



CIRCULAR

SEBI/HO/MRD/DOP2DSA2/CIR/P/2019/26

February 5, 2019

To

All Stock Exchanges, Clearing Corporations and Depositories.

Sir/ Madam,

Subject: Performance review of Public Interest Directors (PIDs)

1. In respect of Public Interest Directors (PIDs) appointed in the governing board of Stock Exchanges, Clearing Corporations and Depositories (herein after referred as Market Infrastructure Institutions or MIIs), SEBI Board, in its meeting dated June 21, 2018, *inter alia*, decided that the tenure of PIDs may be extended by another 3 years, subject to performance review in the manner specified by the Board.
2. Based on decisions taken by SEBI Board, the clauses relating to tenure of PID were amended and have been provided in the Regulation 24(3) of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 [SECC Regulations, 2018] and Regulation 25(3) of SEBI(Depositories and Participants) Regulations, 2018 [SEBI(D&P) Regulations, 2018] as under:

Public interest directors shall be nominated for a term of three years, extendable by another term of three years, subject to performance review in the manner as may be specified by the Board:

Provided that post the expiry of term(s) at the recognized stock exchange or the recognized clearing corporation / depository, a public interest director may be nominated for a further term of three years in other recognized clearing corporation or recognized stock exchange, or a depository, only after a cooling-off period of one year:

Provided further that a person may be nominated as a public interest director for a maximum of three terms across recognized stock exchanges / recognized clearing corporations / depositories, subject to a maximum age limit of seventy five years.

3. For complying with the aforementioned regulation, while developing a framework for performance review of PIDs, MIIs need to consider the following:
 - a. **Policy for Performance review of PIDs:**
 - i. The Nomination and Remuneration committee (NRC) of the MIIs will be responsible for framing the performance review policy for PIDs.



- ii. Such performance review policy shall include criteria for performance evaluation, methodology adopted for such evaluation and analyzing the results, amongst others.
- iii. Performance review policy of PID shall include scope for both internal evaluation as well as external evaluation.
- iv. Further, as performance review is not a static process and requires periodical review, NRC shall also be responsible for reviewing such performance review policy, at least once in 3 years.
- v. Such performance review policy and changes made therein, shall be approved by the governing board of MII.

b. Guiding criteria of Performance Review:

As a part of framing performance review policy, NRC shall be primarily responsible for formulation of performance evaluation criteria. The criteria for performance review of PIDs, which shall be considered for both internal evaluation and external evaluation, may be framed by NRC taking into consideration guiding principles provided at **Annexure A**. These principles would serve as a guidance for MIIs and the same may be adopted by respective MIIs, as considered appropriate, with additional principles, if any.

c. Evaluation mechanism:

- i. PIDs shall be subjected to internal evaluation as well as external evaluation, carrying equal weightage.
- ii. Internal evaluation: All the governing board members shall evaluate the performance of each PID, on an annual basis at the end of every financial year.
- iii. External evaluation: PIDs shall also be subject to external evaluation during their last year of the term in a MII, by a management or a human resources consulting firm. The consultant shall take into consideration the performance of the PID for the entire tenure served in a given MII, at least up to 4 months before expiry of his/her term. In order to avoid any bias or conflict of interest, external consultant should not be a related party or associated with the MII, the concerned PID or any other governing board members.
- iv. Such performance review should be carried out in fair & objective manner and the review should be recorded with clarity and verifiable facts in a standardized format covering all the relevant criteria / aspects.
- v. While evaluating conflict of interest of a PID, the governing board of MII shall also take into consideration provisions of Clause 2(d) of Schedule II Part H of SECC Regulations, 2018 and Clause 2(d) of Schedule II Part C of SEBI (D&P) Regulations, 2018 under the head 'Public Interest Director'; and conflict of interest, if any, of any PIDs should be disclosed to SEBI by the governing board with their comments/ views.

d. Disclosure: Performance evaluation criteria for PIDs shall be disclosed in their annual report as well as on the website of the concerned MII.



- e. **Recommendation to SEBI:** After taking into account the performance of a PID in the concerned MII, on the basis of internal evaluation and external evaluation both carrying equal weightage, NRC shall consider and recommend extension of his / her tenure to the Governing Board of the MII. The Governing Board of the MII shall in-turn consider and recommend to SEBI if the tenure of the PID is desired to be extended by another term of three years.
- f. In addition to the other requirements prescribed in performance review policy of the MIIs along-with norms specified in SECC Regulations, 2018 and SEBI (D&P) Regulations, 2018, the following may be considered by NRCs of MIIs:
 - i. It shall be ensured that the concerned PID hasn't remained absent for three consecutive meetings of the governing board and has attended seventy five per cent of the total meetings of the governing board in each calendar year; failing which PID shall be liable to vacate office.
 - ii. It shall be ensured that PIDs in the governing boards of MIIs are selected from diverse fields of work, in terms of their qualification and experience.
4. The application for extension of term of a PID shall be accompanied with the attendance details of PID in the meetings of various mandatory committees and of the governing board of the MII along-with specific reasons for seeking extension of his / her term as a PID. Such specific reasons shall include facts such as whether the concerned PID, during the term served, had identified any important issues concerning any matter which may involve conflict of interest, or have significant impact on functioning of MII, or may not be in the interest of securities market as a whole, and whether the PID had reported the same to SEBI.
5. In terms of SECC Regulations, 2018 and SEBI (D&P) Regulations, 2018, it is clarified that a minimum of two names shall be submitted by MIIs at the time of making request for appointment of PID and extension of the term of existing PID, including appointment of PID for the purpose of broad basing the governing board, against each such vacancy.
6. It is clarified that the aforementioned norms specify the minimum requirements that have to be complied with by MIIs, however the NRCs of MIIs may adopt additional and more stringent norms while framing a policy for performance review of PIDs. With regard to the detailed criteria for performance evaluation, as provided in Annexure A to the circular, the same shall serve as an illustrative guide for MIIs to frame performance evaluation criteria – both for internal as well as external evaluation, and the same may be adopted by MIIs as considered appropriate, with additional criteria, if any.
7. Additionally, with regard to tenure of PID, following is clarified:
 - a. The term of existing PIDs serving in a MII for more than three years, can be extended, subject to his / her performance review and a maximum tenure of 6 years as PID in that particular MII.



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- b. The term of existing PIDs, that have already served for six years or more in a single MII, shall not be eligible for further extension in that MII.
8. MIIs are directed to:
- c. take necessary steps to put in place systems for implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations;
 - d. disseminate the provisions of this circular on their websites; and
 - e. communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly Report.
9. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 and Section 19 of the Depositories Act, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
10. This circular is available on SEBI website at www.sebi.gov.in at "Legal Framework→Circulars".

Yours faithfully,

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Annexure A to the circular

Guide for MIIs to frame criteria for performance review of PIDs:

- a. **Qualifications:** The PID's qualification in area of law, finance, accounting, economics, management, administration or an other area relevant to the financial markets, including any recent updates in this regard.
- b. **Experience:** The PID's prior experience in area of law, finance, accounting, economics, management, administration or any other area relevant to the financial markets, including any recent updates in this regard.
- c. **Knowledge and Competency:**
 - Whether the PID has sufficient understanding and knowledge of the entity in which it operates and the applicable regulatory norms.
 - Whether the PID has sufficient understanding of the role, responsibilities and obligations of PID under the relevant regulatory norms.
 - How the PID fares across different competencies as identified for effective functioning of Board of the concerned MII (The MII may list various competencies and mark all PIDs against every such competency e.g. Constructive and analytical decision making abilities).
 - Whether the PID has sufficient understanding of the risk attached with the business structure.
- d. **Fulfilment of functions:**
 - Whether the PID understands and fulfils the functions as assigned to him/her by the Board and the regulatory norms.
 - Whether the PID gives views and opinion on various regulatory matters when comments are invited by SEBI through various means.
- e. **Ability to function as a team:**
 - Whether the PID is able to function as an effective team- member.
 - Whether the PID listens attentively to the contributions of others and gives adequate weightage to the views and perception of other Board members.
 - Whether the PID shares good interpersonal relationship with other directors.
- f. **Initiative:**
 - Whether the PID actively takes initiative with respect to various areas.
 - Whether the PID insists on receiving information necessary for decision making.



- Whether the concerned PID keeps himself well informed about the functioning of MII and the external environment in which it operates.
- Whether the PID remains updated in terms of developments taking place in regulatory areas.
- Whether the PID has identified any important issues concerning any matter which may involve conflict of interest for the concerned MII, or may have significant impact on their functioning, or may not be in the interest of securities market, and whether the PID reported same to SEBI.
- Whether the PID appropriately deals with critical matters.

g. **Availability and attendance:**

- Whether the PID is available for meetings of the Board and attends the meeting of Governing board and Committees regularly and timely, without delay. It must be ensured that the concerned PID hasn't remained absent for three consecutive meetings of the governing board and has attended seventy five per cent of the total meetings of the governing board in each calendar year; failing which the PID shall be liable to vacate office.

h. **Commitment:** Whether the PID is adequately committed to the Board and the MII.

i. **Contribution:**

- Whether the PID has contributed effectively to the entity and in the Board meetings.
- Whether the PID participates in the proceedings of Board meetings keeping in mind the interests of various stakeholders.
- Whether the PID actively deliberates and contributes on proposed business propositions and strategic decisions taking into consideration pros and cons of such propositions, long term outlook, business goals, cost-benefit analysis, etc.

j. **Integrity:**

- Whether the PID demonstrates highest level of integrity (including conflict of interest disclosures, maintenance of confidentiality, etc.).
- Whether the PID strictly adhere to the provisions of the SEBI SECC Regulations, 2018, SEBI (D &P) Regulations, 2018 and any other regulatory provision, as applicable, along-with the code of conduct and code of ethics prescribed under other applicable regulatory norms.
- Whether disclosures such as dealing in securities and other regulatory disclosures are provided by the PID on timely basis.
- Confirmation on the PID being a Fit & Proper person.



- Confirmation that the PID doesn't disclose confidential information, including technologies, unpublished price sensitive information, unless such disclosure is expressly approved by the Board of directors or required under the applicable laws.

k. ***Independence:***

- Whether the PID is independent from the entity and the other directors and there is no conflict of interest.
- Confirmation as to non-association of the PID with relevant MII and its member.
- Whether the PID keeps regulators informed of material developments in the concerned MIIs functioning, from time to time.

l. ***Independent views and judgment.***

- Whether the PID exercises his/ her own judgment and voices opinion freely.
- Whether the PID's participation in decisions taken during meetings are unbiased, based on ethical judgment and are in strict conformity to the applicable regulatory norms.
- Whether the PID raises his/her concern if anything is observed contrary to regulatory norms and the expected norms of ethical conduct.
- Whether the PID is committed to ensure that there is fairness and integrity in MIIs system, in letter as well as spirit.

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