

Government of Pakistan
Securities and Exchange Commission of Pakistan

-:-:-

Islamabad, the 30th June, 2020

NOTIFICATION

S. R. O. 594 (I)/2020. - The following draft Professional Clearing Members Regulations, 2020 proposed to made by the Securities and Exchange Commission of Pakistan in exercise of powers conferred by sub-section (1) of section 169 read with sections 68, 69, 75, 76, 77, 78, 79, 80, 82, 84 and 151 of the Securities Act, 2015 (III of 2015), are hereby published for information of all persons likely to be affected by these Regulations and notice is hereby given that objections and suggestions, if any, received within the next fourteen days from the date of its placement on the Commission's website will be taken into consideration, namely:-

CHAPTER I
PRELIMINARY

1. Short title and commencement. - (1) These regulations shall be called the Professional Clearing Members Regulations, 2020.

(2) They shall come into force at once.

2. Definitions. - (1) In these regulations, unless there is anything repugnant in the subject or context, –

- (a) "Act" means the Securities Act, 2015 (III of 2015);
- (b) "Annexure" means annexures appended to these regulations;
- (c) "Companies Act" means the Companies Act, 2017 (XIX of 2017);
- (d) "customer" for the purposes of these regulations includes a licensed securities broker and customers of such securities brokers;
- (e) "customer bank account" means the bank account opened by the professional clearing member with a scheduled bank in Pakistan wherein all customer money is deposited and maintained or separate bank account opened in the name of customer;
- (f) "customer custody account" means a sub-account in the central depository system opened by the professional clearing member for depositing and holding securities owned by a customer;
- (g) "Form" means forms appended to these regulations;
- (h) "non-banking finance company" has the same meaning as defined under clause (xxxiii a) of sub-rule (1) of rule 2 of the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003;
- (i) "professional clearing services" includes services for clearing, settlement and custody of customer assets for customers;
- (j) "professional clearing member" means a company licensed under these regulations to provide professional clearing services;

- (k) "scheduled bank" has the same meaning as defined in clause (m) of section 2 of the State Bank of Pakistan Act, 1956 (XXXIII of 1956); and
- (l) "sponsor" means:
 - (a) a person who has contributed initial capital in the company or has the right to appoint majority of the directors on the board of the company directly or indirectly; and
 - (b) a person who replaces the person referred to in clause (a) above; and
 - (c) a person or group of persons who has control of the company whether directly or indirectly.

(2) Words and expressions used but not defined in these regulations shall have the same meaning as assigned to them in the Act, the Companies Act, the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997), Central Depositories Act, 1997 (XIX of 1997), and any rules or regulations made thereunder.

CHAPTER II

LICENSING AND REGISTRATION TO ACT AS A PROFESSIONAL CLEARING MEMBER

3. Prohibition.- No person shall act as or perform the functions of a professional clearing member unless such person is licensed with the Commission as a professional clearing member under the Act and these regulations.

Provided that Commission may register a scheduled bank, a development finance institute or a non-banking finance company to perform the functions of a professional clearing member without obtaining licence, subject to compliance with the requirements of regulation 10 and the requirements of Chapter III, Chapter IV, Chapter V and Chapter VI of these regulations.

4. Application and procedure for granting a licence. - (1) Subject to sub-regulation (2), an application for grant of a licence as a professional clearing member shall be made to the Commission in Form A along with the information and documents specified in "Annexure A" and receipt evidencing payment of non-fundable fee of such amount as specified in "Annexure B".

(2) The Commission, while considering the application for license, may require the applicant to furnish such further information or clarification as it may deem appropriate or appear before the Commission for representation through a person duly authorized for this purpose in writing by the board of directors of the applicant.

(3) Any subsequent change in the information provided to the Commission at the time of filing of application under sub-regulation (1) and (2) above shall immediately be intimated to the Commission but not later than five working days from the date of such change.

5. Grant of licence. - (1) The Commission, while considering the application for granting a licence, shall *inter-alia* take into account the following matters, -

- (a) the applicant meets the requirements including licensing conditions as provided in the Act and these regulations;
- (b) the applicant has the ability to efficiently handle its functions as a professional clearing member and fulfill its obligations under the Act and these regulations; and
- (c) the applicant has the necessary financial resources, policies, procedures, systems and controls to effectively and efficiently discharge its responsibilities as a professional clearing member.

(2) The Commission, upon being satisfied after conducting such inquiries and obtaining such further information as it deems appropriate that, -

- (a) the applicant is eligible for a licence;
- (b) the applicant is in compliance with the provisions of the Act, these regulations and any directives, guidelines or codes issued thereunder; and
- (c) it is in the public interest and interest of capital market,

may grant a licence to the applicant in Form B under the provisions of the Act.

(3) Where a professional clearing member applies to the Commission in Form C for renewal of licence and the Commission is satisfied that it continues to meet the requirements for licensing and is in compliance with the relevant laws, the Commission may renew licence of the professional clearing member and issue a certificate of renewal of license in Form D.

Provided that where the application for renewal of licence is made within such time as provided in the Act but has not been decided by the Commission, the licence of the professional clearing member shall continue to be valid until the application for renewal is decided by the Commission.

(4) The Commission, after giving a reasonable opportunity of hearing to the applicant, may refuse to grant or renew license if in the opinion of the Commission such applicant does not fulfill the requirements specified under the Act and these regulations.

(5) The applicant, if aggrieved by the decision of the Commission under sub-regulation (1), may, within a period of thirty days from the date of receipt of such refusal, prefer an appeal to the appellate bench of the Commission under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997.

6. Cancellation of licence. - (1) A professional clearing member may apply to the Commission for cancellation of its licence along-with a confirmation that it has informed all its existing customers, settled all dues and pending claims of the customers and has completed all formalities for closure of business.

(2) The Commission may, after being satisfied that all formalities for closure of

business including settlement of customer claims have been completed, cancel the licence of such professional clearing member and impose such conditions as it deems appropriate.

(3) The Commission may cancel the licence granted to a professional clearing member in accordance with the provisions of the Act and/or where-

- (a) the admission of professional clearing member as clearing member or CDS participant is terminated;
- (b) the professional clearing member is declared insolvent by a Court of competent jurisdiction;
- (c) the professional clearing member fails to apply for renewal of licence within the specified time; or
- (d) it has contravened any of the provision of the Act, these regulations or has failed to comply with a direction of the Commission or any act or omission by the professional clearing member in the opinion of the Commission is, or is likely to be prejudicial to the public interest.

(4) A professional clearing member whose licence is cancelled under sub-regulation (3) shall inform all its existing customers, the securities exchange, clearing house and central depository, settle all dues of the customers within fifteen days and shall remain responsible to meet clearing and settlement obligations arising out of trades executed up to the date on which it has been working as a professional clearing member.

7. Licensing conditions.- Subject to compliance with the provisions of the Act and any other requirements or conditions specified in these regulations, a company may apply to the Commission in the manner as provided in regulation 3 for grant of licence as professional clearing member, if –

- (a) it is a public company incorporated under the Companies Act;
- (b) the applicant does not hold, directly or indirectly, a TRE certificate;
- (c) the applicant, its sponsors, directors and senior management officers are fit and proper persons as per the criteria specified in Annexure D and while evaluating fit and proper criteria in respect of sponsors of the applicant, the fit and proper criteria shall also be applied to the extent practical on the majority shareholders and directors of such sponsors;
- (d) the applicant has financial resources, shareholding and governance structure as provided in these regulations and is in compliance with the requirements of regulation 10.

8. Registration to act as professional clearing member for entities which are exempt from licensing- (1) A scheduled bank, a development finance institute or a non-banking finance company only having license for Investment Finance Services may apply for registration as a professional clearing member by submitting application to the Commission in Form E along with all the information and documents specified in “Annexure C”.

(2) The Commission may register an applicant as a professional clearing member if it is satisfied that –

- (a) the applicant has the ability to efficiently handle its functions as a professional clearing member and fulfill its obligations under the Act and these regulations;
- (b) the applicant has the necessary financial resources, policies, procedures, systems and controls to effectively and efficiently discharge its responsibilities as a professional clearing member;
- (c) it fulfills such other conditions as may be specified.

(3) The Commission may cancel the registration granted to a professional clearing member where its admission as clearing member or CDS participant is terminated, or it is declared insolvent by a Court of competent jurisdictions, or has contravened any of the provision of the Act, these regulations or has failed to comply with a direction of the Commission or any act or omission by the professional clearing member in the opinion of the Commission is, or is likely to be prejudicial to the public interest.-

CHAPTER III OBLIGATIONS OF A PROFESSIONAL CLEARING MEMBER

9. Rating and governance requirements.- A professional clearing member must comply with the following conditions at all times:

- (a) it maintains a minimum long term entity rating of (A-) or equivalent from a credit rating company licensed by the Commission and disclose such rating at all times on its website and all advertisements:

Provided that a professional clearing member licensed under these regulations shall obtain and maintain a minimum long term entity rating of (A-) or equivalent within one year from the date of grant of licence under these regulations;

- (b) it complies with the Listed Companies (Code of Corporate Governance) Regulations, 2019;

10. Financial resources requirement.- A professional clearing member shall have net-worth of not less than rupees two hundred and fifty million:

Provided that a scheduled bank, a development finance institute or a non-banking finance company shall be required to be compliant with its financial resource requirements as applicable under the respective laws after allocating the financial resources under this regulation towards professional clearing member services.

Provided further that the Commission may, while granting licence or registration to

function as a professional clearing member, or subsequently, require the applicant to maintain a higher net-worth in a progressive manner.

Provided further that the Commission may, on case to case basis and after taking into account the financial strength of sponsors of the applicant, relax the net-worth requirements for a professional clearing member.

Explanation: The net worth of a professional clearing member shall be calculated as total assets less total liabilities less surplus on revaluation, if any, created upon revaluation of fixed assets, intangible assets and deferred tax reserves.

Provided further that the Commission may issue clarification in respect of treatment of any item of assets and/or liabilities for the purpose of calculating the net worth of a professional clearing member.

11. Shareholding requirements.- (1) No person other than the following shall, directly or indirectly, acquire or hold shares as a sponsor of a professional clearing member licensed under these regulations:

- (a) a licensed local or a foreign bank operating in Pakistan or a subsidiary of such bank;
- (b) a financial institution operating as a development finance institution, an insurance company or a non-banking finance company only having license for Investment Finance Services;
- (c) a central depository;
- (d) a clearing house
- (e) a securities exchange
- (f) any of the following institutions subject to compliance with the conditions provided under sub-regulation (2)-
 - (i) a local or foreign body corporate constituted or recognized for providing custodial, clearing or settlement services in the securities market as may be notified by the Commission;
 - (ii) an institution engaged in providing financial services established outside Pakistan as may notified by the Commission; or
 - (iii) any other institution as may be allowed by the Commission from time to time.

(2) Shareholding in a professional clearing member by institutions referred to in clause (f) of sub-regulation (1) shall be subject to the following conditions, namely:-

- (a) the institution or any of its sponsors or directors are not TRE certificate holders;
- (b) it complies with the financial resource requirements specified under the relevant provisions of applicable laws;
- (c) its license for providing any financial services has not been suspended or cancelled by any regulatory authority during the last five years;
- (d) no investigation or enquiry conducted under the relevant laws has been concluded against it by the Commission, State Bank of Pakistan, National Accountability Bureau, Federal Investigation Agency or any other regulatory or government body, with any material adverse

- findings, resulting in any conviction or imposition of penalty of significant amount; and
- (e) an order restraining, prohibiting or debarring it from providing any financial services has not been passed by any regulatory authority, government body or agency or a court of law.
- (3) No transfer of more than five percent shares of a professional clearing member licensed under these regulations shall be allowed without prior approval of the Commission.

CHAPTER IV CONDUCT OF A PROFESSIONAL CLEARING MEMBER

12. Duties and obligations of a professional clearing member. - (1) In addition to the requirements provided under the Act a professional clearing member shall –

- (a) ensure that within three months of the grant of licence or registration to act as professional clearing member and prior to commencement of business as professional clearing member, it has complied with the following and shall ensure compliance on a continued basis:
 - (i) it has developed and put in place requisite infrastructure; human resources with sufficient education, experience and expertise; mechanisms; systems and controls, including policies and procedures, for efficient business operations, order routing, risk management, clearing and settlement, default handling, customer dispute, grievance and complaint handling in an efficient manner and within reasonable time along with maintenance of proper books and records, effective compliance with the laws, relationship with customers etc.;
 - (ii) it has been admitted as a clearing member by the clearing house and participant by the central depository;
- (b) develop and implement policies, procedures, systems and internal controls, duly approved and periodically reviewed by its board of directors which are disseminated for compliance by all employees, to ensure compliance of the professional clearing member with the requirements of these regulations and its duties and obligations as a professional clearing member;
- (c) ensure fair treatment of its customers and not discriminate amongst them;
- (d) ensure confidentiality of customer information, prevent misuse of customer information, prevent improper or unintended dissemination of market sensitive information internally or externally, including establishment of Chinese walls;
- (e) take all reasonable steps to minimize conflict of interest between itself, its employees and its customers; resolution of conflicts of interest, eliminate misalignment of incentives of employees, appropriate disclosures to customers, actions against non-compliances by employees etc;

- (f) take reasonable steps to ensure that any agreement, written communication, notification or information that such professional clearing member gives or sends to customers to whom the services are to be provided or are being provided is presented fairly and clearly and adequate details regarding the services to be provided by the professional clearing member are covered therein;
- (g) only commence business with a customer once it has entered into an agreement and completed all formalities as per applicable regulatory framework;
- (h) ensure compliance with the Know Your Customer and Customer Due Diligence requirements in accordance with the relevant regulatory framework;
- (i) ensure that credit worthiness of its customers is evaluated through a proper credit risk assessment methodology and trading limits are assigned to each customer beyond which the customer shall not be allowed to take a position;
- (j) prevent any use of customer assets which is unauthorized or not allowed under law, not use customer money for another customer and handle customer money only through banking channels;
- (k) ensure proper segregation and accounting of customer assets and develop and implement appropriate policies and procedures, including maintenance of separate sub-account in CDC for each customer and holding customer money in segregated designated customer bank account, either through a single designated bank account or separate designated bank accounts for customers, and comply with the applicable requirements in these regulations and specified by the central depository and clearing house relating to the segregation of customers' assets and assets under custody;
- (l) establish systems and controls and maintain accurate and up-to-date records of customers' asset holdings and periodic reconciliations, ensure maintenance of proper records for client assets segregation, monitoring of customer assets by the compliance officer along with necessary reconciliations and reporting and rectification in case of discrepancy or non-compliances with the law, maintain audit trail of transactions pertaining to securities and money belonging to a customer and put in place internal audit function headed by dedicated head of internal audit possessing relevant qualification and experience;
- (m) on quarterly or on any other periodic basis as deemed fit by the Commission, furnish to the customer reports containing information regarding handling of securities, receipts and payments and the holding balances of customer's assets, and promptly provide to a customer any report or information pertaining to the account of such customer as and when requested by the customer;
- (n) inculcate a culture of compliance of the regulatory requirements through ongoing education and training of its directors and employees; specify and enforce any appropriate sanctions for breach by its directors and employees of any policies and procedures regarding market

- conduct to deter such practices
- (o) it has put in place necessary mechanisms, controls, systems and safeguards, to ensure cyber security, prevent unauthorized access to confidential information and alteration, destruction, disclosure or dissemination of records and data and reliable back up procedures
 - (p) develop and implement adequate business continuity plan;
 - (q) adequately resolve disputes and redress grievances arising out of clearing and settlement of trades and custody of customer assets;
 - (r) keep accounting and other records which shall sufficiently explain its business and transactions entered into (whether effected on its own behalf or on behalf of customers) and the financial position of the professional clearing member and shall ensure that information which is required to be recorded under the Act and these regulations shall be recorded in such a way as to enable a particular transaction to be identified at any time and traced from initiation of the order to final settlement.
 - (s) within such period as required by the Commission from the grant of license or registration to act as professional clearing member it has submitted a certificate from an independent chartered accountant firm for appropriateness of controls and safeguards to ensure cyber security, access to confidential information and alteration, destruction, disclosure or dissemination of records and data;
 - (t) ensure that its memorandum and articles of association contain no provision inconsistent with the provisions of the Act and these regulations and that no change is made in its memorandum and articles of association except with the prior written approval of the Commission;
 - (u) prescribe a code of conduct, aimed at ensuring that the directors and employees act in accordance with the best interests of its customers, the integrity of the market and are in compliance of the Act, these regulations and any other applicable laws, guidelines, directives, circulars etc., and ensure compliance with the same and take actions against non-compliances; and
 - (v) ensure accuracy and completeness of the information shared or submitted by it to the clearing house, central depository, Commission and any other forum.

- (2) A professional clearing member shall not invest in listed stocks.

13. Extension of credit/ financing.- A professional clearing member licensed under these regulations may extend credit or provide financing to its customers under conventional or Shariah compliant manner subject to compliance with requirements of the Act or any rules or regulations made thereunder.

14. Charges. - (1) Subject to sub-regulation 2, the customer shall pay to professional clearing member the charges from time to time and as per the timelines as required by the professional clearing member for its services under the agreement. These charges may be revised by the professional clearing member from time to time.

(2) Professional clearing member shall have a paramount lien on the money and the securities of the customer for the recovery of any fees or charges due from customer.

(3) Without prejudice to any other remedies available to professional clearing member, the professional clearing member shall be entitled to deduct any outstanding fees and charges (including any applicable taxes, duties and levies) from the amounts payable by the professional clearing member to the customer and professional clearing member's obligations to make payment will always be subject to such right of the professional clearing member.

CHAPTER V ACCOUNTS AND AUDIT

15. General. - The obligations and duties of a professional clearing member under these regulations with respect to audit and accounts are in addition to the requirements of the Companies Act, the rules and regulations made thereunder and any directives issued thereunder.

16. Appointment of auditor and related matters. - (1) A professional clearing member licensed under these regulations shall appoint its auditor from the category A of the State Bank of Pakistan panel of auditors who shall not be an associate of the director or a senior management officer of the professional clearing member.

(2) The audit report shall state all the matters as are required to be stated in accordance with the requirements of the Companies Act and other applicable law and must state additionally whether in the opinion of the auditor the professional clearing member was in compliance with the requirements of section 78 of the Act and the relevant requirement of these regulations as at the date on which the balance sheet was prepared.

(3) Where an auditor resigns or is removed by the professional clearing member, a notice to that effect shall be sent to the Commission containing a statement signed by the auditor to the effect that there are no circumstances connected with his resignation or removal which the auditor considers should be brought to the attention of the Commission.

(4) A professional clearing member shall undergo annual audit of its regulatory framework, operations, information technology systems, internal controls framework including controls over customer asset segregation and any other systems or functions or as required by the Commission from time to time in accordance with the terms of reference determined by the Commission.

CHAPTER VI MISCELLANEOUS

17. Functions of chief compliance officer, - (1) The chief compliance officer shall be fit and proper person and shall have following responsibilities;

- (a) manage, control and lead the compliance function of the professional clearing member and monitor compliance of the professional clearing member with the applicable regulatory regime;
- (b) ensure compliance with and perform functions pertaining to safekeeping of customer assets; and

(c) other ancillary responsibilities as assigned by the professional clearing member.

(2) In case of any non-compliance, the chief compliance officer shall take necessary action under the applicable regulatory framework and where the matter requires attention of the board of directors of the professional clearing member, the same shall be reported immediately:

Provided that where a chief compliance officer is convinced that the matter also needs immediate attention of the Commission, it may simultaneously report to the Commission stating the reasons thereof.

(3) The board of directors of the professional clearing member shall put in place necessary mechanism to ensure that the chief compliance officer performs his/her functions in a transparent, equitable and timely manner.

18. Submission of information and returns. - The Commission may by written notice require a professional clearing member to submit to the Commission such information or periodic returns as it may require.

19. Power to give instructions- The Commission may give such instructions to the professional clearing member as it may deem fit for the purpose of ensuring compliance with the Act and these regulations and to protect the interest of public and customers and the professional clearing member shall comply with such instructions.

20. Power to relax regulations- The Commission may, upon application or upon its own motion, relax operation of any requirement of these regulations for a person or class of persons for reasons to be recorded.

FORM OF APPLICATION FOR LICENCE AS A PROFESSIONAL CLEARING MEMBER

To
The Securities and Exchange Commission of Pakistan,
Islamabad.

Dear Sir,

1. We (Name of the company) hereby apply for licence of professional clearing member under section 68 of the Securities Act, 2015.
2. The requisite information and certified true copies of all the supporting documents are enclosed.
3. Original receipt of the bank for the applicable licensing fee is also enclosed.

Yours faithfully,

Signature of the Chief Executive

Information and Documents to be provided along-with application for licence as a professional clearing member

1. General and business information:

- 1.1. Brief history of the applicant containing at least name of the applicant, date and place of its incorporation, names and contact details of sponsors, directors and senior management officers including group structure, if any.
- 1.2. Address of the registered office of the applicant with complete contact details.
- 1.3. Existing and proposed capital structure including minimum percentage of capital to be contributed and retained by the sponsors.
- 1.4. Details of substantial shareholders of the applicant including a brief profile of their business
- 1.5. Names and profiles of sponsors, directors and senior management officers along-with a conformation with the respective fit and proper criteria provided in these regulations.
- 1.6. Details of ultimate beneficial owners of the applicant:
Explanation:- For the purposes of these regulations, the expression “ultimate beneficial owners” includes natural person or individual who ultimately own or control ten percent or more of the entity.
- 1.7. Details of outstanding legal proceedings, if any, initiated against the applicant, its directors or senior management officers by the Commission or any other regulatory authority.
- 1.8. Details in case the applicant, its sponsors, directors, major shareholders or senior management officers have been declared insolvent or bankrupt, or declared defaulter by any authority.
- 1.9. Details of penal actions, if any, taken against the applicant, its sponsors, directors, major shareholders or senior management officers during the last three years by the Commission or any other regulatory authority.
- 1.10. Details of civil and criminal offenses in which the applicant or any of its sponsors, directors or senior management officer has remained involved during the last three years
- 1.11. In case any associated company of the applicant is already licensed under the Securities Act, 2015, the following details shall be provided, namely: -
 - (i) name of such associated company;
 - (ii) details of disciplinary proceedings initiated against such associated company by the Commission or any other regulatory authority during last three years;
 - (iii) details of legal proceedings, if any, initiated against such associated company by the Commission or any other regulatory authority during last three years; and
 - (iv) details of penal action, if any, taken against such associated company by the Commission or any other regulatory authority during the last three years.

2. Details of existing and proposed infrastructural facilities

- 2.1. Detail of IT infrastructure including
 - (i) Computer systems and hardware(s).
 - (ii) Software(s) to be used for providing professional clearing services.

- (iii) Disaster recovery and business continuity setup.
- 2.2. Detail of physical infrastructure to demonstrate that it has/will have
- (i) Adequate office space;
 - (ii) Necessary human resources;
- 3. Other information**
- 3.1. Details of the affiliation and outsourcing contracts, if any
 - 3.2. Names of bankers of the applicant
 - 3.3. Name of statutory auditors of the applicant
 - 3.4. Names of legal advisors/consultants of the applicant
 - 3.5. Any other information considered relevant to the business of the professional clearing member
 - 3.6. Any significant awards or recognition, collective grievances against the applicant.
 - 3.7. Any other information as may be required by the Commission.
- 4. List of documents to be provided along with application:**
- 4.1. Certified copies of the following documents;
 - (i) memorandum and articles of association
 - (ii) certificate of incorporation
 - (iii) certificate of commencement of business
 - (iv) Forms 3, 27, 28 and 29
 - 4.2. Audited accounts for the last three years and latest half yearly and quarterly accounts, where applicable.
 - 4.3. Proposed operational model, business feasibility and financial projections of the applicant for the next five financial years
 - 4.4. Document evidencing compliance with the applicable fit and proper criteria
 - 4.5. An Undertaking from the sponsors of the applicant that they will not sell or transfer their shares without prior written approval of the Commission;
 - 4.6. An undertaking from the applicant that
 - (i) it will immediately inform the Commission in case of any change in the sponsors/majority shareholders of the sponsoring company.
 - (ii) it will immediately inform the Commission in case of any change in status of compliance of its sponsors, directors, senior management officers are in compliance with all the requirements of the Act and these regulations
 - 4.7. Pattern of shareholding, identifying separately the sponsors and shares held by the sponsors
 - 4.8. Any other document that the applicant may consider useful to support its application
 - 4.9. Any other document as may be required by the Commission.

**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
LICENCE AS PROFESSIONAL CLEARING MEMBER**

No.

Islamabad, ...(date)....

The Securities and Exchange Commission of Pakistan having considered the application for licence by..... (Name of the company).... for professional clearing member under section 68 of the Securities Act, 2015 and being satisfied that the said company is eligible for a licence under the said category, and that it would be in public interest and in the interest of the capital market so to do, hereby grants licence, in exercise of the powers conferred by section 69 of the Securities Act, 2015 to(name of the company).... subject to the provisions of the Securities Act, 2015 and the rules and regulations made thereunder, as amended from time to time.

2. This licence is valid up to one year from the date of issuance.

Signature of the Officer

**FORM OF APPLICATION FOR RENEWAL OF LICENCE AS A PROFESSIONAL CLEARING
MEMBER**

To
The Securities and Exchange Commission of Pakistan,
Islamabad.

Dear Sir,

1. We,(Name of the professional clearing member).... hereby apply for the renewal of the licence of professional clearing member under section 69 of the Securities Act, 2015.
2. The existing licence is due to expire on[date of expiry].....
3. Original receipt of the bank for the applicable the renewal fee is enclosed.
4. An undertaking stating that the professional clearing member is compliant with of all regulatory requirements including compliance with fit & proper criteria as specified in the Professional Clearing Member (Licensing and Operations) Regulations, 2020 is enclosed.
5. It is requested that the licence be renewed for a period of one year.

Yours faithfully,
Signature of the Chief Executive

**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
RENEWAL OF LICENCE AS PROFESSIONAL CLEARING MEMBER**

No.

Islamabad,(date)....

The Securities and Exchange Commission of Pakistan having considered the application for renewal of licence by(Name of the professional clearing member).... of the professional clearing member, and being satisfied that the said professional clearing member is eligible for renewal of licence under the said category and that it would be in public interest and in the interest of the capital market so to do, hereby grants renewal of licence to(Name of the professional clearing member)...., in exercise of the powers conferred by section 69 of the Securities Act, 2015, for one year subject to the provisions of the Securities Act, 2015 and the rules and regulations made thereunder, as amended from time to time.

Signature of the Officer

LICENSING AND RENEWAL FEES*

Description of fee	Amount of fee in PKR
Fee to be paid at the time of applying for licence	Rs.500,000
Fee to be paid at the time of applying for renewal of licence	Rs. 250,000

* The above fees shall be deposited into the designated bank account of the Commission, along-with applicable collection charges.

FORM OF APPLICATION FOR REGISTRATION AS A PROFESSIONAL CLEARING MEMBER

To
The Securities and Exchange Commission of Pakistan,
Islamabad.

Dear Sir,

1. We (Name of the company) hereby apply for registration to act as professional clearing member.
2. The requisite information and certified true copies of all the supporting documents are enclosed.

Yours faithfully,

Signature of the Chief Executive

Annexure C

Information and Documents to be provided along-with application for registration to act as a professional clearing member

1. General and business information:

- 1.1. Brief history of the applicant containing at least name of the applicant, date and place of its incorporation, names and contact details of sponsors, directors and senior management officers including group structure, if any.
- 1.2. Address of the registered office of the applicant with complete contact details.
- 1.3. Details of substantial shareholders of the applicant including a brief profile of their business.
- 1.4. Names and profiles of sponsors, directors and senior management officers.
- 1.5. In case any associated company of the applicant is already licensed under the Securities Act, 2015, the following details shall be provided, namely: -
 - (i) name of such associated company;
 - (ii) details of legal proceedings, if any, initiated against such associated company by any other regulatory authority during last three years; and
 - (iii) details of penal action, if any, taken against such associated company by any other regulatory authority during the last three years.

2. Details of infrastructural facilities

- 2.1. Detail of IT infrastructure including
 - (i) Software(s) to be used for providing professional clearing services.
 - (ii) Disaster recovery and business continuity setup.

3. List of documents to be provided along with application:

- 3.1. Certified copies of the following documents;
 - (i) memorandum and articles of association
 - (ii) Forms 3, 27, 28 and 29
- 3.2. Audited accounts for the last three years and latest half yearly and quarterly accounts, where applicable.
- 3.3. Proposed operational model, business feasibility and financial projections of the applicant for business of professional clearing member for the next five financial years
- 3.4. Pattern of shareholding, identifying separately the sponsors and shares held by the sponsors.
- 3.5. Any other document that the applicant may consider useful to support its application
Any other document as may be required by the Commission.

FIT AND PROPER CRITERIA

**FIT AND PROPER CRITERIA FOR APPLICANT, SPONSORS, DIRECTORS AND SENIOR
MANAGEMENT OFFICERS OF PROFESSIONAL CLEARING MEMBERS**

This Fit and Proper Criteria is perpetual in nature and its compliance is mandatory.

All persons subject to Fit and Proper Criteria must submit any change in the submitted information, including financial soundness to the company secretary of the professional clearing member within three business days and the professional clearing member shall within a period of seven business days report the same to the Commission.

In addition to the applicant and the sponsors of the applicant, eligibility of any person desiring to act as a director on the board of directors or senior management officer of a professional clearing member shall be judged on the basis of following criteria, which in the case of directors, shall be in addition to meeting requirements of the Companies Act, 2017 relating to eligibility of a director:

(a) Financial Soundness and Integrity

(i) The person should not have been adjudged as an insolvent or he should not have suspended payment of debts or compounded liabilities with its/his creditors.

(ii) The person should not have been convicted by a court of competent jurisdiction as a defaulter in payment of any loan to a financial institution including banking company, a Development Financial Institution or a Non- Banking Financial Company.

(iii) The person and companies, firms, sole proprietorship etc. where the person is a chief executive, director (other than nominee director), owner or partner etc., has/have no overdue payment to any customer, financial institution, securities exchange, futures exchange, clearing house, central depository and / or defaulted in payment of any taxes in the individual capacity or as a proprietary concern or any partnership firm or as director in any private unlisted and listed company.

Explanation: In case of overdue payment to any financial institution, CIB reports from the State Bank of Pakistan shall be examined and if there is any overdue/past due payment to a financial institution, irrespective of amount, in overdue column of latest CIB report of the person and of the companies, firms, sole proprietorship etc. where such person is a chief executive, director (other than nominee director), owner or partner etc., such person shall not be considered fit and proper person except:

- (a) in case where such overdue amount is under litigation and the same is also appearing as amount under litigation in CIB report;
- (b) No overdue payment is appearing in the overdue column in the subsequent latest CIB report; or
- (c) such person provides the documentary evidence of having no directorship in companies, firms, sole proprietorship etc., other than professional clearing member, showing overdue status in their CIB reports.

In case of overdue amount in CIB report, no rejection shall be made unless the person has been provided an opportunity of making a representation before the Commission.

(iv) The person should not have been a director and/or chief executive of any company or body corporate which has defaulted in payment of Government duties/taxes/cess or has misused customer securities.

(v) The person should be a tax payer and his name should be borne on the Active Tax Payers List regularly published by Federal Board of Revenue.

Provided that this requirement shall not be applicable in the case of foreign nationals.

(b) Educational or other Qualification or Experience

(i) In case of chief executive officer, the person should:

- a) be a member of a recognized body of professional accountants or possess a post-graduate degree in finance, accountancy, business management, commerce, economics, law, capital market, financial services or related disciplines from a university recognized by the Higher Education Commission of Pakistan, or equivalent; and
- b) have a minimum experience of seven years in a senior management position, preferably in the regulated financial services sector.

Suitability of the chief executive officer shall be assessed by the Commission through interview prior to appointment.

(ii) In case of compliance officer, the person shall

- a) be a member of a recognized body of professional accountants, or possess a graduate degree in finance, accountancy, business management, commerce, economics, capital market, financial services or related disciplines from a university recognized by the Higher Education Commission of Pakistan, or equivalent; and
- b) have a minimum experience of three years in audit, finance or compliance functions or any other managerial position in a company in the financial sector.

Provided that for all of the above persons, where a person possesses seven years of relevant experience of the capital markets, the minimum qualification requirement shall be relaxed.

(iii) Any other senior management officer must be a qualified professional possessing relevant experience and degree relating to the job/assignment and must have demonstrated, through his qualification and experience, the capacity and suitability to successfully undertake the cognate responsibilities of the position.

(iv) The directors and senior management officers must be fully conversant with the duties of director or senior management officer, as the case may be, as specified under the statutes, rules and regulations, memorandum and articles of association and the Corporate Governance Code.

(c) Competency

(i) Membership or licence of the person or any company in which the person was a director during the last three years has not been suspended/cancelled by the Commission, any other regulatory authority, any professional body, association or relevant entity e.g. the securities or futures exchange, central depository or clearing house.

Provided that eligibility of a person may be considered on the basis of prior clearance obtained from any such organization that suspended/ cancelled the membership or licence.

(ii) No proceedings are pending with respect to the applicant's winding up, insolvency or analogous relief.

(iii) The person should not have been disqualified/ removed from the post of a key executive position of a company by the Commission or any other regulatory authority.

(d) Integrity, Honesty and Reputation

(i) The person should not have been convicted in any criminal offence or directly involved in any settlement in civil/ criminal proceedings in a court of law, particularly with regard to moral turpitude, investments, financial/business misconduct, fraud/ forgery, breach of trust, financial crime etc. and/ or it has not been concluded by any regulatory authority that the person has been associated with any unauthorized financial activity including illegal brokerage business.

(ii) No investigation/enquiry/inspection, conducted under Section 139 of the Securities Act, 2015, Section 83 of the Futures Market Act, 2016, Section 29 of the Securities and Exchange Commission of Pakistan Act, 1997, Section 21 of the Securities and Exchange Ordinance, 1969, Section 256 or Section 257 of the Companies Act, 2017, has been concluded against the person by the Commission with material adverse findings or any settlement in civil/criminal proceedings particularly with regard to investments, financial matters/business, misconduct, fraud, formation or management of a corporate body etc. by any regulatory authorities (within or outside Pakistan), professional bodies or government bodies/agencies.

(iii) The person has not defaulted on settlement of a customer complaint where such complaint has been adjudicated by the Commission or the securities exchange.

(iv) An order restraining, prohibiting or debaring the person from dealing in securities in the capital market or from accessing the capital market has not been passed; or penalty of Rs.500,000/- or more has not been imposed on it/him/her by the Commission in the last three years, in respect of any laws administered by the Commission.

Provided that a person may be considered eligible in case a period of at least three years from the date of expiry of the period specified in the order for which such person has been restrained/prohibited/debarred has elapsed.

(v) The sponsors, director or senior management officer should not have been penalized for providing false or misleading information either to the Commission or to any of the regulatory body, securities exchange, central depository or a clearing house.

(vi) The person should not have been actively involved in the management of a company whose registration or licence has been revoked or cancelled or which has gone into liquidation or other similar proceedings due to financial irregularities or malpractices.

(vii) The person must not be ineligible, under the Companies Act, 2017 or any other legislation from acting as a director.

(viii) The person should not have entered into a plea bargain arrangement with the National Accountability Bureau.

(e) Additional Criteria for Independent Directors

(i) The person has no relationship with the professional clearing member that would interfere with him exercising independent professional judgment as a director and he can be

reasonably perceived as being able to exercise independent business judgment without being subservient to any apparent form of interference.

(ii) The person should not be a director, officer, sponsor or shareholder of a company holding TRE certificate or any holding or subsidiary company of such company.

(iii) The person's immediate family member is also not a director, officer, sponsor or shareholder of a company holding TRE certificate and/or the combined shareholding of the immediate family members in any company licensed as a professional clearing member does not exceed twenty percent.

(iv) It shall be mandatory to disclose any shareholding in a listed company in such person's name or in the name of his/her immediate family member or in the name of an entity being managed or controlled by him/her or his/her immediate family member to the professional clearing member;

a. at the time of submission of initial information; and

b. on quarterly basis for the respective period.

(v) The person shall not simultaneously be serving as a director on the board of more than seven listed companies.

(vi) The person should have:

a) membership of a recognized body of professional accountants; or a CFA degree; or a graduate degree in finance, accountancy, business management, commerce, economics, law, capital market, financial services or related disciplines from a university recognized by the Higher Education Commission of Pakistan, or equivalent;

b) have an experience of at least five years in activities relating to capital market, preferably professional clearing member business; and

c) the suitability of person for the position of independent director shall be assessed by the board prior to his/her appointment.

Note:

- In case of any ambiguity in determination of fitness and propriety of a person in terms of this criteria, the decision of the Commission shall be final and binding upon the professional clearing member.

- Along-with the application for licence for a professional clearing member:

a) the applicant's individual sponsors, directors and senior management officers shall submit the following duly filled form of information and the affidavit; and

b) the authorized person on behalf of the applicant and authorized person on behalf of the sponsors where the sponsor is a company, shall submit the following duly filled affidavit.

Information to be provided by individual sponsors, directors and senior management officers of the ____ (name of professional clearing member) ____

1.	Curriculum Vitae/Resume containing:												
(a)	Name:												
(b)	Father's or Husband Name:												
(c)	C.N.I.C # (attach copy)												
(d)	Latest photograph												
(e)	Nationality:												
(f)	Age:												
(g)	Contact details:												
	i) Residential address:												
	ii) Business address:												
	iii) Tel:												
	iv) Mobile:												
	v) Fax:												
	vi) E-mail:												
(h)	National Tax Number:												
(i)	Present occupation:												
(j)	Qualification(s):												
	i) Academic:												
	ii) Professional:												
(k)	Experience: (Positions held during the last 10 years along with name and address of company/ institution) Information to be provided on the following sample format*:												
	<table border="1"> <thead> <tr> <th>Sr#</th> <th>Name of Organization</th> <th>Designation</th> <th>Period</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Company A</td> <td></td> <td>DD/MM/YY - DD/MM/YY</td> </tr> <tr> <td>2</td> <td>Company B</td> <td></td> <td>DD/MM/YY - DD/MM/YY</td> </tr> </tbody> </table>	Sr#	Name of Organization	Designation	Period	1	Company A		DD/MM/YY - DD/MM/YY	2	Company B		DD/MM/YY - DD/MM/YY
Sr#	Name of Organization	Designation	Period										
1	Company A		DD/MM/YY - DD/MM/YY										
2	Company B		DD/MM/YY - DD/MM/YY										
2.	1. Nature of directorship:												
	a) Executive b) Non-executive												
	2. Status of directorship:												
	a) Nominee director b) Elected director c) Independent director												
	Number of shares subscribed or held _____												
	Nominated by (name of shareholder/ nominating entity)												
3.	Names of companies, firms and other organizations of which the person is presently a director, partner, office holder or major shareholder (Information to be provided on the following sample format*)												
	<table border="1"> <thead> <tr> <th>Sr. #</th> <th>Name of Organization</th> <th>Designation</th> <th>Period</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Company A</td> <td></td> <td>DD/MM/YY - DD/MM/YY</td> </tr> <tr> <td>2</td> <td>Company B</td> <td></td> <td>DD/MM/YY - DD/MM/YY</td> </tr> </tbody> </table>	Sr. #	Name of Organization	Designation	Period	1	Company A		DD/MM/YY - DD/MM/YY	2	Company B		DD/MM/YY - DD/MM/YY
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1	Company A		DD/MM/YY - DD/MM/YY										
2	Company B		DD/MM/YY - DD/MM/YY										

4.	Names of any persons on the board of the (name of professional clearing member) who are related to the applicant.
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Signature _____

*use additional sheets if required

Affidavit to be provided by the applicant, sponsors, directors and senior management officers of the applicant

(On Stamp Paper of Appropriate Value)

AFFIDAVIT

A. In case of an individual in his/her own capacity:

I, _____ son/daughter/wife of _____ adult, resident of _____ and holding CNIC/ Passport No. _____ do hereby state on solemn affirmation as under:-

1. That I am eligible forthe position of director/senior management officer....(OR) being sponsor..... of the (name of applicant)..... according to the Fit and Proper Criteria specified as per the Professional clearing members (Licensing and Operations) Regulations, 2020.
2. That I and the companies, firms, sole proprietorship etc. where I am a chief executive, director (other than nominee director), owner or partner etc. have no overdue payment to any financial institution.
3. That I hereby confirm that the statements made and the information given by me are correct and that there are no facts which have been concealed.
4. That I have no objection if the ..(name of applicant)...., or the SECP requests or obtains information about me from any third party.
5. That I undertake to bring to the attention of the ... (name of applicant).... any matter which may potentially affect my status as sponsor/director/senior management officer as per the fit and proper criteria specified in the Professional clearing members (Licensing and Operations) Regulations, 2020.
6. That all the documents provided to(name of applicant)...., are true copies of the originals and I have compared the copies with their respective originals and certify them to be true copies thereof.
7. That I will comply with any other condition as may be specified by the Commission.

B. In case of an individual as authorized person on behalf of sponsors:

I, _____ son/daughter/wife of _____ adult, resident of _____ and holding CNIC/ Passport No. _____, on behalf of(name of institution)..... being sponsor of the ...(name of applicant)..... do hereby state on solemn affirmation as under:-

1. That(name of the institution)..... is eligible for being sponsor of the(name of applicant)..... according to the Fit and Proper Criteria specified as per the Professional clearing members (Licensing and Operations) Regulations, 2020.
2. That(name of the institution)....., and the companies, firms, sole proprietorship etc. associated with(name of the institution)....., have no overdue payment to any financial institution.
3. That I hereby confirm that the statements made and the information given by me are correct and that there are no facts which have been concealed.

4. That(name of the institution)..... has no objection if the ..(name of applicant).., or the SECP requests or obtains information about(name of the institution)..... from any third party.

5. That I undertake, on; behalf of(name of the institution)..... that(name of the institution)..... will bring to the attention of the ... (name of applicant).... any matter which may potentially affect its status as sponsor of the ... (name of applicant).... as per the fit and proper criteria specified in the Professional clearing members (Licensing and Operations) Regulations, 2020.

6. That all the documents provided to(name of applicant).... are true copies of the originals and I have compared the copies with their respective originals and certify them to be true copies thereof.

C. In case of an individual as authorized person on behalf of applicant:

I, _____ son/daughter/wife of _____ adult, resident of _____ and holding CNIC/ Passport No. _____, on behalf of(name of the applicant)..... do hereby state on solemn affirmation as under:-

1. That(name of the applicant)..... is eligible for applying for licence as a professional clearing member as per the Professional clearing members (Licensing and Operations) Regulations, 2020.

2. That(name of the applicant)....., and the companies, firms, sole proprietorship etc. associated with(name of the applicant)....., have no overdue payment to any financial institution.

3. That I hereby confirm that the statements made and the information given by me are correct and that there are no facts which have been concealed.

4. That(name of the applicant)..... has no objection if the SECP requests or obtains information about(name of the applicant)..... from any third party.

5. That I undertake, on behalf of(name of the applicant)..... that(name of the applicant)..... will bring to the attention of the Commission any matter which may potentially affect its status as a professional clearing member as per the licencing conditions and fit and proper criteria specified in the Professional clearing members (Licensing and Operations) Regulations, 2020.

6. That all the documents provided by(name of applicant).... are true copies of the originals and I have compared the copies with their respective originals and certify them to be true copies thereof.

7. That the applicant will comply with any other condition as may be specified by the Commission.

DEPONENT

The Deponent is identified by me

Signature _____

ADVOCATE
(Name and Seal)

Solemnly affirmed before me on this _____ day of _____ at _____
by the Deponent above named who is identified to me by _____, Advocate,
who is known to me personally.

Signature _____
OATH COMMISSIONER FOR TAKING AFFIDAVIT

[File No. SY/SECP/8/13]


(Bilal Rasul)
Secretary to the Commission