



**CIRCULAR**

CIR/MRD/DP/56/2017

June 14, 2017

To,  
The Depositories,

Dear Sir / Madam,

**Subject: Recording of Non Disposal Undertaking (NDU) in the Depository System**

1. The depository system provides a transparent mechanism for recording pledge transactions entered between lenders and borrowers.
2. SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, requires promoters of a company to disclose details of their encumbered shares including NDUs by promoters which are covered under the scope of disclosures of 'Encumbrances'.
3. It has been observed that some shareholders, primarily promoters, enter into non-disposal agreements/ non-disposal undertaking (NDU) for borrowing funds from various lenders. NDUs are typically undertakings given by a shareholder not to transfer or otherwise alienate the securities and are in the nature of negative lien given in favour of another party, usually a lender.
4. It is observed that currently there is no framework to capture the details of NDU in the depository system as these happen outside the depository system and are not captured and reflected in the records of the depositories. Therefore, in order to enable the shareholders to record the NDUs in the depository system, it has been decided to permit the depositories to offer a system for capturing and recording the NDUs.
5. In this regard, the depositories are advised the following:
  - 5.1. Depositories shall develop a separate module/ transaction type in their system for recording NDUs.
  - 5.2. Both parties to the NDU shall have a demat account with the same depository and be KYC compliant.
  - 5.3. Pursuant to entering the NDU, the Beneficial Owner (BO) along with the other party shall make an application through the participant (where the BO holds his securities) to the depository, for the purpose of recording the NDU transaction.



- 5.4. The application shall necessarily include details of BO ID, PAN, email-id, signature(s), name of the entity in whose favor such NDU is entered and the quantity of securities. Such entity in whose favor NDU is entered shall also authorize the participant of the BO holding the shares, to access the signatures as recorded in that entity's demat account.
- 5.5. The participant after being satisfied that the securities are available for NDU shall record the NDU and freeze for debit the requisite quantity of securities under NDU in the depository system. .
- 5.6. The depositories shall make suitable provisions for capturing the details of BO ID and PAN of the entity in whose favor such NDU is entered by the participant. The depositories shall also make available to the said participant, the details of authorized signatories as recorded in the demat account of the entity in whose favor such NDU is entered.
- 5.7. On creation of freeze in the depository system, the depository/ participant of the BO holding shares, shall inform both parties of the NDU regarding creation of freeze under NDU.
- 5.8. The depositories shall make suitable provisions for capturing the details of company/ promoters if they are part of the NDU.
- 5.9. In case if the participant does not create the NDU, it shall intimate the same to the parties of the NDU along with the reasons thereof.
- 5.10. Once the freeze for debits is created under the NDU for a particular quantity of shares, the depository shall not facilitate or effect any transfer, pledge, hypothecation, lending, rematerialisation or in any manner alienate or otherwise allow dealing in the shares held under NDU till receipt of instructions from both parties for the cancellation of NDU.
- 5.11. The entry of NDU made as per para 5.5 above may be cancelled by the depository/ participant of the BO through unfreeze of specified quantity if parties to the NDU jointly make such application to the depository through the participant of the BO.
- 5.12. On unfreeze of shares upon termination/ cancellation of NDU, the depository shall inform both parties of the NDU in the form and manner agreed upon at the time of creating the freeze. The unfreeze shall be effected in the depository



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**Securities and Exchange Board of India**

system after a cooling period of 2 clear business days but no later than 4 clear business days.

6. The freeze and unfreeze instructions executed by the Participant for recording NDUs will be subject to 100% concurrent audit.
7. The DPs shall not facilitate or be a party to any NDU outside the depository system as outlined herein
8. The Depositories shall implement the provisions of this circular within four months from the date of this circular.
9. The Depositories are advised to:-
  - i. make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision, as may be applicable/necessary;
  - ii. to carry out system changes if any to implement the above;
  - iii. disseminate the provisions of this circular on their website;
  - iv. communicate to SEBI, the status of implementation of the provisions of this circular in their Monthly Development Report.
10. This circular is being issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 and section 19 of the Depositories Act, 1996 to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.

**Yours faithfully**

**Susanta Kumar Das**  
**Deputy General Manager**  
**e-mail: susantad@sebi.gov.in**

Circular No.: NSDL/POLICY/2018/0010

Date: February 8, 2018

**Subject: Amendment to Bye Laws and Business Rules – Non-disposal agreements / undertaking.**

All Participants are hereby informed that pursuant to SEBI Circular no. CIR/MRD/DP/56/2017 dated June 14, 2017 regarding guidelines on recording of non-disposal agreements / undertaking (NDU) in the Depository System; following amendments are made in Bye Laws and Business Rules of NSDL:

Sr. No.	Bye Laws		Annexures
1	Insertion of	Bye Law 9.15	Insertion of Bye Law is enclosed as Annexure A.

Sr. No.	Business Rules		Annexures
1	Amendments to	Rules 4.5.2, 4.5.3, 16.1.1 and 22.1	Amended / New Business Rules are enclosed at Annexure B in the track change mode.
2	Insertion of	Rule 12.15	
3		FORM 39	New FORM 39 is enclosed.

Participants are requested to take note of the above. Participants will be separately intimated about the date of release of the software functionality to enable the same.

For and on behalf of  
**National Securities Depository Limited**

**Ravindra Sahu**  
**Senior Manager**

Enclosed: Three

FORTHCOMING COMPLIANCE			
Particulars	Deadline	Manner of sending	Reference
Investor Grievance Report (Monthly)	By 10 <sup>th</sup> of the following month.	Through e-PASS	Circular No. NSDL/POLICY/2015/0096 dated October 29, 2015



## **Annexure A**

### **New Bye Law**

#### **9.15 Hold on Securities**

9.15.1. If a Client intends to create a negative lien on securities owned by him for non-disposal undertaking or non-disposal agreement, he shall make an application for creation of hold on the securities in the form and manner specified in the Business Rules to the Depository through the Participant, who has his account in respect of such securities.

9.15.2. Upon creation of hold on securities, no transfer, pledge, hypothecation, lending, rematerialisation, or alienation of securities in any manner shall be permitted, unless the hold on securities is released.

## Annexure B

### Existing Rules with track changes mode

4.5.2. The Participant shall promptly inform the Clients in respect of those instructions which have not been executed along with reasons thereof.

4.5.3. The Participant shall not accept any instruction for debit or pledge or hold of securities from a Client unless the Participant has fully satisfied itself that the instruction has been given by the Client itself. In respect of instructions received in paper form, the Participant shall ensure that the Client submits the instructions only on an instruction form issued by the Participant to the Client by verifying the instruction forms with its records pertaining to serial numbers of instruction forms issued to the Clients.

16.1.1 Every Participant of the Depository shall maintain the following records relating to its business for a period of five years:-

- i) Delivery/Receipt Instructions given by its Clients.
- ii) Forms submitted by the Clients to the Participant for: -
  - a) Opening of accounts with the Participant;
  - b) Closing of accounts with the Participant;
  - c) Freezing of accounts with the Participant;
  - d) Unfreezing of accounts with the Participant.
- iii) Copies of correspondence from the Clients on the basis of which Clients details were updated in the DPM;
- iv) Record of all actions taken on the exception reports, generated by the system;
- v) A register showing details of grievances received from the Clients and their present status.  
The following details may be specified in this regard :-
  - a) name of the Client;
  - b) reference number of the Client;
  - c) date;
  - d) particulars of complaints;
  - e) actions taken by the Participant;
- vi) if the matter is referred to arbitration, then the particulars including the present status thereof.
- vii) instructions received from the Clearing Member to transfer balances from the Pool account to the Delivery account of the Clearing Member in order to enable it to meet its obligations to the Clearing Corporation;
- viii) instructions from the clearing member authorising the transfer of securities from the pool account of the clearing member to the accounts of its clients
- ix) The forms received in respect of pledge of securities;
- x) The forms received in respect of transmission of securities
- xi) The forms received in respect of securities lending.
- xii) Record of serial numbers of the instruction forms for debit or pledge of securities in a Client account, issued to its Clients.

xiii) The Participant shall ensure that records of nomination are maintained properly and preserved for record purposes. These records shall form part of the records of the Participant.

[xiv\) The forms received in respect of hold of securities;](#)

22.1. No participant shall accept any fresh application from any person for opening a new Client account, or any Dematerialisation Request Form or Form for creation of pledge or hypothecation or hold, with effect from the date of receipt of notice of the termination of participantship, issued by the Depository to Participant, or from the date incorporated in the notice of termination of Participantship issued by Participant to the Depository, or, from the effective date of the order of Participant's Expulsion passed by the Disciplinary Action Committee ; or from the date of the receipt of the order of Participant's expulsion by the Disciplinary Action Committee of the Depository ; whichever is later; or from the date of the receipt of the order of cancellation of Participant's registration certificate passed by SEBI.

## **New Business Rules**

### **12.15 Hold on Securities for Non-Disposal Undertaking or Non-Disposal Agreement**

12.15.1. When a client intends to create a hold on his securities for non-disposal undertaking or non-disposal agreement in favour of another party, the client and the other party must have an account with the depository to create hold on securities. However, the client and the other party may have accounts with two different Participants.

12.15.2. The Participant of the Client shall request creation of hold on the securities of Client in favor of other party on receipt of hold creation form as laid out in FORM 39 jointly from the Client and the other party specifying the cooling period for release of hold.

Explanation:

(1) The cooling period for release of hold must be specified by the client and the other party, which must be in number of clear business days, which may either be two, three or four clear business days.

(2) Clear business days shall mean all days other than Saturdays, Sundays and trading holidays for cash equities.

12.15.3. The Participant of other party shall request confirmation of creation of hold on receipt of form as laid out in FORM 39.

12.15.4. On receipt of the request and confirmation for creation of hold from the Client and other party respectively through their Participants, the Depository may create the hold on the securities.

- 12.15.5. The Participant of the Client shall request release of hold on receipt of the hold release form as laid out in FORM 39 jointly from the Client and other party for specified securities.
- 12.15.6. For hold release request received from the Client and other party, the Participant of the other party shall request confirmation of hold release on receipt of the hold release confirmation form as laid out in FORM 39, from the other party.
- 12.15.7. On receipt the request and confirmation of hold release from the Client and other party respectively through their Participants, the Depository may release the hold for specified securities on the next business day of the expiry of cooling period specified.
- 12.15.8. The aforementioned forms submitted by the Client and other party shall be checked by the Participant to ensure the completeness of the form and validity of the signature of the Client as well as other party before the requests on these forms are executed.



DP Logo	<b>FORM 39 - HOLD ON SECURITIES FOR NON DISPOSAL UNDERTAKING/ AGREEMENT</b>						 NSDL Technology, Trust & Reach	
Participant Name				Serial No.				
Participant Address				Date				
I/We request you to (Please tick in any <b>one</b> of the boxes as may be applicable)								
<input type="checkbox"/> Create the Hold <input type="checkbox"/> Release the Hold				<input type="checkbox"/> Confirm the Creation of Hold <input type="checkbox"/> Confirm the Release of Hold <input type="checkbox"/> Cancellation of the confirmation of Release of Hold				
Details of Client in whose account the securities are held				Details of Other party in whose favor hold is crated				
DP ID				Other Party DP ID				
DP Name				Other Party DP Name				
Client ID				Other Party Client ID				
Client Name				Other Party Name				
To be filled in case of request of creation		Name of Company (if part of NDU)						
		Name of Promoters (if part of NDU)						
		NDU/ Agreement Reference Number						
Please tick in any <b>one</b> of the boxes as may be applicable for cooling period of release the hold. (If not ticked default cooling period will be 4 days)				<input type="checkbox"/> 2 days <input type="checkbox"/> 3 days <input type="checkbox"/> 4 days				
Sr. No.	ISIN	Security Name	Quantity (In figures) (Refer Instruction No.1)	Quantity (In words) (Refer Instruction No. 1)	Hold DM Order No. (Refer Instruction No. 2 )	Reasons for rejections (if any) (To be filled in at the time of Confirmation)		
Execution Date				Please tick in case of request for creation hold				
				<input type="checkbox"/> I/we _____ <name of the other party> hereby authorise the Participant of the Client holding the securities on which hold is being created to access the my / authorized signatory(ies) signatures as recorded in my/our aforesaid Demat Account.				
_____ Authorised Signatory(ies)				_____ Other Party Authorised Signatory(ies)				
Signatures of both Client as well as other party are required in case of request of creation of hold and release hold to be submitted to the Participant of Client.								

**Instructions:**

1. To be submitted in duplicate for acknowledgement.
2. Hold Quantity or Release Quantity to be mentioned as the case may be.
3. Hold DM Order No. to be filled by the client (except at the time of creation of hold to be filled in by the participant).
4. Strike out whichever is not applicable.