



PAKISTAN STOCK BROKERS' ASSOCIATION

(A company setup under section 42 of the Companies Act 2017)

Regd. Office: Mezzanine Floor, Trading Hall, Stock Exchange Building, Stock Exchange Road,
Off. I.I. Chundrigar Road, Karachi.

Ref: PSBA/S0920-02

Tel: 021-32401278-79 E-mail: psamail024@gmail.com

September 03, 2020

MR. AAMIR KHAN

Chairman

Securities and Exchange Commission of Pakistan

Islamabad.

Subject: Comments on SRO 548(1)/2020 dated June 11, 2020

Dear Sir,

This is with reference to the subject mentioned SRO wherein Commission has invited objections/suggestions from persons likely to be affected.

Accordingly, we, being the representative body of TREC Holders of Pakistan Stock Exchange (PSX), being aggrieved and affected suggests as follows:

In the regulation there are certain places wherein Companies Ordinance, 1984 deserves to be replaced with Companies Act, 2017;

A. The proposed addition in regulation 5 is:

(aa) at any given point of time, a director of the securities exchange, other than its chief executive officer, shall not be nominated on more than one board of other self-regulatory organizations, namely a central depository, clearing house or a futures exchange;"

Our comments

The proposed addition in regulation prima-facie reflects the intent of the legislature to achieve the following three objectives:

1. Chief Executive Officer of a securities exchange can represent on the Board of investee company;
2. Restricting Elected Director's nomination to the Board of only one investee company; and
3. Promote the role of Independent Directors to represent securities exchange in the investee company.

Firstly, representation on the Board of an associated company cannot and should not be laid down as a pre-condition to obtain license.

The board of a securities exchange should be empowered to take its own conscious decisions as to whom it thinks more appropriate to be nominated as a director on the Board of an associated company.

Secondly, this proposed addition in regulation 5 whereby the representation of a securities exchange through its chief executive to protect investments of a securities exchange is basically putting an embargo on shareholders of a securities exchange to protect its investment.

Corporate law around the world do not allow infringement of shareholder's right and it is prerogative of the Board of Directors to take conscious decision to protect shareholders' interest and safeguard the assets of the Company.

Chief Executive Officer (CEO) is the highest paid, contractual, executive position, who is accountable to the Board of Directors on the performance of the Company for which he is hired. It would be unjustified if he is also required to sit and involve in the Board of investee company which is operated by a full-time CEO of its own.

Nomination, amongst the Board of Directors to represent on the Board of the investee company, is basically to protect and safeguard the interest of shareholders and being stakeholders themselves, this is their right. Furthermore, elected shareholder directors, being representatives of shareholders, are therefore accountable to them.

All listed companies should protect their assets and for that purpose Companies Act, 2017 through its various provisions, have given this responsibility to the directors, being representative of shareholders. It is the fiduciary responsibility of a director to protect the assets of a company.

Based on the foregoing, it is requested to delete the proposed Regulation in its entirety as it is merely restricting Elected Directors.

B. In regulation 9, sub-regulation (2), the words "than one-third of its total" shall be substituted in place of the words "than the shareholder".

The proposed regulation 9, sub-regulation (2) will now read as:

"The board of directors of a securities exchange shall have independent directors not less than one third of its total directors".



Our comments

This is indeed a positive step and not only in line with the shareholders' demand but also the Listed Companies Code of Corporate Governance. On various occasions, it has been raised.

Though it is never too late, but it is requested that this proposed regulation should be applicable with immediate effect. Presently, PSX has 14 members Board with an equal number of elected and independent directors. Therefore, keeping the Board number fixed and in view of this proposal of 1/3rd, there will be 03 casual vacancies from which at least 02 seats be allocated at the nomination of the Pakistan Stock Brokers Association. This will bring in more value to the Board and will certainly help in developing the institution.

C. In regulation 9, sub-regulation (3) clause (a), after the words "for appointment as independent directors" the following words shall be inserted, "in accordance with the guidelines issued by the Commission".

Our comments

It would be much better if this appointment is based on designation rather than personalities. Seat may be allocated to any person, of nothing less than the designation of last served President / Vice President, by whatever name called, of OICCI, PBC, ICAP, IBA, PTBA, ICMAP, FPPCI etc.

Please acknowledge and appreciate that the above proposal as to the selection of independent directors is based on designation rather than personalities and will once for all end speculations.

D. In regulation 9, the following new sub-regulation (9) shall be inserted after sub-regulation (8), namely, - "(9) The securities exchange shall obtain clearance from the Commission on the fit and propriety of the directors prior to their appointment or election, as the case may be, on the board of directors of the securities exchange and shall submit confirmation that it has evaluated the persons against the fit and proper criteria as provided under these regulations and has no adverse findings therein."

Our comments

Please replace word **propriety** with "proper criteria"



E. In regulation 12, sub-regulation (1) shall be substituted with the following, namely:- "(1) A securities exchange shall, with approval of its board of directors, constitute a regulatory affairs committee comprising of at least 3 independent directors and one shareholder director."

Our comments

It is recommended that the proposed regulatory affairs committee may also have representations from stockbrokers and therefore two Nominees from the Association be made mandatory

F. regulation 12, sub-regulation (2), clause (k) shall be omitted

Our comments

It should not be deleted as being a self-regulatory organization the right of appeal to the aggrieved party is always part of the law.

Please do not hesitate to contact the undersigned should you so desire.

Regards,



BILAL FAROOQ ZARDI

Secretary General

Cell# 0300- 266 2516