

Guidelines on Repositories and Creation and Management of Electronic Negotiable Warehouse Receipts

Warehousing Development and Regulatory Authority

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CHAPTER I

PRELIMINARY

1. Short title, objective and utilization of electronic negotiable warehouse receipt system

- 1) These guidelines may be called the Guidelines on Repositories and Creation and Management of electronic Negotiable Warehouse Receipts.
- 2) These guidelines seek to enable the Authority to establish a system for creation and management of electronic Negotiable Warehouse Receipts through registered Repositories, to enable warehousemen to issue electronic Negotiable Warehouse Receipts via the Repositories, to enable and regulate the process of issuing, storage and transfer of electronic Negotiable Warehouse Receipts and to facilitate creation and regulation of necessary intermediaries.

2. Definitions

In these guidelines, unless the context requires otherwise, -

- a) “Act” means the Warehousing (Development and Regulation) Act, 2007 (37 of 2007).
- b) “affiliate” means —
 - i. applicant’s key managerial persons or any of their relatives who are key managerial persons;
 - ii. a company in which the applicant or any of its key managerial persons is a Member or Director; any person on whose advice, directions or instructions the applicant or any of its key managerial persons is authorised to act, except where the advice, directions or instructions are given in a professional capacity;
 - iii. any company which is —
 - 1) a holding, subsidiary or an associate company of the applicant; or
 - 2) a subsidiary of a holding company to which the applicant is also a subsidiary.

- c) “applicant” means the entity seeking registration to establish a Repository on its own name or as a sponsor that will establish a Repository through a separate company.
- d) “application” means the information submitted by an applicant, expressing an unconditional interest in getting registered as a Repository, and includes the documents regarding eligibility and technical requirements specified in these guidelines and the call for applications.
- e) “application due date” means the last date and time for submitting the application.
- f) “authorised officer” means an officer employed with the Authority who is assigned, by the Authority, the responsibility of performing any functions under the Act, Rules, Regulations, and Guidelines made thereunder.
- g) “Authority” means the Warehousing Development and Regulatory Authority established under the Act.
- h) “commencement of business” means the date on which the Authority grants permission to a Repository to commence the business of providing the core services of a Repository.
- i) “company” means any entity formed and registered under Companies Act, 1956 (1 of 1956) or Companies Act, 2013.
- j) “core services of a Repository” means all of the following –
 - i. enabling safe and accurate creation, storage, maintenance and cancellation of electronic Negotiable Warehouse Receipts;
 - ii. enabling the transfer, pledge or removal of the pledge, e-auction of electronic Negotiable Warehouse Receipts;
 - iii. enabling the delivery of goods in part or full, underlying the electronic Negotiable Warehouse Receipts, through the warehousemen;
 - iv. on-boarding the users of a Repository;
 - v. performing the functions of a Repository Participant; and
 - vi. providing appropriate access to the Repository to the users of the Repository;

- k) “electronic” means any combination of text, graphics, data, audio, pictorial, or other information representation in digital form that is created, modified, maintained, archived, retrieved, or distributed by an Information Technology system.
- l) “exchange” means a stock exchange or a commodity derivatives exchange approved by the Securities and Exchange Board of India under clause (j) of section 2 of the Securities Contracts (Regulation) Act, 1956.
- m) “external person” means a person who satisfies all of the following requirements —
- i. is independent of the Authority;
 - ii. is not an applicant, or a relative or an affiliate of an applicant; and
 - iii. is assigned, by the Authority, the responsibility of performing any functions under any rules, regulations or guidelines made under the Act, Rules, Regulations, and Guidelines made thereunder.
- n) “guidelines” means these guidelines issued by the Authority and as amended from time to time.
- o) “key managerial person”, in relation to an applicant or a Repository, means—
- i. the Chief Executive Officer or the Managing Director;
 - ii. A whole-time Director or Executive Director or equivalent;
 - iii. the Chief Financial Officer;
 - iv. the Company Secretary; and
 - v. any other official by whatever name called, who performs the functions of any of the aforesaid officials or functions of a similar nature.
- p) “outsourcing” means appointing another person to perform one or more of the services of Repository which would otherwise be performed by the Repository in the normal course of business. Provided however, that the services rendered by a Repository Participant will not be construed as outsourcing.
- q) “relative” means a relative as defined under the Companies Act, 2013.

- r) “repository” means a company that has received a Certificate of Registration under these guidelines.
- s) “repository participant” means a person appointed by the Repository under these guidelines.
- t) “sponsor” means an entity or group of entities that declare themselves as sponsor(s) for setting up a Repository in a sole or joint manner. Where there are more than one sponsors, one among them to be the lead sponsor who will make the application for issue of Certificate of Registration.
- u) “strategic business unit” means the identifiable activity within a company that has operational, financial, and manpower resources and systems, segregated from the other activities of the company.
- v) “subsidiary” in relation to any other company (i.e. the holding company), means a company in which the holding company directly or indirectly or through another subsidiary –
 - i. controls the composition of the Board of Directors, such control being implied in cases where the company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors; or
 - ii. exercises or controls more than one-half of the total share capital either on its own or together with one or more of its subsidiary companies.
- w) “user” means a depositor, holder, financial institution, exchange, clearing house, warehouseman, Repository Participant or any other person to whom the Repository provides core services.
- x) “writing” means typing, printing, lithography and other modes of representing or reproducing words in a visible form, including electronic forms.

CHAPTER II

REGISTRATION AS A REPOSITORY

3. Registration as a Repository

No person shall be entitled to provide core services of a Repository without the grant of Certificate of Registration under these guidelines.

4. Eligibility criteria for Repositories

- 1) The applicant shall be an entity providing one or more services related to financial markets to public at large which is regulated by any one of the regulatory agencies as may be specified by WDRA from time to time, which at present shall include RBI, SEBI, PFRDA and IRDA.
- 2) The applicant should not have been denied renewal of an existing registration or the applicant's Certificate of Registration has not been cancelled or terminated by any of the regulatory agencies specified by WDRA from time to time, which at present shall include RBI, SEBI, PFRDA and IRDA.
- 3) The sole or the lead sponsor shall have a net-worth of not less than rupees fifty crore as on the date specified by the Authority.
- 4) The entity which proposes to act as a Repository shall have a net-worth of not less than rupees fifty crore as on the date specified by the Authority.
- 5) If the entity that proposes to act as a Repository has other businesses, it will be required to create a strategic business unit within the company that will perform the functions of the Repository.
- 6) The lead sponsor, if any, shall hold or propose to hold at least twenty six percent of the authorised share capital of the proposed Repository.
- 7) The applicant, sole sponsor or the lead sponsor, as the case may be, should have an average annual turnover of Rupees fifty crores in the last three financial years and have not incurred cash loss during the last two financial years.
- 8) The applicant or any of the sponsors, as the case may be, must have similar experience in developing and managing a large information and communication technology based central systems with the requirements as may be specified by the Authority in the call for applications.
- 9) If one of the sponsors is an exchange, such exchange shall not hold or propose to hold more than fifty one percent of the paid up equity share capital of the company that will set up the Repository and shall reduce the same to twenty four percent within a period of ten years from the date of grant of Certificate of Registration.
Provided however that, in exceptional circumstances, such an exchange may, with the prior approval of the authority, increase the shareholding up

to seventy four percent of the paid up share capital of the company for such time as the authority may permit.

- 10) The applicant or the sponsor(s), as the case may be, and each key managerial person of the applicant or sponsor(s) shall satisfy the following conditions insofar as they are applicable to them –
 - a) they should not have been convicted by a court of law for any offence and sentenced in respect of that offence at any time in the preceding five years;
 - b) the key managerial person(s) should not be a person of unsound mind or an undischarged insolvent;
 - c) they should not be under a declaration of ineligibility/banned/blacklisted by any Regulatory Authority, State or Central Government/ any other Government institutions in India for any reason whatsoever as on the date of submission of the application.
 - d) they should not be under investigation by any law enforcement agency for unfair practices or any other offence.
 - e) The applicant shall submit a declaration stating that it will comply with the provisions of the Act, Rules, Regulations and Guidelines made thereunder from time to time.

5. Process of application for granting a Certificate of Registration

- 1) The Authority shall publish a call for applications for granting a Certificate of Registration as and when it deems necessary.
- 2) The call for applications may contain additional requirements, definitions regarding the process of application, documents to be submitted, and time lines for the selection process, which shall not be in contravention of these guidelines.
- 3) The Authority shall accept applications only if it has published a call for applications under sub-clause (1) of this guideline.
- 4) An applicant shall submit only one application.
- 5) The application shall be submitted in the format and manner specified by the Authority in its call for applications and may include such information the Authority may specify.

- 6) The application for registration shall be accompanied by a non-refundable application fee of Rupees one lakh in the manner and form specified in the call of applications.
- 7) The applicant shall submit an earnest money deposit of Rupees fifty lakh in the format and manner specified in the call for applications.
- 8) The earnest money deposit may be returned or forfeited as provided in the call for applications.
- 9) The Authority may accept or reject any of the applications or cancel the entire process, at any time without any liability or any obligation for such rejection or cancellation.
- 10) Submission of the application for registration shall not bind the Authority to issue a Certificate of Registration to the applicant under these guidelines.

6. Furnishing of information to the Authority

- 1) The Authority shall treat the application as complete if –
 - a) the application is in the proper manner and format specified by the Authority under clause 5 and the call for applications; and the applicant fulfils the eligibility criteria under clause 4.
 - b) The Authority may call for information if the application does not contain any information required under clause 4 and the call for applications.
 - c) The applicant shall furnish such information within the time as may be specified by the Authority.
- 2) If there is any change in the information submitted in the application, the applicant shall immediately inform the Authority in writing.
- 3) If the applicant is a group of two or more sponsors, it shall be the responsibility of the lead sponsor to respond to any request for information from the Authority or the evaluation committee.

7. Verification of information in application

- 1) The Authority will examine the application for granting a Certificate of Registration and determine/verify if the applicant fulfils the eligibility requirements as specified under clause 4.

- 2) The Authority may appoint an authorised officer or an external person for the purposes of verification of information under clause 7 (1).

8. Process of evaluation of applications

- 1) The Authority shall examine whether the applicant and its application meets the eligibility criteria specified in these guidelines and in the call for applications.
- 2) Applications of those applicants who satisfy the eligibility criteria shall then be evaluated on technical grounds specified in the call for applications.
- 3) The Authority may constitute an evaluation committee for the purpose of evaluation of applications.
- 4) The call for applications may specify the details of the technical evaluation criteria that may *inter alia* include the following –
 - a) technical solutions and specifications proposed for the Repository; and
 - b) risk management functions and systems proposed for the Repository.
- 5) The process of evaluation and the scoring criteria that the evaluation committee shall adopt will be specified in the call for applications.
- 6) The evaluation committee may recommend a shortlist of applicants to the Authority.
- 7) The Authority may consider such shortlisted applicants for issuing a Letter of Intent (LoI). Provided however, that the Authority may on its own accord, accept or reject one, all or any of the shortlisted applicants recommended by the evaluation committee. The Authority may require them to meet the additional requirements as specified in the call for applications.
- 8) Additional requirements to be met by an applicant to whom a LoI has been issued, may *inter alia* include:
 - a) the requirement to incorporate a company, if the applicant is a sponsor or group of sponsors;
 - b) the requirement to develop and demonstrate systems and IT infrastructure, processes and other necessary documents for functioning as a Repository; and

- c) any other requirement that the Authority may specify.
- 9) The Authority may verify by itself, or through an external person, that the systems and processes developed by such applicant meet the requirements and that the applicant will be able to function and provide the services of a Repository.

9. Grant of Certificate of Registration

- 1) The Authority shall grant a Certificate of Registration to the applicant in the format specified in schedule 2, if the application is complete and the Authority is satisfied that the applicant fulfils all eligibility criteria and other requirements for providing core services of a Repository as specified under these guidelines and the call for applications.
- 2) The Certificate of Registration granted to a Repository shall be valid unless terminated by the Authority.
- 3) An applicant that has been granted a Certificate of Registration must commence providing the core services of a Repository within three months of the date on which the Certificate of Registration is issued. If in case the applicant has genuine difficulties to commence the business within the stipulated time, it shall make a written application, at least 15 days before the deadline to the Authority seeking an extension.
- 4) The Authority may consider the request of the applicant and suitably advice in writing.
- 5) Before granting a Certificate of Registration, the Authority shall satisfy itself that –
 - a) The applicant has complied with all the requirements under these guidelines and the call for applications for commencing the business of a Repository;
 - b) The applicant has submitted a registration fee of Rupees ten lakhs in the form and manner specified by the Authority;
 - c) The applicant has submitted a performance guarantee of Rupees five crore in the form and manner specified by the Authority.
 - d) The Authority has received and approved the bye-laws of the proposed Repository; and

- e) All the information provided by the applicant in the application is true and correct on the date of grant of the Certificate of Registration.

10. Rejection of application for Certificate of Registration

- 1) The Authority may reject an application for registration if it finds that the applicant does not fulfil the eligibility requirements under clause 4.
- 2) If any information submitted by the applicant under clause 6 is subsequently found to be false or misleading in any material particular, the Authority shall reject the application.
- 3) If the applicant does not furnish the information required by the Authority within the time period specified under clause 6, the Authority may reject the application.
- 4) The Authority may reject an application on any other ground, recorded in writing, if it is satisfied that it is necessary to do so.
- 5) The Authority, before rejecting the application shall issue a communication to the applicant, providing at least fifteen working days to make representation, if any, to the Authority.
- 6) The representation under clause 10(5) shall be made by the applicant in writing.
- 7) The Authority shall consider the representation made by the applicant and decide on the application.
- 8) If no representation is received within the period specified under clause 9(5), the Authority may reject the application.

CHAPTER III

RIGHTS, OBLIGATIONS, RESPONSIBILITIES AND OTHER REQUIREMENTS OF REPOSITORIES, REPOSITORY PARTICIPANTS, WAREHOUSEMAN, CREATION, MANAGEMENT OF ELECTRONIC NEGOTIABLE WAREHOUSE RECEIPTS AND INTER-REPOSITORY REQUIREMENTS

11. Responsibilities of a Repository

A Repository shall fulfil the following responsibilities:

- a) Provide the core services of a Repository either by itself or through the Repository Participants;
- b) provide a limited purpose e-auction platform to facilitate the auctioning of pledged goods when the pledgor has defaulted; and
- c) provide information as and when required by the Authority.

12. Financial requirements

- 1) The Repository shall have and maintain a net worth of not less than Rupees twenty five crore, at all times.
- 2) The Repository shall maintain at all times a performance guarantee of Rupees five crore or any revision as mentioned in 12(3), with the Authority, in a manner to be specified by the Authority.
- 3) The Authority may periodically review the performance guarantee requirements for a Repository.
- 4) The Repository shall maintain separate books of account for all its activities as a Repository, and prepare separate financial statements for Repository activities.
In particular, a Repository shall maintain records and accounts in sufficient detail, including:
 - a) A balance sheet
 - b) A Profit and Loss Account showing all incomes received from fees, charges and other sources, and all expenses, and other payments made or paid by the Repository; and
- 5) The Authority may specify additional requirements regarding financial management, insurance, accounting and record-keeping from time to time.

13. Bye-laws of the Repository

- 1) The Repository shall prepare bye-laws for its functioning as per the requirements set out in the Act, Rules, Regulations and Guidelines issued thereunder and other requirements the Authority may specify from time to time.
- 2) The Board of the Repository must approve the bye-laws before it is submitted to the Authority.

- 3) The bye-laws of the Repository and any modification to the bye-laws must be submitted to the Authority for prior approval.
- 4) The Authority may require a Repository to make such modifications to the bye-laws as it deems necessary from time to time, and the Repository shall make such modifications upon receipt of a communication from the Authority to this effect.
- 5) The bye-laws shall include, but not be limited to –
 - a) eligibility criteria for admission of any person as a Repository Participant;
 - b) hardware and software requirements;
 - c) procedure for account opening and other transactions within the Repository;
 - d) manner of dealings with warehouseman and creation of electronic Negotiable Warehouse Receipts balances in the Repository system;
 - e) procedures for reconciliation;
 - f) procedure for ensuring safeguards to protect the interests of Repository Participants and users;
 - g) manner of creating and invoking pledges;
 - h) manner of e-auction;
 - i) manner of rectification of errors and omissions;
 - j) *inter se* rights and obligations between the Repository and its users;
 - k) fees and charges;
 - l) procedure for grievance redressal including conciliation and Arbitration;
 - m) procedure and systems for inter-Repository transactions;
 - n) internal control standards including procedure for auditing, reviewing and monitoring;
 - o) record keeping;

- p) inspections, and audit including systems audit;
- q) manner of initiating actions against Repository Participants, Warehouseman for failure to perform its duties as per the provisions of the Act, Rules, Regulations and Guidelines made thereunder and the bye-laws of the Repository; and
- r) forms for submitting various instructions.

14. Connectivity

A Repository shall maintain systems that allow its users to connect to it, subject to requirements specified by the Repository and/or by the Authority from time to time.

15. Agreements with Users

- 1) A Repository shall enter into standard agreements with its users, governing the terms and conditions of the use of the services of the Repository.
- 2) A Repository Participant shall also enter into standard agreements with its users, governing the terms and conditions of the use of its services.
- 3) The Repository shall submit copies of all such standard agreements as stated in sub-clauses (1) and (2) above and any subsequent modifications to such agreements, to the Authority.
- 4) The Authority may review such standard agreements as stated in sub-clauses (1) and (2) above, and may direct the Repository to amend or modify the same if it finds that —
 - a) the agreement is found to be imposing discriminatory standards of providing core services of a Repository to its users;
 - b) the agreement is indirectly imposing prohibitive technical requirements on users; or
 - c) any other ground that the Authority may feel necessary.

16. Repository Participants

- 1) A Repository, may provide the services of a Repository Participant under these guidelines.

- 2) A Repository may appoint one or more entities as Repository Participants who shall be persons referred to in clause 16(4) to be its agent for all or any of the following purposes –
 - a) to identify through documentary and/ or physical verification, on behalf of the Repository, the identity and address of the depositor in whose favour a warehouseman intends to issue an electronic Negotiable Warehouse Receipt;
 - b) to facilitate the opening, management and closing of accounts of users on the Repository;
 - c) to facilitate the issue, modification, transfer, pledge and e-auction of electronic Negotiable Warehouse Receipts; and
 - d) such other incidental and ancillary purposes as may be specified by the Repository from time to time.
- 3) The Authority may specify the fit and proper criteria for Repository Participants from time to time, and the Repository shall be bound by the same.
- 4) A Repository may appoint as its Repository Participants any of the following –
 - a) a bank, or financial institution licensed under the Banking Regulation Act, 1949 and the Reserve Bank of India Act, 1934;
 - b) any intermediary registered with the Securities and Exchange Board of India;
 - c) a warehouseman meeting the requirements that the Repository may specify, after such requirements for warehouseman have been approved by the Authority; and
 - d) any other class of persons permitted to act as a Repository Participant by the Authority from time to time.
- 5) The Authority may require a Repository to make modifications in its agreements with Repository Participants, from a prospective date.
- 6) A Repository Participant shall be an agent of the Repository and shall enter into an agreement with the Repository for acting as its participant.

- 7) A person may be a Repository Participant for more than one Repository subject to any requirements specified by the Repository or the Authority, as the case may be.
- 8) The Repository shall be responsible for any act of omission or commission of its participants and shall indemnify a holder for any loss caused due to the negligence of the Repository Participant.
- 9) Where the loss due to the negligence of the Repository Participant is indemnified by the Repository, the Repository shall have the right to recover the same from such Repository Participant.
- 10) Notwithstanding any agreement between a Repository and a Repository Participant, the Authority may in public interest direct a Repository to terminate its agreement with a Repository Participant, and the Repository shall immediately comply with such direction.

17. Warehouse Receipts held in Repository

- 1) Only warehouseman shall issue electronic Negotiable Warehouse Receipts through Repositories.
- 2) Negotiable Warehouse Receipts issued shall be held only in electronic form.
- 3) Electronic Negotiable Warehouse Receipts in a Repository will be the authentic proof of existence of such electronic Negotiable Warehouse Receipts, and the information contained in such electronic Negotiable Warehouse Receipts and the record of electronic Negotiable Warehouse Receipts held in a Repository shall override those of the warehouseman in case there is any difference in the record of the warehouseman and the Repository.

18. Transfer of electronic Negotiable Warehouse Receipt by Repository

The holder of the electronic Negotiable Warehouse Receipt shall have the right to goods endorsed on it, and the Repository shall transfer the electronic Negotiable Warehouse Receipts based on the instructions of the holder or the Pledgee on invocation of the pledge, as the case maybe.

19. Openness and Interoperability

- 1) A Repository shall have systems in place to ensure that electronic Negotiable Warehouse Receipts can be transferred or pledged to users within the Repository or with other Repositories.

- 2) A Repository shall not discriminate in providing core services of a Repository to any class of users on terms other than fees and charges.
- 3) A Repository shall develop and publish application program interfaces for core services of a Repository, that are necessary to allow users to access, create, pledge, and transfer electronic Negotiable Warehouse Receipts and or any other service that the Repository may provide, in a secure manner over the internet.
- 4) The Authority may, from time to time, specify requirements that Repositories will have to meet in order to comply with this guideline.

20. Reconciliation of information

- 1) A warehouseman shall be responsible for reconciling the physical stock of the goods in its custody with the electronic records of the electronic Negotiable Warehouse Receipts with every Repository that it is a user of, and such reconciliation shall be undertaken at least once every fifteen days, or at such frequency and in such manner as the Authority may specify.
- 2) A Repository shall provide the information necessary to warehousemen to perform such reconciliation.
- 3) A Repository shall ensure sharing of information with other Repositories to enable warehouseman to perform such reconciliation.
- 4) The warehouseman shall submit a reconciliation report to the Authority after every reconciliation in the format and manner specified by the Authority.
- 5) The Authority may from time to time specify requirements that Repositories will have to meet in order to comply with this guideline.

21. Record Keeping

- 1) A Repository shall maintain all the information mentioned in Schedule 1.
- 2) A Repository shall intimate to the Authority the:
 - a) place where the information and the records related to the electronic Negotiable Warehouse Receipts are stored;
 - b) arrangements for disaster recovery.

- 3) Subject to the provisions of any other law, the Repository shall preserve information and records related to electronic Negotiable Warehouse Receipts for a minimum period of five years from the date of any transaction with respect to an electronic Negotiable Warehouse Receipt.
- 4) The Authority may from time to time specify information in addition to the information mentioned in Schedule 1 and other requirements that Repositories will have to meet in order to comply with this guideline.

22. Manner of keeping information and records

- 1) A Repository shall ensure that:
 - a) a timely and accurate record of information and records is maintained;
 - b) the integrity of the systems is maintained at all times;
 - c) the information and records are not destroyed or tampered with; and
 - d) the information and records are not lost even in the event of a disaster.
- 2) A Repository shall annually report to the Authority the steps and precautions taken under sub-clause 1 of this guideline.
- 3) The Authority may periodically call for information regarding the steps the Repository and its Repository Participants have taken to comply with the requirements of clause 22(1).
- 4) The Authority may require a Repository, by issuing directions in writing, to modify its existing systems under clause 22(1) in the interests of the security of the electronic Negotiable Warehouse Receipts.
- 5) If the Authority issues any direction to a Repository under this clause, the Repository shall comply with such direction at its own cost, and as per the time period specified in the direction.

23. Preservation of Confidentiality

- 1) A Repository shall provide access to information about electronic Negotiable Warehouse Receipts to the holder, pledgee, the warehouseman and a Repository Participant acting on behalf of such users.
- 2) A Repository or a Repository Participant shall not allow access to information about electronic Negotiable Warehouse Receipts to any person

other than a holder, pledgee or warehouseman without the permission of such person, as the case may be, subject to other requirements set out in these guidelines.

- 3) A Repository or a Repository Participant shall not share, without the prior permission of the Authority, any information received or acquired by it during the course of its working, except as required by the due process of law;
- 4) The Repository or its Repository Participant shall, upon demand from the Authority, furnish information to it regarding data access, including a log identifying each staff member accessing the data, the time of access, the nature of data accessed and the purpose.
- 5) A Repository shall create rights of access of different kinds of users, and provide access to them as per such user rights.
- 6) The Authority may from time to time specify additional requirements that Repositories and Repository Participants shall have to comply with.

24. Obligations of a Repository on outsourcing

- 1) No Repository shall assign or outsource any of its core functions without the prior approval of the Authority.
- 2) Even if the core functions are outsourced after getting the approval of the Authority, the Repository shall be responsible for all the acts of the outsourced entity and for compliance with the provisions of the Act, Rules, Regulations and Guidelines made thereunder.
- 3) A Repository shall take the following due care while assigning or outsourcing its core services:
 - a) that the outsourcing of any function or activity is in accordance with the internal policies and procedures of the Repository;
 - b) that there is no conflict of interest that may impair the ability of the outsourced entity to deliver to the required standard;
 - c) that a detailed review is performed of the ability of the potential outsourced entity to deliver the required functions satisfactorily;
 - d) that the Repository has entered into a written agreement with the outsourced entity clearly setting out their respective rights and

obligations;

- e) that the outsourcing does not impair the quality of the systems of governance of the Repository;
- f) that the outsourcing does not impede the ability of the Authority to monitor the functioning of the Repository;
- g) that the outsourced entity maintains confidentiality of the data shared with or generated by it while performing the outsourced functions or activity in the same manner and to the same extent as the Repository would have maintained;
- h) that the outsourcing does not cause an excessive increase in the risk to the Repository and the system for creation and management of electronic Negotiable Warehouse Receipts; and
- i) the outsourced entity is required to disclose any development to the Repository that may have a material impact on its ability to carry out the outsourced functions.

25. Payment of annual fees and other charges

- 1) A Repository shall pay an annual fee of Rupees ten lakhs to the Authority, in the form and manner to be specified by the Authority from time to time.
- 2) The Authority may require a Repository to pay additional fees or charges to it, as may be specified by the Authority from time to time.
- 3) The Authority may require a Repository to collect and remit fees or charges to it, as may be specified by the Authority from time to time.

26. Compliance Officer

- 1) A Repository shall appoint or designate a compliance officer who shall be responsible for monitoring its compliance with the provisions of the Act, Rules, Regulations and Guidelines made thereunder.
- 2) The compliance officer shall immediately and independently report any non-compliance observed by him or her to the board of the Repository as well as to the Authority.

27. Grievance Redressal

- 1) A Repository shall have a mechanism in place for the resolution of

grievances related to Repository services.

- 2) The Repository shall provide all information pertaining to grievances received by it to the Authority.
- 3) The Repository shall redress grievances within thirty days, failing which it should inform the Authority.
- 4) The Authority may from time to time, specify the requirements for redress of grievances of users, and the Repository shall comply with such requirements.

28. Conflict of interest

- 1) A Repository shall not perform any activity that any user of the Repository performs as its main business other than a Repository Participant, subject to other requirements set out in these guidelines.
- 2) The Repository or its key managerial persons shall not be engaged in the business of warehousing whether registered with the Authority or not.
- 3) A Repository shall have internal policies and procedures for the avoidance of conflict of interests specified in this guideline.
- 4) Where such conflict of interest arises or is likely to arise, the Repository shall –
 - a) take reasonable steps to resolve the same in an equitable manner; and
 - b) immediately inform the Authority.
 - c) The Authority may periodically review the functioning of the Repository to identify and assess conflict or probable sources of conflict, and direct the Repository to take corrective action.

29. Corporate Governance

- 1) The Authority may specify requirements relating to –
 - a) the establishment of committees or groups for carrying out specified functions in relation to the Repository; and
 - b) the processes to be followed by such committees and groups.

30. Indemnification against Loss

- 1) Without prejudice to the provisions of any other law for the time being in force, if any loss is caused to the holder of an electronic Negotiable Warehouse Receipt due to the negligence of the Repository, the Repository shall indemnify such holder.
- 2) Every Repository shall take adequate measures including insurance to protect the interests of the users of the Repository against risks likely to be arise on account of its activities as a Repository.
- 3) The Authority may from time to time specify the risk mitigation measures to be taken by Repositories.

31. Exit Management Plan

- 1) The Repository shall prepare and submit to the Authority an exit management plan, to be invoked in a situation where the Repository is unable to provide the core services of a Repository to its existing customers.
- 2) Such exit management plan shall *inter alia* cover the following —
 - a) the transfer of information related to its activities as a Repository to one or more replacement Repositories;
 - b) the means to ensure the continuing provision of the services of the Repository throughout the transfer process;
 - c) the modalities for communication with the Repository's staff, sub-contractors, suppliers, outsourced entities and any related third parties as are necessary during the process of the exit.
 - d) the provision of contingent support to the replacement Repository for a reasonable period after the transfer;
 - e) the process of enabling the users of the Repository to become users of the replacement Repository.
- 3) The Repository shall ensure that its auditors evaluate the exit management plan every year and certify that it is current and practicable within thirty days from the beginning of every financial year.
- 4) The Authority may direct the Repository concerned to modify its exit management plan from time to time, and the Repository shall make such

modifications and submit the revised exit management plan to the Authority for approval in the manner required as per the directions.

32. Furnishing information to the Authority

The Repository shall furnish information relating to warehouses and electronic Negotiable Warehouse Receipts and any other information to the Authority at such periodic intervals and the manner as may be specified by the Authority from time to time.

CHAPTER IV

ISSUANCE OF ELECTRONIC NEGOTIABLE WAREHOUSE RECEIPTS AND THEIR TRANSFER

33. Conduct of business on a Repository by a warehouseman

- 1) From a date as may be specified by the Authority, every warehouseman registered with the Authority shall issue electronic Negotiable Warehouse Receipts only via one or more Repositories of its choice;
- 2) A warehouseman shall provide the Repository all information required by the Repository for providing core services under these guidelines;
- 3) A warehouseman shall abide by the terms of any agreement entered into between itself and the Repository in order to avail the core services of a Repository; and
- 4) The Authority may from time to time, specify requirements for warehouseman for issuing electronic Negotiable Warehouse Receipts via Repositories.

34. Issuance of electronic Negotiable Warehouse Receipt on a Repository

- 1) The responsibility for correctly determining the quality and quantity of the deposited goods shall lie with the warehouseman.
- 2) The warehouseman shall not issue a paper receipt in lieu of an electronic Negotiable Warehouse Receipt, issued on a Repository.
- 3) If an electronic Negotiable Warehouse Receipt is issued, or any transaction with respect to an electronic Negotiable Warehouse Receipt takes place, the Repository shall, directly or through its Repository Participants, intimate the concerned users through electronic means, mobile applications, or

other means as may be specified by the Authority from time to time.

- 4) A Repository will not allow any change in the information contained in an electronic Negotiable Warehouse Receipt unless such change is necessary to —
 - a) record the pledging, transfer and withdrawals of such electronic Negotiable Warehouse Receipt;
 - b) rectify errors or omissions in the electronic Negotiable Warehouse Receipt;
 - c) make modifications in the electronic Negotiable Warehouse Receipt.
- 5) A Repository shall allow changes to the fields of information contained in an electronic Negotiable Warehouse Receipt only in compliance with requirements specified by the Authority from time to time.
- 6) If any change is necessary to rectify errors or omissions or make modifications in an electronic Negotiable Warehouse Receipt, the warehouseman shall in accordance with the procedure laid down by the Repository —
 - a) cancel the existing electronic Negotiable Warehouse Receipt;
 - b) issue a new electronic Negotiable Warehouse Receipt with the correct information;
 - c) make modifications in the electronic Negotiable Warehouse Receipt to reflect correct information; and
 - d) intimate the holder of the electronic Negotiable Warehouse Receipt of such action.

35. Pledging of electronic Negotiable Warehouse Receipts and removal of pledge

- 1) A Repository shall create systems to enable the pledging of electronic Negotiable Warehouse Receipts, and the release of such pledges, via the Repository.
- 2) The Repository shall mark a pledge on the electronic Negotiable Warehouse Receipt in favour of the pledgee upon being instructed to do so by both the holder of the electronic Negotiable Warehouse Receipt and the pledgee.

- 3) The pledgor and the pledgee shall provide such information as the Repository may require to indicate that an electronic Negotiable Warehouse Receipt has been pledged.
- 4) The Repository shall intimate both the pledgor and the pledgee once such pledge has been marked.
- 5) The pledgee shall have a lien on the electronic Negotiable Warehouse Receipt for the duration of the pledge.
- 6) The warehouseman shall not release the goods from the warehouse if a pledge exists on the electronic Negotiable Warehouse Receipt.
- 7) The Repository shall remove the pledge from a pledged electronic Negotiable Warehouse Receipt upon instruction by the pledgor or pledgee, as the case may be.

CHAPTER V

INSPECTION AND AUDIT

36. Right of the Authority to inspect and audit

- 1) The Authority, after recording the reasons for undertaking an inspection and/or audit in writing, may cause an inspection and/or audit of the books, accounts, records, documents, infrastructure, systems, and procedures in relation to the functioning of a Repository.
- 2) The Authority may appoint an authorised officer or an external person to undertake such inspection and/or audit.
- 3) If core functions have been outsourced to another entity, the Authority will have the right to inspect and/or audit the outsourced entity in addition to the Repository. In such cases, it shall be the responsibility of the Repository to co-ordinate with the outsourced entity.
- 4) For the purpose of this section, reference to a Repository will mean and include the outsourced entity, if any.

37. Notice before inspection and audit

- 1) The Authority shall give not less than three days' notice to the Repository before undertaking an inspection or audit under clause 36.

- 2) The Authority may by an order in writing direct an inspection or audit to be conducted without prior notice to the Repository if it is satisfied that it is in the interests of holders of electronic Negotiable Warehouse Receipt that no such notice should be given.

38. Obligations of Repository on inspection and audit

- 1) The Repository shall:
 - a) produce to the authorised officer or the external person the books, accounts, records and documents and access to the systems that are in its custody or control, as the authorised officer or external person may require, within such reasonable period as may be required;
 - b) extend cooperation to the authorised officer or external person for examining the books, accounts, records and documents and systems of the Repository;
 - c) furnish such statements, documents and other information relating to the systems, procedures and affairs of the Repository, as the authorised officer or external person may require, within such reasonable period as the authorised officer or external person may specify; and
 - d) allow the authorised officer or external person to have reasonable access to the infrastructure and premises occupied by the Repository or by any other person on its behalf.
- 2) The authorised officer or external person shall be entitled to examine or record the statements of any Director, officer or employee of the Repository, in the course of the inspection or audit.

39. Submission of report to the Authority

- 1) On completion of the inspection or audit, the authorised officer or external person shall, as soon as possible or within such period as may be specified by the Authority, submit a report to the Authority.
- 2) The report shall contain details of the findings and shall be accompanied by all the documents, statements and other materials collected by the authorised person or external person in the course of the inspection or audit.
- 3) The Authority may direct the authorised officer or external person to submit interim reports during the course of the inspection or audit.

40. Inspection and audit fees

The expenses including fees as may be incurred by the Authority for the purposes of inspection or audit undertaken under clause 36 shall be recoverable from the Repository.

41. Actions following inspection and audit

- 1) The Authority may after consideration of the inspection or audit report take such action as it may deem fit and appropriate in order to ensure that the affairs of the Repository are conducted in a manner that is not detrimental to the interests of its users.
- 2) Any action under this guideline shall be taken after complying with the inquiry process under clauses 45 and 46 respectively.

42. Internal monitoring, review and evaluation of systems and controls

- 1) A Repository shall have in place an effective internal audit mechanism to —
 - a) review, monitor and evaluate the Repository's controls, policies, systems, procedures and safeguards;
 - b) issue recommendations based on the result of examinations and evaluations carried out in accordance with this guideline.
- 2) The internal audit mechanism shall be designed in a manner that it allows persons carrying out the internal audit to —
 - a) have access to such information, records and systems as they may consider necessary to discharge their functions, subject to complying with confidentiality requirement.
 - b) report their findings and recommendations to the committees responsible for the oversight and management of the Repository.
- 3) The Repository shall submit an annual report of its internal audit to the Authority.

43. External monitoring, review and evaluation of systems and controls

- 1) A Repository shall cause an inspection of its controls, policies, systems, procedures and safeguards annually, by an external audit firm approved by the Authority.

- 2) The fees of the external audit firm shall be borne by the Repository.
- 3) The Repository shall submit the report prepared and conducted by the external audit firm to the Authority within fifteen days of conclusion of the audit.
- 4) The Authority may suggest such additional areas that may be required to be covered by the external auditor.

CHAPTER VI

TERMINATION OF CERTIFICATE OF REGISTRATION

44. Conditions for Termination of Certificate of Registration

- 1) The Certificate of Registration of a Repository may be terminated if —
 - a) the Authority accepts the surrender of the certificate by the Repository;
or
 - b) the Authority cancels the certificate.
- 2) The termination of such certificate will be effective from the date of termination, which will be mentioned in the order passed by the Authority in the case of the surrender, suspension, or cancellation of the certificate.
- 3) The termination of such certificate will have the effects specified in clause 50.
- 4) Upon the termination of such certificate, the Repository will have the obligations specified in clause 51.

45. Conditions for suspension of Certificate of Registration

- 1) The Authority shall not suspend the Certificate of Registration granted to a Repository except after following the processes in clauses 45, 47 and 48.
- 2) The Authority may suspend the Certificate of Registration granted to a Repository, if such Repository violates or fails to comply with the provisions of the Act, Rules, Regulations and Guidelines made thereunder by the Authority, from time to time:
 - a) contravenes the agreements it has signed with users;

- b) is in imminent danger of ceasing to carry on business or of going into liquidation; or
 - c) indulges in unfair trade practices.
- 3) Before suspending the Certificate of Registration, the Authority may require the Repository to satisfy the Authority regarding matters including but not limited to the following:
- a) the arrangements made by the Repository at its own cost for the maintenance and preservation of information required to be maintained under the provisions of the Act, Rules, Regulations and Guidelines made thereunder;
 - b) the transfer, at its own cost, of information related to its activities as a Repository to other Repositories as may be directed by the Authority;
 - c) the arrangements made by it for ensuring continuity of service to its users;
 - d) redressal of grievances of users; and
 - e) any defaults or pending actions
- 4) If the Authority has reason to believe that a Repository is in violation of the provisions of the Act, Rules, Regulations and Guidelines made thereunder, it may cause an inquiry to be conducted.
- 5) The Authority may conduct, or cause to be conducted by an external person, an inquiry, to examine compliance with the provisions of the Act, Rules, Regulations and Guidelines made thereunder.
- 6) The Authority, acting under this guideline, shall issue a show cause notice to the Repository as to why inquiry should not be conducted against it.
- 7) The Repository shall, within fourteen days from the date of receipt of such notice, furnish to the Authority a reply in writing, together with any other evidence it wishes to adduce.
- 8) If, after considering the reply if any from the Repository, the Authority is of the opinion that an inquiry should be held, it shall —
- a) appoint an inquiry officer;

- b) inform the Repository of the decision to initiate an inquiry against it; and
 - c) inform the Repository of the specific violations of the Act, Rules, Regulations and Guidelines made thereunder, that the Repository is believed to have committed.
- 9) The inquiry officer shall issue a notice in writing to the Repository indicating the date at which the Repository shall be given a hearing.
- 10) The Repository may appear before the inquiry officer through any person duly authorised by it.
- 11) At the hearing, the inquiry officer shall explain to such authorised representative of the Repository the violations it is believed to have committed as mentioned in clause 45 (2).
- 12) The inquiry officer shall give an opportunity to the authorised representative of the Repository to produce such evidence as may be relevant to the inquiry.
- 13) If necessary, the hearing may be adjourned to another date.
- 14) The inquiry officer shall have the power to summon any person who is acquainted with the facts of the case to give evidence relevant to the inquiry. If the Repository, or any person summoned under this guideline, fails to appear before the inquiry officer, the inquiry officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

46. Conditions for cancellation of Certificate of Registration

- 1) The Authority shall not cancel the Certificate of Registration granted to a Repository except after following the processes mentioned in clauses 46, 47 and 48.
- 2) The Authority may cancel the Certificate of Registration granted to a Repository if such Repository:
- a) is guilty of fraud;
 - b) furnishes false or misleading information to the Authority; has been suspended more than once as specified in clause 45(2), fails to comply with any direction of the Authority; or

- c) ceases to carry on business or goes into liquidation.
- 3) Before suspending or cancelling the Certificate of Registration, the Authority may require the Repository to satisfy the Authority regarding matters including but not limited to the following —
- a) the arrangements made by the Repository at its own cost for the maintenance and preservation of information required to be maintained under the provisions of the Act, Rules, Regulations and Guidelines made thereunder;
 - b) the transfer, at its own cost, of information related to its activities as a Repository to other Repositories as may be directed by the Authority;
 - c) the arrangements made by it for ensuring continuity of service to its users;
 - d) redress of grievances of users; and
 - e) any defaults or pending actions
- 4) If the Authority has reason to believe that a Repository is in violation of the provisions of the Act, Rules, Regulations and Guidelines made thereunder, it may cause an inquiry to be conducted.
- 5) The Authority may conduct, or cause to be conducted by an external person, an inquiry, to examine compliance with the provisions of the Act, Rules, Regulations and Guidelines made thereunder.
- 6) The Authority, acting under this guideline, shall issue a show cause notice to the Repository as to why inquiry should not be conducted against it.
- 7) The Repository shall, within fourteen days from the date of receipt of such notice, furnish to the Authority a reply in writing, together with any other evidence it wishes to adduce.
- 8) If, after considering the reply if any from the Repository, the Authority is of the opinion that an inquiry should be held, it shall —
- a) appoint an inquiry officer;
 - b) inform the Repository of the decision to initiate an inquiry against it; and

- c) inform the Repository of the specific violations of the Act, Rules, Regulations and Guidelines made thereunder, that the Repository is believed to have committed.
- 9) The inquiry officer shall issue a notice in writing to the Repository indicating the date at which the Repository shall be given a hearing.
- 10) The Repository may appear before the inquiry officer through any person duly authorised by it.
- 11) At the hearing, the inquiry officer shall explain to such authorised representative of the Repository the violations it is believed to have committed as mentioned in clause 46(2).
- 12) The inquiry officer shall give an opportunity to the authorised representative of the Repository to produce such evidence as may be relevant to the inquiry.
- 13) If necessary, the hearing may be adjourned to another date.
- 14) The inquiry officer shall have the power to summon any person acquainted with the facts of the case to give evidence relevant to the inquiry. If the Repository, or any person summoned under this guideline, fails to appear before the inquiry officer, the inquiry officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

47. Report by Inquiry Officer

- 1) The inquiry officer shall submit an inquiry report to the Authority after considering all the facts and the evidence adduced during the inquiry.
- 2) The inquiry report shall include the following:
 - (a) all the material considered in taking the decision to issue the show cause notice;
 - (b) the show cause notice;
 - (c) all communications and representations made by the Repository to the Authority in respect of the show cause notice;
 - (d) all the material considered during the inquiry;
 - (e) the findings of the inquiry;

- (f) the specific violations, if any, by the Repository of the provisions of the Act, rules, regulations, guidelines made thereunder;
- (g) the name of the inquiry officer.

48. Decision taken by the Authority

- 1) The Authority shall issue an order on the basis of the inquiry report and on the basis of all the relevant material before it.
- 2) Such order shall contain all of the following information —
 - a) the decision taken by the authority;
 - b) the reasons to take such decision;
 - c) the materials on which the Authority has relied upon to arrive at such decision;
 - d) any rights that the applicant may have to have the matter referred to the Appellate Authority;
 - e) the procedure of such reference.
- 3) The Authority shall immediately communicate such order to the Repository in writing.
- 4) The order shall be published on the website of the Authority.

49. Surrender of Certificate of Registration

- 1) If a Repository desires to give up its activities as a Repository and surrender its Certificate of Registration as a Repository, it shall make a request for such surrender to the Authority six months before the day it proposes to discontinue its operations.
- 2) While disposing of such a request, the Authority may require the Repository to satisfy the Authority regarding matters including but not limited to the following —
 - a) the arrangements made by the Repository at its own cost for the maintenance and preservation of information required to be

maintained under the provisions of the Act, Rules, Regulations and Guidelines made thereunder;

- b) the transfer, at its own cost, of information related to its activities as a Repository to other Repositories as may be directed by the Authority;
 - c) the arrangements made by it for ensuring continuity of service to its participants;
 - d) redressal of subscriber grievances; and
 - e) any defaults or pending actions.
- 3) The Authority shall dispose of such request by passing such order as it may deem fit.
 - 4) The Authority shall send a copy of such order to the Repository.
 - 5) The order shall be published on the website of the Authority.

50. Effect of termination of Certificate of Registration

On and from the date of termination of its Certificate of Registration, the Repository shall —

- a) cease to carry on any activity as a Repository during the period of suspension, in the case of suspension;
- b) cease to carry on any activity as a Repository from the date mentioned in the order of the Authority, in the case of expiry of the certificate, its surrender, or its cancellation
- c) not represent itself to be a holder of the Certificate of Registration for carrying out the activities of a Repository;

51. Obligations of Repository upon termination of Certificate of Registration

Upon the termination of the Certificate of Registration, the Repository shall, at its own cost —

- a) implement the exit management plan prepared under clause [31](#);
- b) allow its users to transfer their records as per the exit management plan;

- c) transfer the information that are in its control to another Repository as per the exit management plan, if so directed by the Authority; and
- d) be subject to the directions of the Authority with regard to any information that may be in its control relating to its core services of a Repository.

52. Terms & Conditions of Performance Guarantee

- 1) No interest shall be payable by the Authority on the performance guarantee submitted by the applicant under these guidelines.
- 2) If a Certificate of Registration has been granted to a Repository, and the Certificate of Registration of such Repository is in the process of being suspended, cancelled, or surrendered, the performance guarantee shall be retained by the Authority for such time period as necessary to ensure that the requirements of clauses 45(3) and 46(3) have been met.
- 3) If the Authority is satisfied that the requirements of clauses 45(3) and 46(3) have been met, it shall refund the performance guarantee after a period of one year from the date of fulfilment of these requirements subject to clause 52(4).
- 4) The Authority may confiscate all or part of the performance guarantee if –
 - a) in the opinion of the Authority, the Repository has acted with malafide intention; and/or
 - b) monies are owed by the Repository to the Authority under these guidelines.

53. Consequences of breach of performance requirements

The Authority may forfeit all or a portion of the performance guarantee submitted by a Repository if it violates the provisions of these guidelines, in the manner specified by the Authority.

CHAPTER VII

APPEALS

54. Appeal

Any person aggrieved by an order of the Authority made under these guidelines may prefer an appeal to the Appellate Authority as mentioned in section 42 of the Act, Rules and Regulations made thereunder.

WDRA/2016/5-13/A&F

(Ganesh Bakade)
Director (A&F).

SCHEDULES

Schedule 1

Information required to be stored by a Repository

- 1) Details of warehouseman which shall contain the following information;
 - a) name of the warehouseman;
 - b) address and contact details of the warehouseman;
 - c) commodities permitted to be stored by the warehouseman; and
 - d) unique ID assigned to the warehouseman.

- 2) Details of users which shall contain the following information:
 - a) name of the user;
 - b) address and contact details of the user; and
 - c) unique ID assigned to the user.

- 3) electronic Negotiable Warehouse Receipts which shall contain the information as specified by the Authority from time to time.

- 4) Details for every transaction of an electronic Negotiable Warehouse Receipt which shall contain the following information:
 - a) unique ID of holder / transferor / transferee of NWR;
 - b) date and time of the transaction; and
 - c) description and quantity of the commodity credited / debited.

- 5) Details for every pledge/ de-pledge of an electronic Negotiable Warehouse Receipt which shall contain the following information:
 - a) unique ID of the pledgor;
 - b) unique ID of the pledgee;
 - c) date and time of the pledge/ de-pledge; and
 - d) description and quantity of the commodity pledged / de-pledged/invoked.

- 6) Such other information as may be specified by the Authority for carrying on the activities as a Repository.

- 7) The Authority may exempt all Repositories from the requirement to collect and store any or all of the information specified in this schedule by issuing necessary directions to this effect.

Schedule 2

Format of Certificate of Registration

Certificate of Registration

- 1) Registration Number
- 2) Registration Date
- 3) Name of the Repository
- 4) Address of the Repository
- 5) This Certificate of Registration is granted subject to the provisions of the Act, Rules, Regulations and the Guidelines on Repositories and Creation and Management of Electronic Negotiable Warehouse Receipts and shall be valid unless terminated by the Authority.
- 6) Seal of the Authority
- 7) Signature of Authorised Officer
- 8) Date
- 9) Place