

GOVERNMENT OF PAKISTAN
Securities and Exchange Commission of Pakistan

Islamabad 6th December, 2016

NOTIFICATION

SRO 1144 (I)/2016. The draft of Collateral Management and Warehousing (Establishment & Operations) Regulations, 2016, proposed to be made by the Securities and Exchange Commission of Pakistan in exercise of the powers conferred under section 512 read with section 457 of the Companies Ordinance, 2016 (VI of 2016), is hereby published for information of all the persons likely to be affected thereby and notice is hereby given that objections or suggestions, if any, received from any person in respect of the said draft within a period of fourteen days from the date of publication in the official Gazette, with subsequent placement of the draft regulations on the website of the Commission, shall be taken into consideration.

CHAPTER I

Preliminary

1. **Short title and commencement.** – (1) These regulations may be called Collateral Management and Warehousing (Establishment & Operations) Regulations, 2016.

(2) They shall come into force at once.

2. **Definitions.** - In these Regulations, unless the context otherwise requires,

- (a) "Act" means Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);
- (b) "certificate of accreditation" means the certificate of accreditation issued to a Warehouse by a Collateral Management Company under these regulations;
- (c) "Collateral Management Company" or "CMC" means any company established under the Ordinance to engage in the activity of managing Produce as collateral, including but not limited to the following-
 - (i) warehousing, i.e. provision of quality, storage and preservation services for a range of agricultural produce;
 - (ii) providing enabling arrangements for collateral commodity financing;
 - (iii) issuance of credible Warehouse receipts and other necessary arrangements for agricultural commodity financing; and

- (iv) stock audit, evaluation and verification services.
- (d) "Commission" means the Securities and Exchange Commission of Pakistan established under section 3 of the Act.
- (e) "depositor" means a person who delivers Produce to the Warehouse Operator for storage or transfer of ownership;
- (f) "electronic warehouse receipt" or "EWR" means an acknowledgment in electronic form issued in favour of the holder of the receipt by Collateral Management Company against deposit of specified Produce with the Warehouse as proof of title to the Produce held at the Warehouse;
- (g) "financial institution" shall have the same meaning as assigned to it in clause (31) of sub-section (1) of section 2 of the Ordinance;
- (h) "Ordinance" means Companies Ordinance, 2016;
- (i) "Pakistan Mercantile Exchange" or "PMEX" means Pakistan Mercantile Exchange duly licensed by the Commission;
- (j) "Produce" shall have the same meaning as assigned to it in clause (b) of Section 457 of the Ordinance.
- (k) "physical warehouse receipt" means a temporary receipt issued by a Collateral Management Company to a Depositor upon depositing Produce with the Warehouse, for the purpose of acknowledging the deposit until the issuance of the Electronic Warehouse Receipt to the Depositor;
- (l) "Warehouse" means any premises accredited by the Collateral Management Company to be used for the custody of Produce deposited by a person;
- (m) "Warehouse receipts" includes electronic receipts and physical warehouse receipt;
- (n) "Warehousing Guidelines" means the guidelines issued by the Collateral Management Company, with approval of the Commission, for compliance by all accredited Warehouses in relation to storage, warehousing management and supply chain/inventory maintenance and distribution standards of International Standards Organization (ISO);
- (o) "Warehouse operator" means any person responsible for managing Warehouses;
- (p) "Weight or Quantity" in relation to a specific Produce means such weight or quantity which is duly adjusted for the specified rate of

weight reduction due to moisture shrink during the period of storage in a Warehouse.

(2) Words and expressions used but not defined in these regulations shall, unless there is anything repugnant in the subject or context, have the same meaning as assigned to them in the Ordinance, the Act, the Securities Act, 2015 or the Futures Act, 2016.

CHAPTER II

Establishment and Licensing of Collateral Management Company

3. Incorporation of CMC- (1) No person shall operate or perform the activities of managing produce as collateral or any connected or related activities under the Ordinance unless-

- (a) its principal line of business relates to managing Produce as collateral or any connected or related activity;
- (b) it is incorporated as a public or private company under the provisions of the Ordinance; and
- (c) it has obtained a license from the Commission under these regulations.

4. Eligibility for Licensing. - (1) Subject to regulation 4, a Collateral Management Company shall obtain a license from the Commission to perform the activities of managing produce as collateral or any connected or related activities under the Ordinance or these regulation subject to the following conditions-

- (a) the company's sponsors, directors and key executives meet the fit and proper criteria as provided in Schedule I;
- (b) the company has a minimum equity of ten million rupees or such higher amount as may be specified by the Commission from time to time;
- (c) the company has necessary infrastructure including adequate office space, equipment, systems and technology;
- (d) the company has key management personnel and technical experts with relevant qualifications and experience in warehousing;
- (e) the company's chief executive possesses at least 5 years' experience in the business of warehousing;
- (f) The company shall appoint its directors and the chief executive officer with prior approval of the Commission

- (g) the company has affiliation with a recognized Collateral Management Company or regulated financial/capital market institution as acceptable to the Commission.

(2) The Commission may upon request by the Company, along with viable justification, may relax conditions referred to in clause (e) and (g) of sub-regulation (1).

5. **Application for Licensing of a Collateral Management Company.** - (1) subject to regulation 4, any person desirous of obtaining a license to perform the activities as a Collateral Management Company may make an application to the Commission in **Form A** along with following-

- (a) certificate of incorporation and Memorandum and Articles of Association;
- (b) list of names of sponsors, shareholders, directors and authorized signatory of the applicant, as the case maybe;
- (c) list of key officers and technical experts engaged and details of their qualifications and experience related to warehousing;
- (d) list of relevant technology systems in place;
- (e) five years' business development plan duly detailing how the company shall expand its network of accredited Warehouses to cover major agricultural producing areas in Pakistan;
- (f) statement of financial credibility in the form of latest audited financial statements, if available;
- (g) declaration that the applicant shall comply with the terms and conditions of the license; and
- (h) a non-refundable licensing fee of three-hundred-thousand rupees.

(2) The Commission, while considering the application for grant of license, may require the applicant to furnish such further information or clarification regarding its activities and businesses as it deems appropriate.

(3) Any subsequent change in the information provided to the Commission at the time of filing of application under sub-regulation (1) shall be intimated to the Commission within five working days from the date of such change.

(4) The applicant shall, if so required, appear before the Commission for a representation through an officer duly authorized for this purpose in writing by the board of directors of the applicant.

6. **Grant of License.**— (1) The Commission, while considering the application for granting a license made under sub-regulation (1) of regulation 5, shall *inter alia* take into account the following matters, namely: -

- (a) ability of the applicant to efficiently handle its functions under these regulations;
- (b) necessary infrastructure including but not limited to adequate office space, equipment, experienced manpower and technical aspects to effectively and efficiently discharge its responsibilities as a CMC;
- (c) earlier refusal, if any, by the Commission for registration of the applicant as a CMC;
- (d) conviction or involvement of its sponsors, directors or other key officers in an offence involving, fraud or breach of trust;
- (e) penal action against the applicant or its directors for an offence under the Ordinance and Act; and
- (f) any other matter as deemed necessary by the Commission.

(2) The Commission on being satisfied that the applicant is eligible may grant a license to the applicant in **Form 'B'**.

(3) The license shall remain valid for a period of three years from the date of grant of license unless it is restricted, suspended or cancelled earlier by the Commission.

7. **Renewal of License.**— (1) For renewal of its license a CMC shall, three months prior to the date of expiry of its license, apply to the Commission in **Form 'C'** providing therewith a receipt evidencing payment of a non-refundable renewal fee of amount one-hundred-thousand rupees and submit such documents as specified in Annexure "D".

(2) The Commission if satisfied that the applicant continues to meet the requirements of license and is eligible for renewal shall renew the license of CMC for three years and issue a license to the applicant **in Form 'D'**.

(3) Where the application for renewal of license is made within such time as specified in sub-regulation (1) but has not been decided by the Commission, the license shall continue to be valid until the application for renewal is decided by the Commission.

(4) While granting renewal of license to the CMC the Commission may, in addition to the criterion laid down for grant of license, also take into account the past performance of the CMC.

8. Procedure where License is not Granted or Renewed.— (1) The Commission, after giving a reasonable opportunity of being heard to the applicant, may refuse to grant or renew a license if in the opinion of the Commission such applicant does not fulfill the requirements as provided in the Ordinance and these regulations or where the Commission, after taking into account the facts, is of the view that it is not in the public interest or in the interest of the financial services market to grant or renew such license.

(2) A CMC whose application for renewal of license is refused under sub-regulation (1) shall, from the date of receipt of the decision of the Commission, cease its activities as a CMC.

(3) A CMC whose application for renewal of license is refused shall intimate all its members of this fact within a period of fourteen days from the date of receipt of such decision of the Commission.

CHAPTER III

DUTIES AND RESPONSIBILITIES OF COLLATERAL MANAGEMENT COMPANY

- 9. Duties of a Collateral Management Company-** (1) Every CMC shall –
- (a) ensure that its Board of directors and the chief executive are appointed with prior approval of the Commission;
 - (b) ensure that key officers fulfill the fit and proper criteria as provided in these regulations;
 - (c) maintain the eligibility criteria provided in regulation 4 and notify to the Commission immediately if it ceases to fulfill any of the conditions provided in these regulations;
 - (d) maintain high standard of integrity and fairness in discharging its functions and its dealing with other persons with whom they have agreed in writing to render services as CMC;
 - (e) fulfill its obligations in a fair, efficient, transparent and ethical manner;
 - (f) act with due skill, care and diligence in performing all its functions and discharging all its obligations and responsibilities;
 - (g) upon obtaining a license, display such license, in a conspicuous place, in the principal place of its business;

- (h) have its own inspection arrangements or a list of third party examiners responsible for the inspection of the Warehouses for the purpose of accreditation or annual inspection;
- (i) have a list of approved third party assayers, who shall verify and grade the commodity stored at their accredited Warehouses;
- (j) accredit a Warehouse, subject to the following conditions and requirements-
 - (i) the Warehouse operator has submitted proof of ownership or registered-lease deed or rent agreement, along with disclaimer from owner of the Warehouse/property providing waiver of ownership regarding Produce stored in such Warehouse, in case of leased or rented Warehouse;
 - (ii) the Warehouse is suitable with respect to the kind of Produce being stored;
 - (iii) the Warehouse is equipped with all the necessary equipment and apparatus including but not limited to drying, weighing, handling, sampling, grading, firefighting, circulation of stock, alternative power source, and insect/pest management;
 - (iv) the Warehouse operator has financial capability, and adequate trained staff with expertise and knowledge for the storage of Produce in the Warehouse;
 - (v) the Warehouse has an efficient system for loading/unloading of Produce including proper mechanism for segregation of different kinds/quality of produce;
 - (vi) the Warehouse has adequate security arrangements and is located in a place which is accessible and is not excessively prone to natural disasters;
 - (vii) the Warehouse is comprehensively insured for incidents including but not limited to natural disaster, fire, and theft;
 - (viii) the Warehouse is free from litigation or other claims and has provided no objection certificate from local government;
 - (ix) the Warehouse Operator is a reputable member of the community, has no criminal convictions, has not defaulted on his financial obligations, has not been convicted of fraud by

the court of law, is competent and has control over the operations of the Warehouse;

- (x) the Warehouse Operator has submitted an affidavit that he is responsible for ensuring maintenance of quantity, weight and quality of Produce that is stored for the Depositor;
 - (xi) the Warehouse is electronically connected with CMC, which in turn has a linkup with PMEX; and
 - (xii) upon accrediting a Warehouse, the CMC shall forthwith inform the Commission and shall share the copy of accreditation, along with location, capacity, kind of Produce the Warehouse is suitable for storing, and other relevant information;
- (k) maintain records and documents in respect of accredited Warehouses;
 - (l) issue credible Warehouse receipts against Produce stored in the Warehouse;
 - (m) make an initial assessment report at the time of accrediting a Warehouse as well as annual assessment report in relation to each Warehouse accredited, and maintain a copy thereof for a minimum period of 5 years;
 - (n) maintain a register of accredited Warehouses and publish the list on its website;
 - (o) submit a monthly report to the Commission about details of Warehouses accredited and inspections carried out; and
 - (p) allow and assist the Commission to inspect its office(s), accounts, books, records and documents, and its accredited Warehouses at any time.

10. Maintenance of Books of Accounts and Record by CMC. — (1) Every CMC shall properly maintain the following records, namely: -

- (a) list of all the applications received for accreditation;
- (b) list of all the rejected applications and reasons of rejection thereof;
- (c) list of all accredited warehouses along with criteria, procedure and basis of issuance of accreditation;

(d) all the record relating to the depositors' and investors' complaints, if any;

(e) such other record as may be required by the Commission.

(2) Every CMC shall ensure that the record referred to in sub-regulation (1) is maintained and preserved in good order for a period of at least ten years.

(3) Every CMC shall-

(a) ensure that the record is kept at such a place and maintained in such a manner that it is easily accessible; and

(b) establish a record-retention-policy which shall ensure that all relevant legal and regulatory requirements are complied with.

CHAPTER IV

ACCREDITATION OF WAREHOUSES

11. Accreditation of Warehouse. - (1) A CMC may grant certificate of accreditation to a Warehouse, subject to the fulfillment of following conditions or requirements, namely:-

(a) CMC shall prepare internationally compliant warehousing guidelines and standard operating procedures for the accreditation, management and inspection of Warehouses and have the same approved by the Commission;

(b) CMC shall appoint one or more examiners to undertake an inspection of the Warehouse to ensure that all the conditions as stipulated in 9(1)(i) for accreditation have been fulfilled:-

Provided that the CMC shall appoint third party examiners for inspection of its own Warehouse(s).

(c) CMC, shall ensure that the examiners-

(i) are competent to undertake evaluation for accreditation of Warehouses;

(ii) shall not conduct the annual inspection of the same Warehouse, within a two years' period after accreditation, which has been inspected by them for the purpose of accreditation, however, they may carry out any follow up inspection of the same Warehouse to ascertain the implementation status of previous directions and recommendations;

(iii) have conducted the inspection in a fair and transparent manner;
and

(d) Warehouse shall have warehouse operator who will manage and operate the Warehouse to the satisfaction of the CMC; and

(e) Warehouse shall have proper books of accounts and other record and documents.

(2) On the complete satisfaction of all the conditions for accreditation, the CMC shall grant a certificate of accreditation to the Warehouse.

(3) The CMC shall appoint one or more persons as examiners to undertake an inspection of the condition of an accredited Warehouse and the inspection shall include, but not limited to, review of books of accounts, other records and documents of the Warehouse once every twelve months after the grant of accreditation certificate:

Provided that such inspections shall be carried out by examiners who had not earlier inspected the Warehouse for accreditation purposes.

12. Cancellation of Certificate of Accreditation. - (1) In the event a CMC upon undertaking a periodic inspection determines that the Warehouse Operator or Warehouse is not complying with the requirements of certificate of accreditation, it shall cancel the accreditation and record the same in its periodic inspection report and shall immediately inform of its decision to cancel and the grounds thereof to the Commission, PMEX and relevant financial institution(s).

(2) In the event of cancellation of certificate of accreditation of a Warehouse, the Produce stored therein, against which a Warehouse Receipt has been issued, shall be transferred to another accredited Warehouse by a CMC within a period of seven working days.

(3) The Collateral Management Company shall submit a copy of its inspection report as well as its decision to cancel the certificate of accreditation in respect of a Warehouse to the Commission not later than five working days from the date of such decision.

(4) Upon cancellation of accreditation of a Warehouse, the CMC shall inform the financial institution(s) that have provided financing against produce stored in such warehouse and shall publish the same on its website immediately.

13. Cancellation of Accreditation by the Commission. - (I) The Commission may cancel the certificate of accreditation granted to a Warehouse by CMC under these Regulations if, -

(a) the Warehouse Operator files an application for insolvency;

(b) the Warehouse Operator has lost control of the Warehouse or has ceased to conduct the business of warehousing;

- (c) the Warehouse Operator commits any fraudulent act;
- (d) the Warehouse Operator has in any other manner become incompetent to conduct the business of warehousing;
- (e) the Warehouse Operator has not permitted regular audit and random inspection by the Collateral Management Company; and
- (f) the Warehouse Operator fails to comply with any of the conditions of accreditation or any provision of these Regulations.

(2) Before passing an order of cancellation of accreditation, the Commission shall give an opportunity of hearing to the Warehouse operator.

CHAPTER V DUTIES OF A WAREHOUSE OPERATOR

14. Reasonable care of the Produce deposited/sold/transferred. - Every Warehouse Operator shall exercise prudence in taking care of the Produce deposited/sold/transferred including necessary insurance/takaful arrangements.

15. Precautions against damage or harm to Produce. - (1) Every Warehouse Operator shall keep his Warehouse clean and free from dampness and take all necessary precautions against pests, etc.

(2) No Warehouse Operator shall accept Produce for deposit which is likely to cause damage to other Produce which is or may be deposited in such Warehouse.

16. Preservation of identity of Produce.- Every Warehouse Operator shall keep the Produce of one depositor/seller/transferor separate from the Produce of other depositors/sellers/transferors and from other Produce of the same depositor/seller/transferor for which a separate receipt has been issued, in such a manner so as to permit, at all times, the identification and delivery of the Produce deposited/sold/transferred against the related Warehouse Receipt, duly accounting for the specified weight reduction percentage due to moisture shrink.

Provided that where standardized and graded Produce are stored in a Warehouse, the same variety of Produce belonging to different depositors/seller/transferor may be pooled together and each depositor/seller/transferor shall be entitled only to his portion of the Produce according to weight or quantity, as the case may be, as shown in the Warehouse Receipt.

17. Produce deteriorating in Warehouse and its disposal.- (1) Whenever Produce deposited/sold/transferred in a Warehouse deteriorates from causes beyond the control of the Warehouse operator, the Warehouse Operator shall forthwith give notice of such deterioration to the CMC, which in turn may require the depositor/seller/transferor or the Financial Institution in case such Financial Institution is providing financing against such

Produce, to take delivery of the Produce immediately, after surrendering the receipt duly discharged and paying all charges due to the CMC.

(2) If the depositor or the Financial Institution does not comply with a notice given under sub-section (1) within one week, the CMC may cause the Produce to be removed from the Warehouse and sold by public auction at the cost and risk of the depositor/seller/transferor. The proceed realized from such auction shall be transferred to the depositor/seller/transferor after honoring claims of Financial Institution, Warehouse and CMC, as the case maybe.

18. Delivery of Produce. - Every Warehouse operator, in the absence of reasonable excuse, shall, without unnecessary delay, deliver the Produce deposited in his Warehouse without deterioration to the depositor/seller/transferor on demand made by the CMC and surrender of the receipt duly discharged and payment of all charges due to the CMC.

19. Excess in Produce stored. - If there is any excess in the Produce stored/sold/transferred in a Warehouse by absorption of moisture or other causes beyond the control of the Warehouse Operator, the Warehouse Operator shall not be entitled thereto.

20. Insurance of Produce in a Warehouse. - (1) A Warehouse Operator shall be responsible to maintain the quality, quantity and weight of the Produce of the depositor and shall insure the Produce stored in his Warehouse.

(2) In case of financing provided by a Financial Institution against an Electronic Warehouse Receipt, the liabilities of such Financial Institution shall be discharged first before the claim of the depositor or the Warehouse in circumstances part or whole Produce is destroyed.

21. Lien of Warehouse Operator on Produce: - (1) Subject to the rights of the Lender, every Warehouse Operator has a lien on goods deposited with him for storage by the depositor/seller/transferor.

(2) The lien of the Warehouse Operator is for the amount of the storage and maintenance charges including –

- (a) all lawful charges for storage and preservation of the Produce;
- (b) all reasonable charges for:
 - (i) any notice required to be given under the provisions of these regulations;
 - (ii) notice and advertisement of sale;
 - (iii) sale of goods where default is made in satisfying the lien of the Warehouse Operator; and

(iv) compliance of statutory provisions.

22. Warehouse Operator not to deal in or lending/financing against Produce in Warehouse. - Notwithstanding anything contained in any other law, no Warehouse Operator shall either on his own account or that of others, deal in, or lend money or finance on Produce received by him for deposit/custody on behalf of owners/transferor of Produce in his Warehouse.

23. Transfer of Produce. - Transfer of Produce from Warehouse to any other location will always require NOC from CMC and a Financial Institution, if relevant and in case the license of such CMC has been cancelled by the Commission, the direction of the Commission shall prevail.

24. Accounts and books to be maintained by Warehouse Operator. - A Warehouse Operator shall maintain accounts, books and records and shall have IT systems in place that will ensure effective functioning of commodity trading.

25. Obligations towards the Collateral Management Company. - A Warehouse Operator shall, in connection with the inspection, allow the CMC to have access to its premises and extend full cooperation for examining any books, accounts, records, and Produce in the custody of the Warehouse.

CHAPTER VI

WAREHOUSE RECEIPTS

26. Receipt to be issued: - (1) Against the Produce deposited in the Warehouse by each depositor, the CMC shall immediately issue a Physical Warehouse Receipt, which shall contain full particulars of the Produce, as specified under Regulation 28(2) along with the name of the Warehouse Operator and the expiry date of receipt.

(2) The Physical Warehouse Receipt shall be temporary and remain valid only until the Depositor surrenders it to CMC for its cancellation, whereupon the CMC will issue an Electronic Warehouse Receipt to the Depositor, which shall simultaneously be entered into the system by CMC in favor of the holder of the receipt:

Provided that the details contained in the Physical Warehouse Receipt must match the contents of the Electronic Warehouse Receipt.

27. Transferability of EWR. - The EWR issued by a Collateral Management Company shall be transferable only upon endorsement of such CMC and shall entitle the lawful holder thereof to receive the Produce specified in it on the same terms and conditions as the original depositor/owner/seller/transferor.

28. Standardization and issuance of Warehouse Receipts: - (1) The CMC shall be the repository of the Electronic Warehouse Receipt books, and shall control and maintain the records of such Warehouse receipt book.

(2) The Warehouse receipt shall contain all the following particulars, namely:-

- (a) receipt number;
- (b) Warehouse registration number and date up to which it is valid;
- (c) name of the Warehouse and its complete postal address;
- (d) name and address of the person by whom or on whose behalf the goods are deposited;
- (e) date of issue of the Electronic Warehouse Receipt;
- (f) statement that the goods received shall be delivered to the holder thereof;
- (g) storage charges and handling charges;
- (h) description of the goods or of the packages containing them with particulars of quantity and quality or grade;
- (i) market value of the goods at the time of deposit;
- (j) private marks of Depositor on the goods or packages, if any, except in the case of fungible goods;
- (k) name of the insurance company indemnifying for fire, flood, theft, burglary, misappropriation, riots, strikes or terrorism;
- (l) statement of the amount of any advance made and of any liability incurred for which the Warehouse Operator claims his lien;
- (m) date and signature of the Warehouse Operator or his authorized agent;
- (n) declared shelf-life of goods;
- (o) the fact that the Warehouse Operator holds the lien on the goods deposited for his storage and handling charges; and
- (p) that the receipt would be valid only till the date of expiry of declared shelf-life of the goods for which it is issued.

(3) In case a CMC willfully omits from an Electronic Warehouse Receipt any of the particulars set out in sub-regulation (2), it shall be liable for damages caused by such omission.

(4) No Electronic Warehouse Receipt shall, by reason of the omission only of any of the particulars set-forth in sub-regulation (2), be deemed to be invalid for the purpose of settlement of disputes or claims.

(5) CMC may, with the prior approval of the Commission, add, delete or modify any particulars as specified in sub-regulation (2) for all or any Produce or for any class of Warehouses.

(6) The Warehouse receipt issued by a CMC under these regulations, shall be in a standard format, size and font as approved by the Commission.

(7) Each Electronic Warehouse Receipt book and each Electronic Warehouse Receipt therein shall be allocated a serial number, which shall be duly noted in a separate register by the CMC.

29. Maintenance of record of Warehouse Receipts. - (1) The CMC shall maintain a record of, -

- (a) total number and value of the Warehouse Receipts issued;
- (b) date of issuance of the Electronic Warehouse Receipt;
- (c) date of expiry of the Electronic Warehouse Receipt issued;
- (d) the commodities for which the Electronic Warehouse Receipt has been issued;
- (e) the quality and quantity of the commodities as specified in the electronic Warehouse receipt;
- (f) any Warehouse receipt that has been surrendered to the CMC by a depositor;
- (g) any Electronic Warehouse Receipt that has been cancelled by the CMC;
- (h) any transaction that has been carried out on the Electronic Warehouse Receipt: and
- (i) any other information prescribed or sought by the Commission.

(2) The CMC shall submit a summary of total number of Electronic Warehouse Receipts issued commodity-wise, along with the total value of the relevant Produce, on monthly basis to the Commission.

(3) The CMC shall inform the Commission immediately of any loss, damage or destruction of any record or report in relation to the Electronic Warehouse Receipts.

30. Financing, Ownership and Collateral Management in respect of Produce. -

(1) The CMC may make necessary arrangement for provision of financing against the Produce including the matters concerning the collateral management of such financing/ownership in accordance with such terms and conditions as may be provided by the CMC with the prior approval of the Commission.

(2) The CMC may, from time to time, amend, modify, alter, rescind or substitute the terms and conditions referred to in sub-regulation (1) with the prior approval of the Commission.

CHAPTER VII

DISCIPLINARY PROCEEDINGS

31. Restriction or suspension of License.—(1) Where a CMC contravenes or fails to comply with any provision of these regulations or is not in compliance with the conditions of license or any directive issued or order passed by the Commission, the Commission may, after providing a reasonable opportunity of representation to the CMC, impose-

- (a) a restriction on its activities as CMC or suspend its license; and
- (b) penalties provided under sub-section (2) of section 512 of the Ordinance.

(2) A CMC whose license has been suspended shall not act as, or perform activities as a CMC during the period of suspension and remove the cause of suspension within a period of one hundred and twenty days from the receipt of the suspension order or such earlier period as specified in the order of suspension.

(3) The Commission while restricting or suspending the license of a CMC may impose such conditions, as it deems appropriate.

32. Cancellation of License.— (1) The Commission, after providing to a CMC a reasonable opportunity of being heard, may cancel the license of a CMC, if-

- (a) in the opinion of the Commission a CMC has been in violation of any provision of these regulations or restriction imposed under sub-regulation (1) of regulation 31; or
- (b) it is found guilty of fraud or any criminal offence of moral turpitude; or
- (c) its license has been suspended and the causes of suspension have not been removed within one hundred and twenty days from the receipt of suspension order or such earlier period as specified in the order of suspension; or
- (d) it has in any other manner become incompetent to carry out its functions as required under these Regulations.

(2) The Commission while cancelling the license of a CMC may take such measures and issue such directions as it deems appropriate as are not inconsistent with the Act and Ordinance.

- (3) The license of a CMC shall stand automatically cancelled if such CMC-
- (a) voluntarily surrenders its license to the Commission; or
 - (b) is wound up by an order passed by a court of competent jurisdiction; or

(4) Notwithstanding anything contained in sub-regulation (1), where the Commission is satisfied that a delay in the cancellation of license of the CMC will be detrimental to the interest of depositors or the public in general, the Commission may immediately cancel the license of the CMC till the time an opportunity of being heard is provided to the CMC and final order is passed:

Provided that where the Commission cancels the license under sub-regulation (4), the opportunity of being heard and final order must be passed within ninety days of such cancellation.

(5) Upon cancellation of license, the CMC shall with immediate effect cease its business as a CMC and transfer all the necessary record to another CMC with the prior approval of the Commission.

(6) A CMC whose license has been cancelled shall fulfill its obligations in relation to any accreditation activity pending, inter alia, furnishing of reports, submission of documents etc.

33. Dissemination of information of cancellation of license. – Upon cancellation of license of CMC, the Commission shall publish the said information in widely circulated English and Urdu newspapers, along with the rationale for the said decision, and the order shall also be placed by PMEX on its website:

Provided that in case of suspension or cancellation, the Electronic Warehouse Receipt issued by a CMC, whose license has been suspended or cancelled, shall be honored by such CMC, provided that such Electronic Warehouse Receipts are bonafide. However, such CMC shall not issue any more Warehouse receipts till its suspension has been removed. Moreover, all the bonafide Warehouse Operators and their relevant Warehouses, that meet the criteria of these regulations and accredited by such CMC, shall be eligible to operate normally subject to the condition that they shall have them self-accredited by another registered CMC within a period of six months.

CHAPTER VIII

MISCELLANEOUS

34. Power to Conduct Inspections. – Notwithstanding anything contained in the provisions herein above, the Commission shall have the power to carry out inspections of the Collateral Management Company, Warehouses and any matter connected with the collateral management and warehousing business.

35. Power of the Commission to issue Directions. - (1) Where the Commission is satisfied that it is necessary and expedient so to do in the public interest or to prevent the affairs of any CMC or operations of any Warehouse that are likely to prejudice the interests of the stakeholders, the Commission may issue directions to the CMC or Warehouse operator.

(2) The Commission may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-regulation (1), and in so modifying or canceling any direction may impose such conditions as it deems fit.

Schedule I
[See regulation 4(1)(a)]

FIT AND PROPER CRITERIA

DEFINITIONS

"Key Executive" means key executives of the Collateral Management Company and includes, inter alia, the persons discharging the following functional responsibilities, -

- a. Any executive, officer acting as second to chief executive officer including chief operating officer or by whatever name called;
- b. any person responsible for heading any specific licensed form of business
- c. chief financial officer, head of accounts or head of finance;
- d. head of internal audit;
- e. head of information technology;
- f. head of risk management;
- g. head of human resource;
- h. head of operations;
- i. head of inspections;
- j. head of marketing/sales;
- k. head of law, company secretary or compliance officer; and
- l. any other functional responsibility which the Commission may include.

APPLICATION AND SCOPE

(1) The Fit and Proper Criteria in relation to a Collateral Management Company is applicable to the following persons:

- (i) promoters and major shareholders of the collateral management company;
- (ii) director of the collateral management company;
- (iii) chief executive of the collateral management company;

(iv) Key Executives of the collateral management company;

(2) A proposed director or chief executive of the Collateral Management Company shall not assume the charge of office until their appointment has been approved by the Commission.

(3) The application for seeking approval of the Commission under clause 4(1)(f) shall be submitted by the Collateral Management Company along with the requisite information required under Annexure "A" and an Affidavit as specified in Annexure "B".

(4) The appointment of Key Executives of a Collateral Management Company does not require the approval of the Commission; however, a Collateral Management Company shall ensure at the time of appointing a Key Executive that such person qualifies the Fit and Proper Criteria by submitting information as specified in Annexure "C".

(5) The fitness and propriety of any person shall be assessed by taking into account all the relevant factors including but not limited to the following:

- (a) Integrity and track record of such person;
- (b) Financial soundness of such a person;
- (c) Competence and capability of the person; and
- (d) Conflict of interest of such person with the business of the collateral management Company.

Provided that 5(c) may not be considered while assessing the fitness & propriety of promoters and major shareholder of the collateral management Company.

Provided further that in case the sponsor and major shareholder is a body corporate, in addition to the relevant/ applicable clauses, corporate behavior of the said body corporate and its sponsors shall be duly considered.

(6) The Fit and Proper Criteria is perpetual in nature and a Collateral Management Company shall ensure compliance with the provisions of Fit and Proper Criteria.

(7) The Collateral Management Company shall within 30 days of the close of each calendar year submit the following documents with regard to its chief executive and directors:

- (a) CIB reports of the chief executive and directors and the companies, firms, sole proprietorships, etc. where they are acting as directors, chief executives, partners or sponsors; and
- (b) Latest tax returns.

(8) All persons subject to Fit and Proper Criteria shall report any change with reference to their fitness and propriety to the respective Collateral Management Company within three business days of such change taking effect and Collateral Management Company shall within a period of seven business days from the date of receipt, report the same to the Commission.

(9) Collateral Management Company shall monitor whether any change in the status of its chief executive, directors and key executives is contrary to the requirements of the Fit and Proper Criteria. In case of any change in status result in non-compliance with the Fit and Proper Criteria, the Collateral Management Company shall immediately stop the person

from performing his assigned functions, informs the Commission and initiate the process for replacement of the individual with a fit and proper individual.

(10) Any violations or circumvention of the Fit and Proper Criteria shall be dealt with under the provisions of the Ordinance.

ASSESSMENT OF FITNESS AND PROPRIETY

(a) Integrity and Track Record

A person shall not be considered Fit and Proper if he:

- (i) has been convicted of an offence involving moral turpitude;
- (ii) has been involved in the mismanagement of investments, financial or business misconduct, fraud etcetera;
- (iii) has been the subject to adverse findings, after conducting an inquiry, by the Commission or any other regulatory or professional body or government agency;
- (iv) has been actively involved in the management of a company or firm whose registration or license has been revoked or cancelled or which has gone into liquidation or other similar proceedings due to mismanagement of affairs, financial misconduct or malpractices;
- (v) is ineligible, under the Ordinance or any other legislation or regulation, from acting as a director or serving in a managerial capacity of a Collateral Management Company or a company;
- (vi) has entered into a plea bargain arrangement with the National Accountability Bureau; and
- (vii) in case of promoters or major shareholder of collateral management company, does not have the requisite disclosed and verifiable financial resources.

(b) Financial soundness

In determining a person's financial soundness, the following shall be considered:

- (i) whether such person's financial statements or record including wealth statements or income tax returns or assessment orders are available;
- (ii) whether the person has been declared by a court of competent jurisdiction as defaulter in repayment of loan to a financial institution;
- (iii) whether any instance of overdue payments or default to a Financial Institution or write-offs by a Financial Institution are appearing in the latest Credit Information Bureau report of the person and of the companies, firms, sole proprietorships etc. where the person was a chief executive, director (major shareholder/ sponsor), partner, owner etc.
- (iv) whether the person has applied to be adjudicated as an insolvent and his application is pending;
- (v) whether the person is an un-discharged insolvent; and

(vi) whether the person has been declared a defaulter by a stock exchange or futures exchange.

(c) Competence and Capability

In determining a person's competence and capability the following shall be considered:

- (i) the directors should be individuals having management or business experience of at least five years at a senior level;
- (ii) the directors shall have experience and knowledge in any profession such as finance, accounting, marketing, trading, agriculture, etc.;
- (iii) the chief executive should have a minimum experience of five years in a senior management position;
- (iv) the chief executive should have demonstrated, through his qualification and experience, the capacity to successfully undertake the cognate responsibilities of the position; and
- (v) the key officers must be qualified professionals possessing relevant experience and certification relating to the job or assignment.

(d) Conflict of interest

The directors or chief executive of Collateral Management Company shall not be a director in any other Collateral Management Company engaged in a similar business in Pakistan.

Provided that this condition shall not apply to nominees of the Federal or Provincial Governments on the board of any collateral management company;

- (a) Information to be provided by promoters, major shareholders (other than a body corporate), proposed directors and proposed chief executive of the Collateral Management Company

1.	Curriculum Vitae/Resume containing:
a	Name: (former name if any):
b	Father's or Husband Name:
c	C.N.I.C # / Passport # (In case of foreign nationals) –(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: (Attach copy) (In case of CEO, HEC verification of all degrees)
	ii) Professional: (Attach copy)
k	Trainings
l	Experience: Position held during the last ten years (along with name and address of company/institution/ body where appointment held, nature of the company/institution/body and dates of appointment). In case of CEO, verification of antecedents from all the previous employers.
2.	<p>Status of directorship Shareholder <input type="checkbox"/> Nominee</p> <p><input type="checkbox"/></p> <p>Name of the shareholders/ Group of shareholders he is representing</p> <p>Nature of directorship Executive <input type="checkbox"/></p> <p>Non-executive <input type="checkbox"/></p> <p>Independent <input type="checkbox"/> Non-independent</p> <p><input type="checkbox"/></p> <p>Number of shares subscribed or held _____</p> <p>Personal net worth (copy of wealth statement) _____</p>
3.	Names of companies, firms, sole proprietorships and other organizations of which the proposed person is a chief executive, director, partner, sponsor, office holder or major shareholder.
4.	(1) CIB report issued by SBP for the companies, firms, sole proprietorships, etc. where the applicant is/was a director (sponsor or major shareholder), chief executive, partner or owner (attach original CIB reports)

	<p>(2) An undertaking providing details of the following:</p> <ol style="list-style-type: none"> I. Any write off availed from any Financial Institution during the last five years II. Any default of Finance obtained from any Financial Institution during the last five years. III. Placement on ECL during the last five years IV. Any conviction from any Court of Law or any plea bargain with NAB during the last ten years V. Any write off or default by any related or affiliated person or by any company on whom the applicant or anyone closely related to him had an interest as sponsor, major shareholder, director, chief executive, key executives, etc. during the last five years
5.	In the case of appointment of directors the date of board of directors' meeting in which the appointment of proposed director was approved. (Attach copy of the minutes of the meeting of the board of directors. If the director is elected, then attach a copy of the minutes of the general meeting of the company.)
6.	Names of persons on the board of the Collateral Management Company who are related to the applicant.

Signature _____

*use additional sheets if required

(b) Information to be provided by a body corporate as promoters and major shareholders of the collateral management company:

1. Financial statements for the last three years;
2. Details of business places;
3. Shareholding details;
4. CIB report of the company and its directors and sponsors;
5. Details of any write off availed from any Financial Institution during the last five years
6. Details of any default of Finance obtained from any Financial Institution during the last five years.
7. Details of any rescheduling of Finance obtained from any Financial Institution during the last five years.
8. Any substantial adverse verdicts against the Company from any Court of Law during the last ten years
9. Details of associated companies and subsidiaries;
10. Details of any exiting or potential litigation in the name of the company, its sponsors and directors;
11. Details of any inquiry, investigation conducted by the Commission or any other regulatory or professional body or government agency during the last five years; and
12. Any other information as may be required by the Commission.

Affidavit
Before the Securities and Exchange Commission of Pakistan

(On Stamp Paper of Appropriate Value)

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 for the position of _____ according to the Fit and Proper Criteria for the position of _____, annexed to the Collateral Management and Warehousing Regulations, 2016.
2. That I hereby confirm that the statements made, undertakings provided and the information given by me including that required under Schedule I is correct and that there are no facts which have been concealed.
3. That I have no objection if the Securities and Exchange Commission of Pakistan requests or obtains information about me from any third party.
4. That I undertake to bring to the attention of the Securities Exchange Commission of Pakistan any matter which may potentially affect my status for the position of _____ as per the Fit and Proper Criteria annexed to the Collateral Management and Warehousing Regulations, 2016.
5. That all the documents provided to Securities Exchange Commission of Pakistan are true copies of the originals and I have compared the copies with their respective originals and certify them to be true copies thereof.

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
(Name and Seal)

Information to be provided by key executives of the Collateral Management Company

1. Position and Grade held by the Officer
2. Date of assumption of current position (dd/mm/yyyy)
3. Curriculum Vitae/ Resume containing:
 - a) Name (Former name, if any)
 - b) Father or husband name
 - c) CNIC # / Passport # (In case of foreign nationals)
 - d) Nationality
 - e) Age
 - f) Contact details
 - i. Residential address
 - ii. Business address
 - iii. Telephone
 - iv. Mobile
 - v. Fax
 - vi. Email
 - g) National tax number
 - h) Education
 - i. Academic qualification (HEC verification of all degrees)
 - ii. Professional qualification
 - i) Trainings
4. Previous Employment(s)
5. Latest photograph
6. Has the executive ever been convicted of any offence? If yes, please provide details
7. Has the executive ever been censured or penalized by any financial regulator (local or foreign)? If yes please give details
8. Has the executive ever been dismissed from employment? If yes please give details
9. An undertaking providing details of the following:
 - i. Any write off availed from any Financial Institution during the last five years
 - ii. Any default of Finance obtained from any Financial Institution during the last five years.
 - iii. Placement on ECL during the last five years
 - iv. Any conviction from any Court of Law and plea bargain with NAB during the last ten years

(Signature of the concerned official)**(Signature and Stamp of Employer)**

Information to be provided by the Collateral Management Company for Renewal of License

1. list of names of sponsors, shareholders, and directors of the applicant, as the case maybe;
2. list of key officers and technical experts engaged and details of their qualifications and experience related to collateral management and/or warehousing;
3. list of relevant technology systems in place;
4. latest audited financial statements;
5. declaration that the applicant shall comply with the terms and conditions of the license;
6. detail of non-compliance, if any, by the collateral management company and the warehouse accredited by such CMC, with any provision of the Collateral Management and Warehousing (Establishment and Operations) Regulation, 2016 and any other relevant Laws and reasons thereof;
7. list, location, name of warehouse operators and specifications of warehouses accredited by CMC;
8. details of any exiting or potential litigation in the name of the company, its sponsors and directors;
9. details of any inquiry, investigation conducted by the Commission or any other regulatory or professional body or government agency;
10. detail of complaints against collateral management company and warehouse accredited by such CMC, during the last three years, along with steps taken for the resolution; and
11. any other information as may be required by the Commission.

FORM-A

[See regulation 5 (1)]

**FORM FOR PERMISSION TO APPLY FOR
LICENSE OF A COLLATERAL MANAGEMENT COMPANY**

The Securities and Exchange Commission of Pakistan,
Islamabad.

Dear Sir,

I/We hereby apply for permission under regulation 5 of the Collateral Management and Warehousing (Establishment & Operations) Regulations, 2016 to apply for License of a Collateral Management Company under the name and style of _____.

2. Original receipt of the treasury/bank for the fee of Rs. _____ being the processing fee is enclosed.
3. Necessary information and documents as required by regulation 5(1) are duly verified and signed by all members along with an affidavit by them as to the correctness of details is submitted.
4. I/We undertake to keep the information up to date at all times and any change thereof shall be communicated to the Securities and Exchange Commission of Pakistan.

Yours faithfully,

Names of Member

Signature of the Member

FORM-B

[See regulation 6(2)]

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

LICENSE

COLLATERAL MANAGEMENT COMPANY

The Securities and Exchange Commission of Pakistan, having considered the application made for licensing under regulation 5 of the Collateral Management and Warehousing (Establishment & Operations) Regulations, 2016 by (Name of the Company) and being satisfied that the said company is eligible for License and that it would be in public interest and in the interest of the commodity market so to do, hereby grants, in exercise of the powers conferred by regulation 5 of the Collateral Management and Warehousing (Establishment & Operations) Regulations, 2016 grant license to _____ subject to the conditions prescribed under the Collateral Management and Warehousing (Establishment & Operations) Regulations, 2016 or as may be specified or imposed hereafter by the Commission.

2. The license number of the Collateral Management Company is _____.
3. This license is valid up to _____.

Dated: _____

Place: ISLAMABAD

By order

Sd/-

For and on behalf of

THE SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

FORM-C
[See regulation 7(1)]

FORM OF APPLICATION FOR RENEWAL OF LICENSE
AS A COLLATERAL MANAGEMENT COMPANY

The Securities and Exchange Commission of Pakistan,
Islamabad.

Dear Sir,

I/We hereby apply for the renewal of the license of (Name of the Collateral Management Company) under regulation 7 of the Collateral Management and Warehousing (Establishment & Operations) Regulations, 2016.

2. Necessary information and documents as required by Annexure D duly verified and signed by all members along with an affidavit by them as to the correctness of details is submitted.
3. The license is due to expire on _____.
4. Original receipt of the treasury/bank for the fee of Rs. _____ being the renewal fee is enclosed.
5. It is requested that the license be renewed.

Yours faithfully,

Signature of the Chief Executive

FORM-D

[See regulation 7(2)]

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

RENEWAL OF LICENCE

COLLATERAL MANAGEMENT COMPANY

The Securities and Exchange Commission of Pakistan having considered the application for renewal of license under regulation 7 of the Collateral Management and Warehousing (Establishment & Operations) Regulations, 2016 by (Name of the Collateral Management Company) and being satisfied that it would be in public interest and in the interest of the commodity market to renew the licence of (Name of the Collateral Management Company) hereby grants, in exercise of the powers conferred by regulation 7 of the Collateral Management and Warehousing (Establishment & Operations) Regulations, 2016, renewal of licensing to the said company subject to the conditions prescribed under the Collateral Management and Warehousing (Establishment & Operations) Regulations, 2016 or as may be specified or imposed hereafter by the Commission.

2. This License is valid up to _____.

Dated: _____

Place: ISLAMABAD

By order

Sd/-

For and on behalf of

THE SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN



(Bilal Rasool)

Secretary to the Commission