursuance of any order or other binding directive issued to the Repository under any law or delegated legislation for the time being in force.

## Amendment to the Byelaws – A history

SNo. /Amendment No.	Date Amendment	of	Regulation No.	Remarks
1.	June15, 2020		9A	Inserted Statutory Committee as per WDR guidelines on Corporate Governance for Repositories dated April 23, 2019