

## Compliance with fit & proper requirement in case of trading in securities of listed Depositories

### Securities and Exchange Board of India (Depositories and Participants) Regulation, 2018

#### Eligibility for acquiring or holding shares in a depository

22. (1) No person shall, directly or indirectly, acquire or hold equity shares or voting rights of a depository unless he is a fit and proper person. The depository shall ensure that all its shareholders are fit and proper persons:

Provided that such a requirement to ensure that all its shareholders are fit and proper persons shall not be applicable to a listed depository for shareholding of a person who directly or indirectly, acquires or holds less than two percent equity shares or voting rights of such listed depository.

3) Any person eligible to acquire or hold more than five percent of the paid up equity share capital under sub-regulation (1) and sub-regulation (2) of regulation 21 may acquire or hold more than five percent of the paid up equity share capital of a depository only if the person has obtained prior approval of the Board

(4) The application for seeking approval in terms of sub-regulation (2) or sub-regulation (3) of this regulation shall be made to the Board in Form E of the First Schedule through the depository concerned.

(5) The depository shall verify the declarations/ undertakings given by the shareholders under sub-regulation (4) and forward the application, along with its recommendation for approval of the Board

(6) If approval under sub-regulation (2) is not granted by the Board to any person, such person shall forthwith divest his entire shareholding in the depository

(7) Any person holding two percent or more of the paid up equity share capital in a depository shall file a declaration within fifteen days from the end of every financial year to the depository that he complies with the fit and proper criteria.

#### Requirement of fit and proper

23. (1) (a) The 'fit and proper person' criteria shall apply to the applicant, depository, its shareholders, directors and key management personnel at all times.

(b) The depository shall ensure that all its shareholders, directors and key management personnel are fit and proper persons at all times.

(2) For the purpose of these regulations, an applicant, or a depository shall be deemed to be a fit and proper person, if –

such a person has a general reputation and record of fairness and integrity, including but not limited to

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- (i) financial integrity;
- (ii) good reputation and character; and
- (iii) honesty;

such a person has not incurred any of the following disqualifications—

- (i) conviction of the person by a court for any economic offence or an offence of the securities laws;
- (ii) an Order for winding up has been passed against the person;
- (iii) the person has been declared insolvent and has not been discharged;
- (iv) an Order; restraining, prohibiting or debaring the person from dealing in securities or from accessing the securities market, has been passed by the Board and a period of three years from the date of the expiry of the period specified in the Order has not elapsed;
- (v) any other Order against the person which has a bearing on the securities market, has been passed by the Board and a period of three years from the date of the Order has not elapsed: Provided that for the purpose of sub-clauses (iv) and (v), any Order passed by the Board against a depository shall not affect the operation of such a depository unless expressly mentioned in the Order.
- (vi) the Board has initiated recovery proceedings under the Act or the Securities and Exchange Board of India Act, 1992 (15 of 1992) that are pending;
- (vii) the person is not financially sound or has been categorized as a willful defaulter; and
- (viii) any other disqualification as may be specified by the Board from time to time.

(3) For the purpose of these regulations, the shareholders, directors or key management personnel of the depository, shall be deemed to be fit and proper if,-

- (a) they fulfil the criteria specified under sub-regulation (2) of this regulation; and
- (b) they have not been found to be of unsound mind by a court of competent jurisdiction and have not been declared a fugitive economic offender; and
- (c) they have not been convicted of an offence involving moral turpitude.

(4) If any director or key management personnel of a depository is not deemed to be fit and proper under sub-regulation (3), the depository shall replace such a person within thirty days from the date of such disqualification, failing which the fit and proper person criteria may be invoked against the depository.

(5) Any disqualification of the depository under sub-regulation (2) shall not have any bearing on the fit and proper status of the directors or key management personnel unless the directors or key management personnel are also found to incur the same disqualification in the said matter.

(6) An order passed against the person by any other regulatory authority may be taken into account by the Board while determining the fit and proper person criteria.

(7) If any question arises on the decision of a depository as to whether a person is a fit and proper person, the decision of the Board on such question shall be final.”

**Securities and Exchange Board of India (Intermediaries) Regulations, 2008**

(1) *The applicant or intermediary shall meet the criteria, as provided in the respective regulations applicable to such an applicant or intermediary including:*

- (a) the competence and capability in terms of infrastructure and manpower requirements; and*
- (b) the financial soundness, which includes meeting the net worth requirements.*

(2) *The 'fit and proper person' criteria shall apply to the following persons:*

- (a) the applicant or the intermediary;*
- (b) the principal officer, the directors or managing partners, the compliance officer and the key management persons by whatever name called; and*
- (c) the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary, directly or indirectly:*  
*Provided that in case of an unlisted applicant or intermediary, any person holding twenty percent or more voting rights, irrespective of whether they hold controlling interest or exercise control, shall be required to fulfill the 'fit and proper person' criteria.*

**Explanation**– *For the purpose of this sub-clause, the expressions “controlling interest” and “control” in case of an applicant or intermediary, shall be construed with reference to the respective regulations applicable to the applicant or intermediary.*

(3) *For the purpose of determining as to whether any person is a 'fit and proper person', the Board may take into account any criteria as it deems fit, including but not limited to the following:*

- (a) integrity, honesty, ethical behaviour, reputation, fairness and character of the person;*
- (b) the person not incurring any of the following disqualifications:*
  - (i) criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;*
  - (ii) charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences and is pending;*
  - (iii) an order of restraint, prohibition or debarment has been passed against such person by the Board or any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets and such order is in force;*
  - (iv) recovery proceedings have been initiated by the Board against such person and are pending;*
  - (v) an order of conviction has been passed against such person by a court for any offence involving moral turpitude;*
  - (vi) any winding up proceedings have been initiated or an order for winding up has been passed against such person;*
  - (vii) such person has been declared insolvent and not discharged;*

*(viii) such person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;*  
*(ix) such person has been categorized as a wilful defaulter;*  
*(x) such person has been declared a fugitive economic offender; or*  
*(xi) any other disqualification as may be specified by the Board from time to time.*

*(4) Where any person has been declared as not 'fit and proper person' by an order of the Board, such a person shall not be eligible to apply for any registration during the period provided in the said order or for a period of five years from the date of effect of the order, if no such period is specified in the order.*

*(5) At the time of filing of an application for registration as an intermediary, if any notice to show cause has been issued for proceedings under these regulations or under section 11(4) or section 11B of the Act against the applicant or any other person referred in clause (2), then such an application shall not be considered for grant of registration for a period of one year from the date of issuance of such notice or until the conclusion of the proceedings, whichever is earlier.*

*(6) Any disqualification of an associate or group entity of the applicant or intermediary of the nature as referred in sub-clause (b) of clause (3), shall not have any bearing on the 'fit and proper person' criteria of the applicant or intermediary unless the applicant or intermediary or any other person referred in clause (2), is also found to incur the same disqualification in the said matter:*

*Provided that if any person as referred in sub-clause (b) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall replace such person within thirty days from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against the intermediary: Provided further that if any person as referred in sub-clause (c) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall ensure that such person does not exercise any voting rights and that such person divests their holding within six months from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against such intermediary.*

*(7) The 'fit and proper person' criteria shall be applicable at the time of application of registration and during the continuity of registration and the intermediary shall ensure that the persons as referred in sub-clauses (b) and (c) of clause (2) comply with the 'fit and proper person' criteria.*