

Suggestions on the draft Petroleum and Natural Gas Regulatory Board (Gas Exchange) Regulations, 2020

Sr. No	Proposed Gas Regulation	Particulars	Description	Suggestions
1.	Regulation 2 (o), Regulation 2 (ee), Regulation 2 (jj)	Clearing and Settlement Mechanism	Provides for creation of clearing house or clearing corporation by Gas Exchange	<p>Considering the importance of principle of separation of trading activities with clearing and settlement activities, we agree that trading and clearing and settlement activities need to be segregated. One suggestion is that clearing and settlement activities should be handled by a separate <u>Clearing Corporation</u> and not by <u>Clearing House</u> as a part of Gas Exchange, to ensure the independence.</p> <p>The Securities Contracts (Regulation) (Stock Exchange and Clearing Corporation) Regulations, 2018 applicable to stock exchange and clearing corporations in securities market also mandates that clearing and settlement activities be handled by a separate Clearing Corporation.</p> <p>The draft Central Electricity Regulatory Commission (Power Market) Regulations, 2020 also provide for a separate Clearing Corporation only for handling of clearing and settlement activities.</p> <p>Further, various regulations in the Proposed Gas Regulations also refers to Clearing Corporation such as Regulation 2 (uu) - Netting, Regulation 2 (ww) - Novation,</p> <p>Hence, it is requested that reference to the term “Clearing House” in proposed Regulations such as Regulation 2 (q), 2 (jj), may be deleted.</p>
2.	Regulation 2 (q)	Clearing Member	Clearing Member can be a member of Gas Exchange since Clearing House is part of the Gas Exchange	In light of the suggestion provided at serial no. 1, it is suggested that the definition of the Clearing Member be restricted only to Clearing Corporation and reference to the term “Clearing House” be deleted.

3.	Regulation 8	Process involved during registration as Gas Exchange or Gas Clearing Corporation	<ol style="list-style-type: none"> 1) Application for recognition as a stock exchange or clearing corporation must be made available in public domain viz two leading newspaper and on website. 2) Public comments/objections pursuant to publication of the Application for recognition must be filed with Petroleum and Natural Gas Regulatory Board. 3) In addition, information sought by Board pursuant to the said Application and response provided on public or broad comments also has to be disseminated on the website of the applicant. 4) If the Board intends to grant recognition, it will seek public comments / objections again. 	<p>We are of view that no purpose will be served by providing for proposed steps. The regulatory framework prescribed by Securities and Exchange Board of India or Reserve Bank of India do not provide for the said steps before considering the application filed by an entity. Their framework requires the filing of application for new entrants, and approval by the respective regulators only, without the need for public comments. Once Exchanges are approved, all information regarding their rules, Byelaws and Regulations are publicly disseminated.</p> <p>Further, the proposed application methodology is currently used by Central Electricity Regulatory Commission for Central Electricity Regulatory Commission (Power Market) Regulations, 2020; and it is our experience that the process is prone to misuse by incumbent exchanges with a clear conflict of the interest in the matter.</p> <p>Accordingly, various information about the Gas Exchange or Gas Clearing Corporation would be made available in public domain after grant of permission by the Petroleum and Natural Gas Regulatory Board.</p>
4.	Regulation 20 and 21	Restrictions on shareholding	<ol style="list-style-type: none"> 1) No member can hold beyond 5 % in Gas Exchange while there is no such restriction in case of Gas Clearing Corporation. 2) Any person other than member can hold upto 15 % and do not require approval from the Board. 	<p>It is suggested that:</p> <ol style="list-style-type: none"> a) Member's holding in Gas Clearing Corporation should also be capped at 5 % as provided for Gas Exchange in line with the regulations prescribed for Exchanges. b) Further, it is suggested that threshold restriction on entities other member should be increased from 15% to 25 % considering the need for

			3) Person holding beyond 15 % have to divest within 5 years.	long-term commitment in setting up a Gas Exchange or Gas Clearing Corporation which are specialized in nature.
5.	Regulation 20 and 21	Restriction on total holdings by the Members	No such restriction	Considering the importance of demutualization i.e segregation of ownership and trading/clearing rights, it is suggested that there should be overall cap on the holdings by all the members of Gas Exchange or Gas Clearing Corporation. For e.g, the members cannot hold more than 49 % in a stock exchange.
6.	Regulation 23	Applicability of Corporate Governance Norms	Refers to Clause 49 of the Listing Agreement	It is suggested that reference to Clause 49 of the Listing Agreement be replaced with reference to SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015 since the provisions of corporate governance norms in the Listing Agreement has been rechristened in said SEBI Regulations and the current format of Listing Agreement does not have provisions relating to Corporate Governance.
7.	Regulation 24	Restriction on Independent Directors	No such exemption	<p>There is parity between the definition of “Associate” provided in proposed Gas Regulations and Securities Contracts (Regulation) (Stock Exchange and Clearing Corporation) Regulations, 2018.</p> <p>It is suggested that the exemptions provided to Domestic Institutions and Banks, to ensure that their participation is encouraged. vide Securities Contracts (Regulation) (Stock Exchange and Clearing Corporation) Regulations, 2018 in relation to Independent Director of an Associate of a member, may also be provided in Gas Regulations.</p> <p>Regulation 23 (7) Securities Contracts (Regulation) (Stock Exchange and Clearing Corporation) Regulations, 2018 are provide below for your consideration:</p> <p><i>“(6) No trading member or clearing member or their associates and agents, irrespective of the stock exchange / clearing corporation of which they are members, shall be on the governing board of any recognised stock exchange or recognised clearing corporation.</i></p>

				<p>(7) For the purposes of sub-regulation (6) above, a person who is a director in an entity, that itself is a trading member or clearing member or has associate(s) as trading member(s) or clearing member(s) shall be deemed to be a clearing member or trading member:</p> <p><u>Provided a person shall not be deemed to be clearing member and / or trading member or their associate for the purpose of sub-regulation (6), if he/she is on the board of a public financial institution or bank which is in public sector, or which either has no identifiable ultimate promoter, or the ultimate promoter is in public sector or has well diversified shareholding, and such Public Financial Institution or Bank or its associate is a clearing member and / or trading member:</u></p> <p><u>Provided further that the independent directors of the associates of Public Financial Institution or Bank in public sector, who are clearing member and/or trading member and where the majority shareholding is that of such public Financial institution or bank in the public sector, shall not be deemed to be a clearing member and / or trading member for the purpose of sub-regulation (6)."</u></p>
8.	Regulation 42 (3)	Minimum corpus of SGF / Initial contribution by Exchange or Clearing Corporation	50 crores or shall be equal to 5% of the sum total of the Gross revenues of the gas exchange for the preceding five (5) years, which is higher.	Since there would be new entrants in Gas Trading Platform, it is suggested that initial minimum corpus of SGF may be INR 10 crores and same should be increased based on well-defined formula considering the cleared volumes on the Gas Exchange. This will ensure that as cleared volumes increase, Clearing corporations provide for higher capital.
9.	Regulation 37 (5)	Setting aside the claim from the deposits of the Member	Gas exchange shall set aside sufficient funds in order to provide for settlement of any claims, pertaining to pending arbitration cases, arbitration awards, liabilities/claims of contingent	It is suggested that upon crystallization of claims in accordance with By-laws of the Gas Exchange, the claim amount should be set aside from the deposits of the member. Further, setting aside the uncrystallized claim amount from the deposits of the members may impose additional financial burden on the member.

			nature, if any, and unresolved investors complaints/grievances lying with the gas exchange.	
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