भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

Consultation Paper

Review of Regulation 38 (2) of the SECC Regulations, 2018 and Regulation 7(c)(i) of the D&P Regulations, 2018 for providing an automatic approval route for investment in related activities by the MIIs

1. Background:

1.1. Regulation 38 of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 (SECC Regulations) and Regulation 7(c)(i) of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 (D&P Regulations) govern the utilization of profits and investments by recognized Stock Exchanges and Clearing Corporations; and Depositories respectively (collectively called as 'Market Infrastructure Institutions' or 'MIIs').

1.2. The relevant provisions of the SECC Regulations and the D&P Regulations have been reproduced at ***Annexure – 1***.

1.3. Under Regulation 38(2) and 7(c) (i), an MII is prohibited from carrying on any activity whether involving deployment of funds or otherwise without prior approval of the SEBI.

1.4. Two provisos currently exist under each of the said provisions, as follows:

1.4.1. **First Proviso:** Treasury investments made in accordance with the MII Board-approved investment policy are exempt from prior approval.

1.4.2. **Second Proviso:** Activities unrelated or not incidental to the MII's core function may be undertaken through a separate legal entity or Strategic Business Unit specific to each activity subject to the SEBI approval.

1.5. Therefore, as observed, only single carve-out exists i.e. treasury investments under a Board-approved policy. Every other investment or activity, regardless of size or nature, requires approval of the SEBI.

1.6. Certain MIIs have submitted proposals suggesting amendments to Regulation 38 and Regulation 7(c)(i), primarily to reduce the regulatory burden of seeking prior approval for certain investments or activities.

2. Deliberations of the Secondary Market Advisory Committee:

2.1. The proposals of the MIIs were examined and an agenda in this regards was taken to Secondary Market Advisory Committee (SMAC) for its deliberations and recommendation.

2.2. SMAC agreed with the overall approach whereby a framework for automatic approval route for deployment of funds and undertaking of new related activities is being proposed based on certain parameters. SMAC left the final discretion on the parameters, including the various financial parameters being proposed for eligibility of the automatic approval route, to SEBI.

3. Objective:

3.1. To review and rationalize the current requirement of prior SEBI approval for all activities and fund deployments by MIIs other than recognized clearing corporations under Regulation 38(2) of the SECC Regulations and Regulation 7(c)(i) of the D&P Regulations

3.2. The existing framework, which mandates prior approval irrespective of the size, nature or regulatory mandate of the activity, has led to an increased approval burden on MIIs.

3.3. The proposed framework seeks to distinguish between activities that are related to an MII's core function and those that are unrelated and introduce a proportionate governance safeguards and retain mandatory prior approval for activities that are unrelated or not incidental to the MII's core function, thereby aligning regulatory oversight with actual risk.

4. Rationale for Revisiting the Current Approach:

4.1. **Increased burden for otherwise low-risk activities:** The current framework treats all non-treasury activities identically, e.g. a minor investment of a few lakhs in a technology platform directly supporting market operations attracts the same prior approval requirement as a large investment in an entirely unrelated business. This may not be in line to the risk.

4.2. **Redundancy where independent oversight already exists:** Certain activities are directed by SEBI through circulars or involve entities regulated by other statutory financial sector regulators (such as IFSCA, IRDAI, RBI, PFRDA, etc.). Requiring a separate Reg 38(2) or Reg 7(c)(i) approval in such cases creates an avoidable duplication of regulatory scrutiny.

4.3. **Governance-based oversight may achieve the regulatory objective more effectively:** A framework built on MII Governing Board oversight, Governing Board-approved Standard Operating Procedures and periodic reporting to the regulator may provide equivalent oversight as compared to case-by-case approval by SEBI, while allowing MIIs operational flexibility within clearly defined guardrails and promote Ease of Doing Business.

5. Based on the proposals taken to SMAC, recommendations of the SMAC and further internal deliberations, following is proposed:

5.1. The MIIs (excluding the recognized clearing corporations) may engage in activities whether involving deployment of funds or otherwise, without prior approval of SEBI (hereinafter referred to as the "automatic route"), in the following routes and subject to the financial limits specified at paragraph 5.1.3 and the governance conditions specified at paragraph 5.1.4 below:

5.1.1. **Route A**: activities related or incidental to the activity of the MII in the securities market where

(a) the activity is undertaken pursuant to directions of SEBI; or

(b) the activity involves a transfer of shares of a company held by the MII or by a subsidiary of the MII, to the MII or to another subsidiary of the MII; or
(c) the activity involves deployment of funds by an operating subsidiary of the MII and such deployment is made exclusively from funds generated from the subsidiary's own operations.

5.1.2. **Route B**: An activity that is similar in function to an activity carried on by the MII and is undertaken through an investee company regulated by another financial sector regulator in India.

Provided, SEBI has previously approved such activity and the activity remains the same, notwithstanding that such activity is not an activity in the securities market.

5.1.3. Financial limits

5.1.3.1. The aggregate deployment of funds under the automatic route in a financial year shall not exceed the lower of

5.1.3.1.1. five percent of the net worth of the MII as on 31 March of the financial year immediately preceding the financial year in which the deployment is made; and

5.1.3.1.2. Regulatory minimum net worth.

For this purpose, deployment of funds by the MII and by any of its subsidiaries shall be aggregated and reckoned against the said limit, irrespective of the entity making such deployment and irrespective of the source of the funds so deployed.

5.1.3.2. The net worth of the MII, post the proposed deployment of funds, shall not fall below 1.5 times the minimum net worth prescribed by the Board.

Provided that where the audited financial statements of the MII for the immediately preceding financial year have not been adopted as on the date of the proposed deployment of funds, the net worth as on the last day of the financial year preceding that year shall apply, and any deployment of funds made on that basis shall be reckoned against the limit computed on the basis of the audited financial statements of the immediately preceding financial year upon their adoption.

5.1.4. Governance conditions relating to the above automatic route are as follows:

5.1.4.1. The sharing of logo, brand, if any, with the entity in which the activity is being carried out shall be at arm's length pricing basis or otherwise as specifically approved by Board.

5.1.4.2. If there is sharing of resources with the entity in which the activity is being carried out, MII shall, prior to sharing resources, execute an appropriate resource sharing agreement which shall ensure that such sharing is ring fenced and does not adversely impact the operations, financial health and other interest of the MII.

5.1.4.3. There shall not be any conflict of interest of the new activity with the core functions of the MII or with the role as first level regulator.

5.1.4.4. The MIIs shall ensure that the investee companies, their directors, and shareholders comply with "fit and proper criteria" at all times

5.1.4.5. Each new activity, or each instance of deployment of funds, shall require prior approval of the Governing Board of the MII.

5.1.4.6. Further, before giving the approval the governing board shall inter alia ensure that there is no conflict of interest and adequate resources including liquid net worth is maintained for technological upgradations, meeting regulatory obligations such as IPF, SGF, piloting innovative solutions in securities market, Investor Awareness etc.

5.1.4.7. Every MII shall formulate Standard Operating Procedures, duly approved by its Governing Board, incorporating appropriate guidelines governing such activities and investments.

5.1.4.8. Every MII shall submit to the Board a half-yearly report setting out particulars of all new activities undertaken through the automatic routes during the said period, including those involving deployment of funds, together with the basis on which each such activity has been treated as related or incidental to the activity of the MII, within thirty days from the end of the half year, in such format as may be specified.

6. Delegation:

Considering that the conditions specified above are operational and detailed in nature, it is proposed that Regulation 38(2) of the SECC Regulations and Regulation 7(c)(i) of the D&P Regulations be amended to provide an enabling delegation to SEBI to specify such conditions by way of a circular. The proposed amendments to the said regulations are placed at ***Annexure-2*** and the draft consolidated circular setting out the detailed conditions is placed at ***Annexure-3***.

7. Public Comments:

7.1. This consultation paper seeks comments / suggestions from public / stakeholders on the proposed amendments to the SECC Regulations and the D&P Regulations placed at ***Annexure-2*** and on the draft circular placed at ***Annexure-3***, inter alia, comprising of major issues, as mentioned herein below:

7.1.1. Whether you agree that an automatic route be introduced permitting MIIs, other than recognized clearing corporations, to undertake without prior approval of SEBI activities that are related or incidental to their activity as an MII in the securities market or that are similar in function to

an activity carried on by the MII and have previously been approved by SEBI?

7.1.2. Whether you agree with the categories of related activities proposed to be eligible for the automatic route, namely activities undertaken pursuant to directions of SEBI, transfer of shares of a company held by the MII or by a subsidiary of the MII to the MII or to another subsidiary of the MII, and deployment of funds by an operating subsidiary from funds generated from its own operations; and activities involving investee companies performing similar functions and regulated by another financial sector regulator in India where SEBI has previously approved the MII undertaking such activity?

7.1.3. Whether you agree that where the activity involves deployment of funds under the automatic route, such deployment should not exceed, in a financial year, the lower of five percent of the net worth of the MII as on 31 March of the preceding financial year and the regulatory minimum net worth?

7.1.4. Whether you agree that the net worth of the MII, post the proposed investment, should not fall below 1.5 times the minimum net worth prescribed by SEBI?

7.1.5. Whether you agree with the other conditions proposed relating to arm's length sharing of logo and brand, execution of a ring-fenced resource sharing agreement, absence of conflict of interest, compliance with fit and proper criteria by investee companies, etc.?

7.1.6. Any other matter on the proposed amendments and the draft circular.

7.2. You may submit your comments / suggestions on the proposal along with rationale for the same by November 12, 2026, by using the following link:

https://www.sebi.gov.in/sebiweb/publiccommentv2/PublicCommentAction.do?doPublicComments=yes

7.3. Only in cases where you face any technical issue in submitting your comment along with rationale through the web based public comments form, you may email to mrd_pod3@sebi.gov.in with the subject: *"Public Comments w.r.t. Review of Regulation 38(2) of the SECC Regulations, 2018 and Regulation 7(c)(i) of the D&P Regulations, 2018".*

Issued on: October 22, 2026

Annexure-1: Extant Provisions

A. Regulation 38 of the SECC Regulations, 2018

Utilization of profits and investments

38. (1) The utilization of profits and investments by recognised clearing corporations shall be in accordance with the norms specified by the Board.

(2) The recognized stock exchange or recognized clearing corporation shall not carry on any activity whether involving deployment of funds or otherwise without prior approval of the Board:

Provided that prior approval of the Board shall not be required in case of treasury investments if such investments are as per the investment policy approved by the governing board of recognized stock exchange or recognized clearing corporation;

Provided further, that the recognised stock exchange and recognised clearing corporation may engage in activities whether involving deployment of funds or otherwise that are unrelated or not incidental to its activity as a stock exchange or clearing corporation, as the case may be, through a separate legal entity and subject to approval of the Board.

(3) An employee of a recognised stock exchange or recognised clearing corporation shall not simultaneously be an employee of any other company where the recognised stock exchange or recognised clearing corporation has invested.

(4) A director, committee member or employee of a recognised stock exchange or a recognised clearing corporation shall not receive any compensation or any other financial benefit from the companies where the recognised stock exchange or recognised clearing corporation has invested, other than fees and expenses related to the governing board and committee meetings.

B. Regulation 7(c) of the D&P Regulations, 2018

Grant of certificate of registration

7. *After considering the application under regulation 3, with reference to the qualifications specified in regulation 6, if the Board is satisfied that the company established by the applicant is eligible to act as depository, it may grant a certificate of registration in Form B of the First Schedule to the depository subject to the following, namely: ---*

…

(c) (i) the depository shall not carry on any activity whether involving deployment of funds or otherwise without prior approval of the Board:

Provided that prior approval of the Board shall not be required in case of treasury investments if such investments are as per the investment policy approved by the governing board of depository.

Provided further that a depository may carry out such activity not incidental to its activities as a depository, whether involving deployment of funds or otherwise, as may be assigned to the depository by the Central Government or by a regulator in the financial sector, through the establishment of Strategic Business Unit(s) specific to each activity with the prior approval of the Board and subject to such conditions as may be prescribed by the Board, including transfer of such activity to a separate company within such time as may be specified by the Board having regard to the matters which are relevant to the efficient and orderly function of the Depository as mentioned in regulation 14.

Explanation: For the purposes of this clause, a Strategic Business Unit shall be an organizational unit of a company with its own mission, objectives and business strategy that is given the responsibility to serve the particular demands of one business area with appropriate technological, financial and other segregations.

Annexure-2: **Proposed Amendments to the SECC Regulations, 2018 and the D&P Regulations, 2018**

A. Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018

In regulation 38, in sub-regulation (2), after the second proviso, the following proviso shall be inserted, namely -

"Provided also that a recognised stock exchange may engage in activities whether involving deployment of funds or otherwise that are related or incidental to its activity as a stock exchange, or such other activities as may be specified by the Board, without prior approval of the Board, subject to such conditions as may be specified by the Board."

B. Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018

In regulation 7, in clause (c), in sub-clause (i), after the second proviso, the following proviso shall be inserted, namely --

"Provided also that a depository may carry on activities whether involving deployment of funds or otherwise that are related or incidental to its activities as a depository, or such other activities as may be specified by the Board, without prior approval of the Board, subject to such conditions as may be specified by the Board."

Annexure-3

DRAFT CIRCULAR

SEBI/HO/MRD/MRD-PoD-X/P/CIR/2026/_____

To,

All Recognised Stock Exchanges

All Depositories

Madam / Sir,

Subject: Framework for undertaking of related activities and deployment of funds by Market Infrastructure Institutions

1. **Background**
   1.1. Regulation 38(2) of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 (SECC Regulations) and Regulation 7(c)(i) of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 (D&P Regulations) provide that a Market Infrastructure Institution (MII) shall not carry on any activity whether involving deployment of funds or otherwise without prior approval of the Board.
   1.2. In terms of the third proviso to Regulation 38(2) of the SECC Regulations and the third proviso to Regulation 7(c)(i) of the D&P Regulations, a recognised stock exchange and a depository may engage in activities that are related or incidental to its activity as an MII without prior approval of the Board, subject to such conditions as may be specified by the Board.
   1.3. Accordingly, the conditions subject to which such activities may be undertaken are specified hereunder.

2. **Applicability**
   2.1. The provisions of this circular shall apply to recognised stock exchanges and depositories.

3. **Activities that may be undertaken without prior approval of the Board**
   3.1. The MIIs (excluding the recognized clearing corporations) may engage in activities whether involving deployment of funds or otherwise, without prior approval of SEBI (hereinafter referred to as the "automatic route"), in the following routes and subject to the financial limits specified at paragraph 3.2 and the governance conditions specified at paragraph 3.3 below:

      3.1.1. **Route A**: activities related or incidental to the activity of the MII in the securities market where

      (a) the activity is undertaken pursuant to directions of SEBI; or

(b) the activity involves a transfer of shares of a company held by the MII or by a subsidiary of the MII, to the MII or to another subsidiary of the MII; or
(c) the activity involves deployment of funds by an operating subsidiary of the MII and such deployment is made exclusively from funds generated from the subsidiary's own operations.

3.1.2. **Route B**: An activity that is similar in function to an activity carried on by the MII and is undertaken through an investee company regulated by another financial sector regulator in India.

Provided, SEBI has previously approved such activity and the activity remains the same, notwithstanding that such activity is not an activity in the securities market.

3.2. **Financial limits**

3.2.1. The aggregate deployment of funds under the automatic route in a financial year shall not exceed the lower of

(a) five percent of the net worth of the MII as on 31 March of the financial year immediately preceding the financial year in which the deployment is made; and
(b) regulatory minimum net worth.

For this purpose, deployment of funds by the MII and by any of its subsidiaries shall be aggregated and reckoned against the said limit, irrespective of the entity making such deployment.

3.2.2. The net worth of the MII, post the proposed deployment of funds, shall not fall below 1.5 times the minimum net worth prescribed by the Board.

3.2.3. For the purposes of this circular, 'net worth' shall have the meaning assigned to it in Explanation I to Regulation 14 of the SECC Regulations or the Explanation to Regulation 15(1) of the D&P Regulations, as the case may be, as on the last day of the immediately preceding financial year as per the audited financial statements of the MII.

Provided that where the audited financial statements of the MII for the immediately preceding financial year have not been adopted as on the date of the proposed deployment of funds, the net worth as on the last day of the financial year preceding that year shall apply and any deployment of funds made on that basis shall be reckoned against the limit computed on the basis of the audited financial statements of the immediately preceding financial year upon their adoption.

3.3. **Governance conditions relating to the above automatic route are as follows:**

3.3.1. The sharing of logo, brand, if any, with the entity in which the activity is being carried out shall be at arm's length pricing basis or otherwise as specifically approved by the Board.

3.3.2. If there is sharing of resources with the entity in which the activity is being carried out, MII shall, prior to sharing resources, execute an appropriate resource sharing agreement which shall ensure that such sharing is ring fenced and does not adversely impact the operations, financial health and other interest of the MII.

3.3.3. There shall not be any conflict of interest of the new activity with the core functions of the MII or with the role as first level regulator

3.3.4. The MIIs shall ensure that the investee companies, their directors, and shareholders comply with "fit and proper criteria" at all times

3.3.5. Each new activity, or each instance of deployment of funds, shall require prior approval of the Governing Board of the MII. Further, before giving approval the governing board shall inter alia ensure that there is no conflict of interest and adequate resources including liquid net worth is maintained for technological upgradations, meeting regulatory obligations such as IPF, SGF, piloting innovative solutions in securities market, investor awareness, etc.

3.3.6. Every MII shall formulate Standard Operating Procedures, duly approved by its Governing Board, incorporating appropriate guidelines governing such activities and investments.

3.3.7. Every MII shall submit to the Board a half-yearly report setting out particulars of all new activities undertaken during the said period, including those involving deployment of funds through the automatic route, together with the basis on which each such activity has been treated as related or incidental to the activity of the MII, within thirty days from the end of the half year, in such format as may be specified.

4. Any activity that does not satisfy the conditions specified in this circular shall require prior approval of the Board.

5. Effective date and other provisions

5.1. The provisions of this circular shall come into force with effect from _____, 2026.

5.2. The MIIs are directed to bring the provisions of this circular to the notice of relevant stakeholders and to make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above.

5.3. This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Section 31 of the Securities Contracts (Regulation) Act, 1956 and Section 25 of the Depositories Act, 1996, and the Regulation 38(2) of the SECC Regulations and the Regulation 7(c) of the D&P Regulations.

5.4. This circular is available on the SEBI website at www.sebi.gov.in under the category "Legal Framework - Circulars".

Yours faithfully,

_____

_____

Market Regulation Department