

Extract of Fit and Proper Requirement from the Regulations

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

Regulation 19 – Eligibility for acquiring or holding shares

(1) No person shall, directly or indirectly, acquire or hold any equity shares or voting rights of a recognised stock exchange or recognized clearing corporation unless he is a fit and proper person:

Provided that the onus shall be on the recognised stock exchange/ recognised clearing corporation to ensure that all its shareholders are fit and proper persons:

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

(3) A person eligible to acquire or hold more than five per cent of the paid up equity share capital under sub-regulation (2) and (3) of regulation 17 and sub-regulation (2) and (3) of regulation 18 may acquire or hold more than five per cent of the paid up equity share capital of a recognised stock exchange or a recognised clearing corporation only if he has obtained prior approval of the Board.

(4) The application for seeking approval in terms of sub-regulation (3) of this regulation shall be made to the Board in the manner specified at PART –F of Schedule – II of these regulations through the concerned stock exchange / clearing corporation.

(5) The stock exchange / clearing corporation shall verify the declarations/ undertakings given by the shareholders under sub-regulation (4) and forward the application along with its recommendation for approval to the Board.

(7) Any person holding two per cent. or more of the paid up equity share capital in a recognised stock exchange or a recognised clearing corporation, as the case may be, shall file a declaration within fifteen days from the end of every financial year to the recognised stock exchange or recognised clearing corporation, as the case may be, that he complies with the fit and proper criteria provided in these regulations.

Regulation 20 – Requirement and criteria of fit and proper

1. (a) The 'fit and proper person' criteria shall apply to the applicant, recognised stock exchange, recognised clearing corporation, its shareholders, directors and key management personnel at all times.

(b) The recognised stock exchange or recognised clearing corporation shall ensure that all its shareholders, directors and key management personnel are fit and proper persons at all times.

2. For the purposes of these regulations, a person shall be deemed to be a fit and proper person if—

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

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

(b) such person has not incurred any of the following disqualifications—

- (i) has been convicted by a court for any offence involving moral turpitude or any economic offence or any offence against the securities laws;
- (ii) an order for winding up has been passed against the person;
- (iii) has been declared insolvent and has not been discharged;
- (iv) has been restrained, prohibited, or debarred from dealing in securities or accessing the securities market by SEBI or any other authority, and three years have not elapsed since the expiry of such period;
- (v) any other order affecting the securities market passed by SEBI or other regulatory authority and three years have not elapsed;
- (vi) recovery proceedings have been initiated by SEBI and are pending;
- (vii) has been found to be of unsound mind by a competent court;
- (viii) is financially unsound or a wilful defaulter;
- (ix) any other disqualification as specified by SEBI.

3. If any question arises on the decision of a recognised stock exchange or clearing corporation regarding whether a person is fit and proper, the Board's decision shall be final.

4. If any director or key management personnel of a recognised stock exchange or recognised clearing corporation is not deemed fit and proper under sub-regulation (3), the exchange/corporation must replace them within 30 days, failing which SEBI may invoke the fit and proper criteria against the entity.

5. Disqualification of the exchange or corporation under sub-regulation (2) does not automatically affect the fit and proper status of directors or key management unless they also meet the disqualification.

6. SEBI may consider orders from other regulators when determining the fit and proper criteria.

7. SEBI's decision is final if a dispute arises over someone's fit and proper status.

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

Schedule II – Criteria for Determining a Fit and Proper Person

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

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

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

- (a) the applicant or the intermediary;
- (b) the principal officer, the directors or managing partners, the compliance officer and the key management persons by whatever name called; and
- (c) the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary, directly or indirectly:

Provided that in case of an unlisted applicant or intermediary, any person holding twenty percent or more voting rights, irrespective of whether they hold controlling interest or exercise control, shall be required to fulfill the 'fit and proper person' criteria.

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

- (a) integrity, honesty, ethical behaviour, reputation, fairness and character of the person;
- (b) the person not incurring any of the following disqualifications:
 - (i) criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 has been filed against such person by the Board and which is pending;
 - (ii) charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences and is pending;
 - (iii) an order of restraint, prohibition or debarment has been passed against such person by the Board or any other regulatory authority or enforcement agency;
 - (iv) the person has been found to have made a false statement or suppressed material fact in any documents, reports or information furnished to the Board;
 - (v) the person has refused to furnish information required by the Board;

(6) Any disqualification of an associate or group entity of the applicant or intermediary of the nature as referred in sub-clause (b) of clause (3), shall not have any bearing on the 'fit and proper person' criteria of the applicant or intermediary unless the applicant or

intermediary or any other person referred in clause (2), is also found to incur the same disqualification in the said matter:

Provided that if any person as referred in sub-clause (b) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall replace such person within thirty days from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against the intermediary:

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

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