

রেজিস্টার্ড নং ডি এ-১

বাংলাদেশ



গেজেট

অতিরিক্ত সংখ্যা
কর্তৃপক্ষ কর্তৃক প্রকাশিত

বৃহস্পতিবার, সেপ্টেম্বর ২৫, ২০১৪

[বেসরকারি ব্যক্তি এবং কর্পোরেশন কর্তৃক অর্থের বিনিময়ে জারীকৃত বিজ্ঞাপন ও নোটিশসমূহ]

**DHAKA STOCK EXCHANGE
(INVESTORS' PROTECTION FUND) REGULATIONS, 2014**

NOTIFICATION

Dated, the 18th August, 2014

PRELIMINARY

WHEREAS it is to expedient to frame regulations for establishing a Fund for the protection of the investors of a defaulting TREC holder of the Dhaka Stock Exchange Ltd.

Now, therefore, in exercise of the powers conferred by section 34 of the Securities and Exchange Ordinance, 1969 (Ord. XVII of 1969) and read with section 23 of the Exchanges Demutualization Act, 2013, the Dhaka Stock Exchange Ltd. makes, with the prior approval of the Bangladesh Securities and Exchange Commission, the following regulations, namely:—

1. Short Title, Commencement and Application:

- (1) These regulations shall be called “Dhaka Stock Exchange (Investors’ Protection Fund Regulations), 2014”;
- (2) These regulations shall come into effect on the Demutualization Date.

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2. Definitions:

- (1) In these regulations unless there is anything repugnant in the subject or context—
- (a) “Board” means the Board of Trustees of the Fund;
 - (b) “Board of Directors” means the Board of Directors of DSE;
 - (c) “Commission” or “BSEC” means the Bangladesh Securities and Exchange Commission;
 - (d) “Chairman” means the Chairman of the Board of trustees;
 - (e) “Defaulting TREC holder” means a TREC holder of DSE who has been adjudicated as insolvent or has, as the case may be, wound up voluntarily or otherwise, or who has failed to settle his customers’ dues in terms of money or security;
 - (f) “Demutualization Act” means the Exchanges Demutualization Act, 2013 (Act No. 15 of 2013);
 - (g) “Demutualization Date” means the date from which the Exchange stands demutualized in accordance with the provisions of section 10 of the Demutualization Act;
 - (h) “Exchange” or “DSE” means the Dhaka Stock Exchange Limited;
 - (i) “Fund” means the Dhaka Stock Exchange Investors’ Protection Fund established by Dhaka Stock Exchange Ltd. under the Dhaka Stock Exchange Investors’ Protection Fund Regulations, 1999, as amended by these regulations;
 - (j) “Independent director” means an independent director of the Exchange as defined in the Demutualization Act;
 - (k) “Investor” means a customer of a TREC holder of the DSE placing funds or securities with the TREC holder for carrying out buy or sale transaction in security listed with DSE, and shall also include the money or security due to be paid or delivered to the customer by TREC holder; but shall not include the TREC holders or any of the directors or partners;

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- (l) “TREC” means Trading Right Entitlement Certificate as defined in the Demutualization Act;
- (m) “TREC holder” means a person who holds a TREC issued by the Exchange;
- (n) “Trustee” means a member of the Board of Trustees;
- (o) “Year” means the financial year ending on 30th June each year.
- (2) Words and expressions used herein and not defined, but defined in the Securities and Exchange Ordinance, 1969 (Ordinance No. XVII of 1969), the Bank Companies Act, 1991 (Act XIV of 1991), the Bangladesh Securities and Exchange Commission Act, 1993 (Act XV of 1993), the Financial Institution Act, 1993 (Act XXVII of 1993), the Companies Act 1994 (Act XVIII of 1994), the Depository Act, 1999 (Act VI of 1999), the Insurance Act, 2010 (Act XXIII of 2010), the Exchanges Demutualization Act, 2013 (Act XV of 2013) shall have the same meanings respectively assigned to them in the said Acts and the Ordinance, and the Rules and Regulations made thereunder.

3. Purpose of the Fund:

The purpose of this Fund created under these regulations is to protect the interest of the investors in case of default by the TREC holders. It shall also keep a provision which shall provide DSE the power to set-off the security deposit by any TREC holder if there remains any unsettled dues owed by a TREC holder to its customers.

4. Continuation of the Fund:

- (1) The Fund established under the DSE (Investors' Protection Fund) Regulations, 1999 shall continue to subsist and the money credited to account of the Fund as on the date of coming into effect of these regulations shall be regulated under the provisions of these regulations.
- (2) The Fund shall continue to be irrevocable.

5. Constitution of the board of trustees for the Fund:

- (1) The Fund shall be vested in and managed by the Board approved by the Commission.

- (2) The Board shall consist of—
- (a) a Chairman to be nominated by the Board of Directors from amongst the distinguished persons who are not in any way associated with any stock exchange:
Provided that the Board of Directors will propose at least 3 (three) candidates against the chairman and the Commission will select one of them;
 - (b) two members to be nominated from amongst the Directors of the DSE by the Board of Directors;
 - (c) one member to be nominated by the Board of Directors from amongst the investors;
 - (d) the Managing Director/Chief Executive Officer of DSE.
- (3) The BSEC shall appoint the chairman within the first month of each year.
- (4) The Board of Directors shall nominate two members from the Board of Directors and one from institutional investors in the first Board meeting of each year:
Provided that the first Board shall be constituted within one month of coming into force of these regulations.
- (5) A Trustee shall cease to hold office if—
- (a) he ceases to be an office bearer or a member of the Board of Directors;
 - (b) his nomination is cancelled by BSEC;
 - (c) he becomes insolvent or is of unsound mind;
 - (d) he is guilty of an offence involving moral turpitude;
 - (e) he becomes incompetent to act for reason of illness or infirmity;
 - (f) he leaves Bangladesh permanently;
 - (g) he resigns from office of the trustee; or
 - (h) he remains absent from three consecutive meetings of the Board or from all meetings of the Board for a continuous period of three months, whichever period is the longer, without leave of absence from the Board.

- (6) Any casual vacancy in the Board shall be filled up by the concerned authority(ies) within one month of occurrence of such vacancy.
- (7) A Trustee shall hold office for a term of one year, but shall continue to hold office after the expiry of his term until a successor enters upon his office.

6. Power and Functions of the Board:

- (1) The Board shall have the full control over the administration and management of the Fund and shall be vested with all powers, authorities and discretion necessary or expedient for that purpose in addition to any express powers conferred by these regulations.
- (2) The Board shall meet at least three times during the year and not more than six months shall elapse between any two meetings.
- (3) Three Trustees present shall constitute a quorum for such meeting.
- (4) The Chairman shall preside over all meetings of the Board and in his absence a Trustee elected among the present at the meeting shall preside.
- (5) Each Trustee shall have one vote and the decision of the majority shall prevail, and in case of equality of votes, the Chairman shall have a casting vote.

7. Accounts of the Fund:

The Board shall maintain proper accounts of the Fund and these shall be prepared and maintained in accordance with these regulations.

8. Audit:

- (1) The Board shall, within three months of closing of each year, get the accounts of the Fund audited by the practicing chartered accountant appointed annually.
- (2) The Board shall submit a copy of the audited report and statement of the accounts to the BSEC and the DSE within two weeks of receiving of the report.
- (3) The auditor's report and the accounts of the Fund shall be available to the TREC holders through the Board.

9. TREC holder's Participation in the Fund:

Every TREC holder shall participate in the Fund at such rate as prescribed in these regulations and any failure to contribute to the Fund shall constitute violation of these regulations and the Exchange shall have the power to suspend the trading right of the TREC holder until such time the contribution is deposited with the Fund.

10. Sources of Contribution:

- (1) The Fund shall consist of contributions of the Exchange and its TREC holders in the following manner:
 - (a) Contributions already made by DSE and others which are currently lying with the Exchange as on the date of coming into force of these regulations.
 - (b) An amount representing 0.50 % (point five zero percent) of the listing fee received by the DSE during the immediate preceding quarter, shall be placed in the Fund immediately after closure of each quarter.
 - (c) Quarterly contribution at the rate of 1 (one) taka for every Taka 10 (ten) lac or part thereof gross cumulative turnover (buy + sale) of each TREC holder immediately after closure of each quarter.
 - (d) Taka 1 (one) lac from each of the TREC holders other than the initial TREC holders.
 - (e) All benefits accrued against unclaimed shares shall be transferred to the Investors' Protection Fund of DSE after 5 years of such accrual.
 - (f) Any amount received from such other sources as may be available at the discretion of the Board.
- (2) The Board reserves the right to alter, vary and discontinue at any time the contribution to the Fund subject to prior consent from the BSEC.
- (3) DSE shall have the power to deduct from or adjust against the settlement accounts or any other accounts of the TREC holder the amount of the TREC holder's contribution and shall place the amount in the Fund within three working days of closure of each quarter.

11. Contingency Fund from DSE:

- (1) If at any time the Fund becomes insufficient to satisfy the liabilities against the reserve of the Fund, the Board may request the Board of Directors for such amount of contingency fund as the Board thinks fit to satisfy such liabilities of the Fund.
- (2) The amount of such contingency fund shall be paid by DSE to the Fund, as an interest free loan within such time and such terms as may be determined by the Board of Directors:

Provided that the Board of Directors may decide to impose mandatory contribution from TREC holders to recover the same loan which will be payable by each TREC holder at such term as may be prescribed.
- (3) The contributions, other than the contingency fund, made to the Fund by DSE and its TREC holders shall be non-refundable and shall not be considered as a debt due by the Fund to DSE or to any TREC holder.

12. Investment of the fund:

The Board shall invest the Fund except investment in the capital market, in such a manner as may be authorized by law for the time being in force.

All investments and bank accounts of the Fund shall be maintained by the Board with a scheduled bank in the name of the Fund under the control of at least any two of the Trustees with power to operate the banking accounts, and to sell, transfer, vary and transpose such investments.

13. Loss:

Any loss in or diminution in value of the investments of the Fund from whatever cause arising, not being due to the gross neglect or willful default or fraud of a Trustee, shall be borne by the Fund and the Trustee shall incur no responsibility or liability by reason or on account thereof.

14. Refund or withdrawal of contribution to the Fund:

The TREC holders shall not be entitled to any repayment or refund or withdrawal of their due contribution to the Fund on cessation of TREC for any reason whatsoever.

15. Appointment of Trustee:

In the event of the default of a TREC holder, the Board shall appoint one or more of their number as Trustee(s) to handle any claims by investors in respect of losses incurred by the investor as a result of the default.

16. Lodging of claims and payment against claims:

- (1) Claims to be considered for payment: The Trustee(s) shall only consider the claims of investors of a TREC holder who has been declared a defaulter by the Exchange in pursuant to sub-regulations (2), (3) and (4) of regulation of the Dhaka Stock Exchange (Settlement of Transactions) Regulations, 2013. Claims made by investors against a TREC holder who has not been declared a defaulter are dealt with by the Exchange's complaints procedures and should be submitted, in the first instance, to the TREC holder directly.
- (2) Circumstances for considering claims:
 - (a) Claims arising out of payments made to a TREC holder by an investor for securities which have been received from DSE but not delivered by the TREC holder;
 - (b) Claims arising out of securities delivered to the TREC holder by an investor but in respect of which the sale proceeds have not been received;
 - (c) Claims by an investor arising out of money in the hand of the TREC holder pending utilization for buying securities or money in the hand of the TREC holder which has been improperly dealt with;
 - (d) Claims by an investor arising out of securities in the hand of the TREC holder which have been improperly dealt with.
- (3) Certain claims to be disallowed: The Fund shall not be available for claims in respect of repayment of deposits or loans placed with or given to a defaulting TREC holder by any person or for any other transaction not connected with the purchase and/or sale of listed securities.

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- (4) Time limit for lodging claims: Investors of a defaulting TREC holder shall lodge a claim with the Trustee(s) within a period of six months from the date of declaration of such TREC holder as a defaulter in accordance with these regulations. The Trustee(s) may not entertain any claim lodged after the expiry of the aforesaid time limit.
 - (5) Claims against a defaulter who is a TREC holder in more than one stock exchange in Bangladesh:
 - (a) The claimant at his discretion may lodge a claim with the Trustee(s) of any one Fund.
 - (b) In the case of the same claim lodged with more than one Trustee, the claimant will be asked from which Fund the claim should be settled. The Trustee(s) will ensure that the same claim is not settled out of more than one Fund.
 - (6) Determination of nature of claims and payments: The Trustee(s) shall have an absolute discretion as regards to the mode and method of assessing the nature of the claims including their genuineness and shall likewise at their discretion accept, reject or partially grant or allow claims and make payments in respect thereof subject to the limits herein mentioned, as they may deem fit and proper.
 - (7) Compensation not to exceed maximum limit: The compensation paid in respect of any single investor claimant shall not exceed a sum of Tk. 500,000/- (five hundred thousand) only. The Trustee(s) may, however, at any time in consultation with the Board, and with the approval of the Commission or as per the directive of the Commission, increase the maximum limit of compensation payable as aforesaid. Such compensation shall be settled within 90 (ninety) days from the date of receipt of the complaint.
 - (8) Appeal: An investor shall be entitled to apply to the Board for reconsideration of the decision of the Trustee(s) to reject or partially grant or allow any claim and the decision of the Board shall be final and binding and the Trustee(s) shall act accordingly.

(9) Claim not to affect legal proceedings: The rejection or partial acceptance of any claim by the Trustee(s) or as the case may be, or the grant of any compensation to an investor claimant shall not preclude or debar such investor from pursuing his claim for dues against the defaulting TREC holder in any court of law or otherwise howsoever or other legal action on other grounds or causes of action of whatsoever nature, subject, however, that the net claim of any such investor claimant against a defaulting TREC holder may stand reduced to the extent of any compensation received by him from the Fund.

17. Discretionary nature of Fund:

The Fund shall be discretionary Fund and the Trustee(s) shall be under no legal obligation to collect the debts of a defaulter TREC holder and/or to make payments from the Fund as mentioned hereinabove.

18. Bar on assignment:

The contribution of a TREC holder shall not be a debt due from the Fund and no TREC holder shall be entitled to transfer or assign in any manner his contribution to the Fund.

19. Alteration of regulations:

- (1) The Board, with the written consent of the Board of Directors and with the approval of the Commission may, in their discretion, alter, modify or repeal any of these regulations as they consider necessary but no such addition, alteration, modification or repeal shall have retrospective effect;
- (2) If there is any conflict between these regulations and DSE rules, bye-laws or regulations, such repugnance, to that extent, shall be ineffective and the Board shall, if so required by the Board of Directors, remove such inconsistency.
- (3) Any such alteration in or removal from these regulations shall be made and become effective subject to the compliance of the relevant provisions of the Securities and Exchange Ordinance, 1969.

20. Expenses of the fund:

The Chairman and the Trustees shall be entitled to get honorarium for attending Board meeting. The Board shall also be entitled to charge to the Fund all the expenses of management and administration of the Fund including fees of auditors, legal advisers or other professional advisers, and staff salaries, wages and all related costs, charges and expenses to which the Board or a Trustee shall be put to in connection with the Fund or any legal claim thereon by any reason whatsoever.

21. Indemnity:

The Board shall be indemnified by the Fund from and against all actions, proceedings, losses, damages, claims, liabilities, costs, charges and expenses in connection with the Fund or the management and administration thereof or any dealings therewith provided that the same shall not arise by reason of their gross neglect or willful default or fraud or of personal reason.

22. Declaration:

Every TREC holder shall sign a Declaration in the form prescribed by the Board signifying his assent to the Fund and to abiding by and observing the regulations for the time being in force including any decision of the Board in relation to the Fund.

23. Reporting to BSEC and DSE:

The Board shall furnish a quarterly report on the Fund and affairs of the Trustees to BSEC and DSE within one month of the end of each quarter.

24. Winding-up:

- (1) The Trust shall be wound up, dissolved or liquidated only in the event of the dissolution of Dhaka Stock Exchange Ltd.
- (2) For the purpose of winding up, the Board shall first realize the assets of the Fund and after meeting all debts/liabilities and claims the amounts/assets so realized shall be and form a part of the property of Dhaka Stock Exchange and shall be appropriated or utilized accordingly.

25. Repeal and Savings:

- (1) **Repeal:** The *Dhaka Stock Exchange Investors' Protection Fund Regulations, 1999* is hereby repealed.
- (2) **Savings:** Notwithstanding the repeal, the *Dhaka Stock Exchange Investors' Protection Fund Regulations, 1999* and any amendments of the regulations made thereunder, shall continue to apply, as if those regulations had not been repealed to any acts of the Exchange at any period prior to the commencement of these regulations.

By Order of the Board of Directors
Professor Dr. Swapan Kumar Bala
Managing Director
Dhaka Stock Exchange Limited.