



CONSULTATION PAPER ON PROPOSED AMENDMENTS TO IFSCA (BULLION EXCHANGE) REGULATIONS, 2020

Objective

1. The objective of this consultation paper is to seek comments / views from public on the proposed amendments to the International Financial Services Centres Authority (Bullion Exchange) Regulations, 2020 (“Bullion Exchange Regulations”).

Background

2. The Bullion Exchange Regulations have been notified and published in the Gazette of India on December 11, 2020, providing the regulatory framework for bullion exchange, bullion clearing corporation, bullion depository, vault manager and other intermediaries associated with the bullion market in International Financial Services Centres (“IFSC”) in India.
3. Subsequently, the IFSCA (Market Infrastructure Institutions) Regulations, 2021 (“MII Regulations”) have been notified in April 2021, providing the regulatory framework for market infrastructure institutions (stock exchanges, clearing corporations and depositories) in the securities markets in IFSC.
4. We have received representations from various stakeholders to align some of the provisions of the Bullion Exchange Regulations with the MII Regulations so as to bring consistency in the broad framework for the market infrastructure institutions operating in the bullion market and the securities markets, in IFSC.
5. IFSCA considered the above representations and engaged into discussion specifically with the MIIs operating in IFSC to review and harmonize the Bullion Exchange Regulations with the MII Regulations. This exercise has been focused to ensure that the specialized bullion regulatory needs remain intact while ensuring alignment with the MII Regulations.

Proposed amendments in the Bullion Exchange Regulations

6. In view of the above, the following are the main amendments proposed in the Bullion Exchange Regulations:

Sr. No.	Area	Regulation	Current provision	Proposed amendment	Justification/ Rationale
1	Definitions	2(1)	“consumer” means a constituent of a bullion trading member	“consumer” means a client of a bullion trading member	The word “constituent” may have several interpretations. May be replaced with “client” for better clarity.
2	Definitions	2(1)	“netting” means the determination by a bullion clearing corporation of net payment or delivery obligations of the bullion clearing members of a bullion clearing corporation by setting off or adjustment of the inter- se obligations or claims arising out of bullion depository receipts	"netting" means the determination by bullion clearing corporation of net payment or delivery obligations of the clearing members of a bullion clearing corporation by setting off or adjustment of the inter-se obligations or claims arising out of buying and selling of bullion depository receipts, including the claims and obligations arising out of the determination by the bullion clearing corporation or bullion exchange, on the insolvency, winding-up, liquidation or resolution of any bullion clearing member or bullion trading member or client or such other circumstances as the recognized clearing corporation may specify in its bye-laws, of the transactions admitted for settlement at a future date, so that only a net claim be demanded, or a net obligation be owed.	May be aligned with the MII Regulations, 2021 and the SECC Regulations, 2018
3	Definitions	2(1)	“vault” means any premises wherein the vault manager takes custody of the bullion deposited by the depositor and	“vault” means any premises wherein the vault manager stores bullion deposited by the depositor and includes	For better clarity

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			includes a place for storage as approved by Authority	a place for storage as approved by Authority	
4	Definitions	2(1)	“vault manager” means a person, registered by the Authority who manages the vault empanelled by a bullion depository for carrying on the vaulting business	“vault manager” means a person, registered by the Authority who manages the vault for carrying on the vaulting business	For better clarity
5	Requirements for grant of recognition to a bullion clearing corporation	5(3)	-	<p>(3) An applicant seeking recognition as a bullion clearing corporation shall, in addition to the conditions as specified in sub-regulation (1), comply with the following conditions, namely,-</p> <p>(a) the applicant has necessary infrastructure to ensure timely clearing and settlement of trades;</p> <p>(b) the applicant has adequate risk management mechanism;</p> <p>(c) the applicant has a settlement procedure including netting, novation and guarantee for settlement of trades in place, which is in accordance with the manner specified by the Authority;</p> <p>(d) the applicant has the capacity to establish a fund to</p>	Detailed specific requirements in respect of bullion clearing corporation may be inserted in the Bullion Exchange Regulations in line with the MII Regulations.

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				<p>guarantee settlement of trades;</p> <p>(e) the applicant has necessary capability to have a wide network of bullion clearing members and has adequate facility to admit and regulate its members;</p> <p>(f) the applicant has established connectivity with the bullion depositories, clearing banks, bullion exchange and bullion clearing members;</p> <p>(g) the applicant has adequate systems' capacity for on-line/real time risk management of trades cleared and settled and is supported by a suitable business continuity plan including a disaster recovery site;</p> <p>(h) the applicant has in its employment, sufficient number of persons having adequate professional and other relevant experience to the satisfaction of the Authority;</p> <p>(i) the applicant has the necessary arrangements in place for resolving disputes and redressal of grievances arising out of clearing and settlement of trades;</p>	

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				<p>(j) the applicant has an agreement with a bullion depository and with a recognised bullion exchange in respect of clearing and settlement of the trades; and</p> <p>(k) any other conditions as may be specified by the Authority.</p>	
6	Grant of recognition to a bullion exchange or bullion clearing corporation	6(7)	(7) The rules or bye-laws of a bullion exchange relating to any of the matters specified in sub-regulation (3) of regulation 3 , shall be amended only with the prior approval of the Authority.	(7) The rules or bye-laws of a bullion exchange and bullion clearing corporation relating to any of the matters specified in sub-regulation (3) of regulation 4 , shall be amended only with the prior approval of the Authority.	This requirement may be made applicable for both bullion exchange and bullion clearing corporation
7	Shareholding	15(1)	Any Indian bullion exchange or recognized stock exchange, or any bullion exchange or stock exchange of a foreign jurisdiction, may on its own or through a consortium form a subsidiary to provide the services of a bullion exchange or bullion clearing corporation, as the case may be, wherein up to fifty-one per cent of paid up equity share capital is held by such bullion exchange or stock exchange or the consortium formed by them.	Any Indian bullion exchange or recognized stock exchange, or any bullion exchange or stock exchange of a foreign jurisdiction, may on its own or through a consortium form a subsidiary to provide the services of a bullion exchange or bullion clearing corporation, as the case may be, wherein at least fifty-one per cent of paid up equity share capital is held by such bullion exchange or stock exchange or the consortium formed by them.	<p>In terms of the MII Regulations, the consortium is required to hold at least 51% in recognised MIIs. Bullion Exchange Regulations may be aligned with MII Regulations.</p> <p>In terms of the MII Regulations, any other person is permitted to hold upto 25%. Further, approval of authority is required for acquisition of shareholding of 10% or more.</p> <p>However, in case of Bullion Exchange Regulations, there are two categories for investors:</p>

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		15(2)	The remaining share capital may be acquired or held by any other person (whether Indian or of foreign jurisdiction) and such person shall not at any time, directly or indirectly, either individually or together with persons acting in concert, acquire or hold more than five per cent of the paid up equity share capital in a bullion exchange or bullion clearing corporation, as the case may be.	The remaining share capital may be acquired or held by any other person (whether Indian or of foreign jurisdiction) and such person shall not at any time, directly or indirectly, either individually or together with persons acting in concert, acquire or hold more than ten per cent of the paid up equity share capital in a bullion exchange or bullion clearing corporation, as the case may be.	<p>1) Specified institutions; and 2) Others</p> <p>Therefore, specified institutions may be allowed to acquire upto 25%. AND</p> <p>Others may be allowed to acquire shareholding upto 10%.</p> <p>Asset Management Companies, Custodians and Sovereign Funds may also be included as specified institutions for acquiring shareholding upto 25% in bullion MIIIs.</p>
		15(2)	Provided that a bullion exchange, a bullion depository, a stock exchange, a depository, a banking company, an insurance company, or a commodity derivatives exchange, whether Indian or of foreign jurisdiction, or a public financial institution of Indian jurisdiction, or a bilateral or multilateral financial institution approved by the Central Government, may acquire or hold, either directly or indirectly, either individually or together with persons acting in concert, up to fifteen per cent of the paid-up equity share capital of a bullion exchange or bullion clearing	Provided that a bullion exchange, a bullion depository, a stock exchange, a depository, a banking company, an insurance company, an asset management company or a commodity derivatives exchange, whether Indian or of foreign jurisdiction, or a public financial institution of Indian jurisdiction or a sovereign fund or a bilateral or multilateral financial institution approved by the Central Government, may acquire or hold, either directly or indirectly, either individually or together with persons acting in concert, up to twenty-five per cent of the paid-up equity share capital of a bullion exchange or bullion	

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			corporation, as the case may be.	clearing corporation, as the case may be.	
		16(2)	Any person who acquires equity shares or voting rights, in a bullion exchange or bullion clearing corporation, directly or indirectly, either individually or together with persons acting in concert, that entitles the person(s) so acquiring to exercise any voting rights above five per cent , shall seek prior approval of the Authority, in such form and the manner specified by the Authority, within fifteen days of such acquisition.	Any person who acquires equity shares or voting rights, in a bullion exchange or bullion clearing corporation, directly or indirectly, either individually or together with persons acting in concert, of ten per cent . or more of the paid-up equity share capital shall not have any conflict of interest and obtain prior approval of the Authority.	In terms of MII Regulations, approval of Authority is required for acquisition of ten per cent. or more of the paid-up equity share capital and such entities shall not have any conflict of interest. We may align with the MII Regulations.
8	Record Keeping	19	Under Regulation 19, In addition to the requirements under other laws in force, a bullion exchange and bullion clearing corporation shall maintain and preserve all the books, registers, other documents and records relating to the issue or transfer of its securities for a period of not less than eight years .	In addition to the requirements under other laws in force, a bullion exchange and bullion clearing corporation shall maintain and preserve all the books, registers, other documents and records in electronic retrieval form for a period of not less than twenty years	“relating to the issue or transfer of its securities” may be deleted. This requirement may be aligned with the MII Regulations, 2021 (i.e. to be maintained in electronic retrieval form for 20 years)
9	Governance	20(2)	The governing board of every recognised bullion exchange and recognised bullion clearing corporation	The governing board of every recognised bullion exchange and recognised bullion clearing corporation	Timeline for implementation of the provisions relating to Governance may be

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			shall include shareholder directors, public interest directors, and managing director, subject to the following	shall include shareholder directors, public interest directors, and managing director, within the timeline as may be specified by the Authority , in compliance with the following	separately specified by IFSCA. In line with the regulatory provisions prescribed in MII Regulations.
10	Governance	20(2)	-	The managing director shall be included in the category of shareholder directors. Any employee of a bullion exchange or bullion clearing corporation, as the case may be, may be appointed on the governing board in addition to the managing director and such director shall be deemed to be a shareholder director	Mentioned in MII Regulations. May be inserted in Bullion Exchange Regulations
11	Governance	20(2)	The appointment of managing director shall be for a term not exceeding five years subject to maximum age limit of 65 years .	The appointment of managing director shall be for a term not exceeding five years subject to maximum age limit of 70 years : Provided that the managing director may be re-appointed subject to approval of the Authority.	The MII Regulations permit till 70 years. 65 years may be changed to 70 years. Provision for re-appointed may also be mentioned for better clarity.
12	Governance	20(2A)	-	(2A) The roles and responsibilities of the governing board of every bullion exchange and bullion clearing corporation, should be clearly specified and	Mentioned in MII Regulations. The governance norms may be strengthened in respect of bullion MIIs.

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				the procedures for its functioning, including procedures to identify, address, and manage conflicts of interest should be documented.	May be inserted in Bullion Exchange Regulations
13	Governance	20(2B)	-	(2B) The governing board of every bullion exchange and bullion clearing corporation shall review the overall performance and the performance of its individual directors regularly.	Mentioned in MII Regulations. The governance norms may be strengthened in respect of bullion MIIs. May be inserted in the Bullion Exchange Regulations.
14	Statutory committees	23	(1) Every recognised bullion exchange or recognized bullion clearing corporation shall constitute a functional committee, comprising of member and core settlement guarantee fund committee; a grievance redressal committee; a nomination and remuneration committee; an oversight committee, comprising of standing committee on technology; an advisory committee; a regulatory oversight committee; audit committee; and a risk management committee. (2) The composition, quorum and functions of the committees under sub-regulation (1) shall be in the	Every bullion exchange and bullion clearing corporation shall constitute such committees as may be specified by the Authority from time to time	May be aligned with the MII Regulations

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			manner as specified by the Authority.		
15	Trading Hours	26A	-	<p>(1) The trading hours for bullion exchange shall be as specified by the Authority from time to time.</p> <p>(2) A bullion exchange and a bullion clearing corporation shall ensure that the risk management system and infrastructure are commensurate to the trading hours at all times.</p>	<p>In respect of MII, it has been specified that the trading hours shall not exceed 23 hours 30 minutes in a day</p> <p>A general provision may be inserted regarding trading hours. More details may be specified subsequently.</p>
16	Risk Management	26B	-	<p>(1) A bullion exchange and a bullion clearing corporation shall have a sound risk management system and infrastructure for comprehensively managing risks.</p> <p>(2) A bullion exchange shall evolve a detailed framework for the applicable position limits for each product to be traded.</p> <p>(3) A bullion clearing corporation shall evolve a robust risk management framework and shall comply with the following:</p> <p>(a) The risk management framework shall be in line with the Committee on Payments and Market Infrastructures</p>	<p>The risk management framework for exchanges and clearing corporations may be broadly aligned with the MII Regulations.</p>

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				<p>(CPMI) and International Organization of Securities Commissions' (IOSCO) Principles for Financial Market Infrastructures;</p> <p>(b) A bullion clearing corporation shall evolve a margining framework based on the best practices prevailing in the bullion clearing corporations globally; and</p> <p>(c) A bullion clearing corporation shall on an ongoing basis maintain capital including retained earnings and reserves, to adequately cover counterparty credit risk, business risk, legal and operational risk.</p>	
17	Halting Trading by bullion exchange	26C	-	A bullion exchange shall have a procedure for any halt of trading in market or product for promoting fair and orderly trading.	May be inserted in line with the MII Regulations.
18	Co-location by bullion exchange	26D	-	<p>(1) A bullion exchange providing co-location facilities shall supervise and monitor such facilities and shall ensure that the integrity, security and privacy of data and trading systems are maintained, at all times.</p> <p>(2) A bullion exchange shall ensure that equal and fair access is</p>	<p>Similar provisions mentioned in MII Regulations.</p> <p>We may insert in the Bullion Exchange Regulations also.</p>

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				<p>provided to the participants through such co-location facilities.</p> <p>(3) A bullion exchange providing co-location facilities shall publish quarterly reports on its website on latencies observed at the exchange.</p>	
19	Business Continuity Plan and Disaster Recovery	26E	-	A bullion exchange and a bullion clearing corporation shall have in place Business Continuity Plan and Disaster Recovery Site to maintain data and transaction integrity in the manner as may be specified by the Authority from time to time.	Requirements for BCP and DR may be prescribed
20	Pledge or hypothecation of bullion held in a bullion depository	40	A beneficial owner may with the previous approval of the bullion depository , create a pledge or hypothecation in respect of the bullion owned by such beneficial owner through a bullion depository.	A beneficial owner shall create a pledge or hypothecation in respect of the bullion owned by such beneficial owner through a bullion depository.	<p>The pledge of bullion shall be made mandatory through a bullion depository.</p> <p>“may” may be replaced with “shall”</p> <p>Prior approval of the bullion depository may not be necessarily required for creating a pledge.</p>
21	Business Continuity Plan and Disaster Recovery	42A	-	A bullion depository shall have in place Business Continuity Plan and Disaster Recovery Site to maintain data and transaction integrity in the manner as may be	Requirements for BCP and DR may be prescribed in respect of bullion depository

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				specified by the Authority from time to time.	
22	Registration of Vault Managers	43(5)	The registration shall be subject to annual renewal as per the procedure specified by the Authority.	The registration shall be subject to annual review as per the procedure specified by the Authority.	Annual renewal may not be mandated for vault managers. Intermediaries are generally granted registration for a longer period. Annual renewal may be changed to annual review.
23	Liabilities of Vault Managers	44(4)	The vault manager shall not be responsible for any loss, destruction, damage or deterioration of the bullion attributable to circumstances such as force majeure, act of war, act of public enemies and the like.	The vault manager shall not be responsible for any loss, destruction, damage or deterioration of the bullion attributable to any of the circumstances under force majeure events.	For better clarity
24	Bullion depository receipts	46(2)(m)	Regulation 46(2) of Bullion Exchange Regulations	46(2) (m) “and may add or exempt such other particulars as may be prescribed by the bullion exchange or the Authority.”	The particulars provided in respect of bullion depository receipts are very prescriptive. The bullion exchange / Authority may have the powers to add or exempt some of these requirements.
25	Bullion depository receipts	46(3)	(3) In case a vault manager wilfully omits from a bullion depository receipt any of the particulars set out in sub-regulation (1), such vault manager shall be liable for damages	May be deleted	The bullion depository receipts will be issued by bullion depository and not the vault manager. This sub-regulation may be deleted

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			caused by such omission.		
26	Depositing bullion into vaults	47(3)	At the time of deposit of the bullion, the vault manager shall employ the services of an assayer , with the prior approval of the Authority, for the purposes of testing the good delivery standard of the bullion.	At the time of deposit of the bullion, the vault manager may employ the services of an assayer as and when required , with the prior approval of the Authority, for the purposes of testing the good delivery standard of the bullion.	The services of assayer may be made optional.
27	Issue of bullion depository receipt	48(1)	On receipt of bullion from a depositor and after completion of all necessary documentation, the vault manager shall issue a bullion depository receipt in the name of such depositor in electronic form through a bullion depository, in such manner as may be provided	On receipt of bullion from a depositor and after completion of all necessary documentation, the bullion depository shall issue the bullion depository receipt in electronic form once the confirmation of physical bullion has been received from the vault manager and communicated to the bullion depository, in such manner as may be provided.	This sub-regulation is in contradiction to the definition of "bullion depository receipt". BDRs are to be issued by bullion depository and not the vault manager. The role of vault manager would be to confirm receipt of physical bullion to the depository. In the name of depositor may not be required here. Registered owner and beneficial owner has been dealt separately.
28	Fit and Proper	51	-	A recovery proceeding has been initiated against the person by a financial regulatory authority and is pending	May be aligned with the MII Regulations.
29	Annual net worth certificate	54	Every bullion exchange, bullion clearing corporation and bullion depository shall submit an audited net worth	Every bullion exchange, bullion clearing corporation, vault manager and bullion depository shall submit an audited net worth	Annual net worth certificate requirements may be mandate in respect of vault managers also.

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			certificate from their respective statutory auditor on an annual basis by April of every year for the preceding financial year.	certificate from their respective statutory auditor on an annual basis by April of every year for the preceding financial year.	
30	Maintenance of books of accounts, records and other documents	55(2)	Such books of accounts, records and other documents specified by the Authority shall be maintained for a period of at least five years.	Such books of accounts, records and other documents specified by the Authority shall be maintained in electronic retrieval form for a period of at least twenty years.	This requirement may be aligned with the MII Regulations, 2021 (i.e. to be maintained in electronic retrieval form for 20 years)
31	Regulatory Fee	57	Every recognised bullion exchange, bullion clearing corporation, bullion depository and other intermediaries shall pay a regulatory fee as may be specified by the Authority.	Every recognised bullion exchange, bullion clearing corporation, bullion depository, vault manager and such other intermediaries shall pay a regulatory fee as may be specified by the Authority.	Vault manager may also be inserted
32	Power to call for information	59	-	The Authority may at any time call for any information, documents or records from a bullion exchange, bullion clearing corporation, bullion depository, vault manager or any intermediary associated with the bullion market, or their governing body or any shareholder thereof.	Power to call for information may be inserted
33	Inspection	60	-	(1) The Authority may at any time undertake inspection, conduct inquiries and audit of any bullion exchange,	Provisions for conducting inspection may be inserted

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				<p>bullion clearing corporation, bullion depository, vault manager or any intermediary associated with the bullion market, or its associates or any of its shareholders.</p> <p>(2) Where an inspection of an entity is undertaken by the Authority under sub-regulation (1), every manager, director, managing director, chairperson, officer and other employee of such shall entity cooperate with the Authority.</p> <p>(3) The Authority shall after consideration of inspection or investigation report take such action as it may deem fit and appropriate.</p>	
34	Directions by the Authority	61	-	Without prejudice to the exercise of its powers under the provisions of the IFSCA Act and rules and regulations made thereunder, the Authority may, either suo- motu or on receipt of any information or during pendency of any inspection, inquiry or investigation or on completion thereof, in the interest of public or trade or investors or the bullion market in an IFSC, issue such directions as it deems fit.	Provisions for issuance of directions by the Authority may be inserted

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35	Appointment of Auditor by the Authority	62	-	The Authority shall have the power to appoint an auditor to inspect or investigate, into the books of account, records, documents, infrastructures, systems and procedures or affairs of a bullion exchange, bullion clearing corporations, bullion depository, vault manager or any intermediary associated with the bullion market.	Provisions for appointment of auditor by the Authority may be inserted
36	Authority to recover the expenses	63		Wherein the auditor has been appointed under regulation 62, the Authority shall be entitled to recover the expenses including fees paid to the auditors from the bullion exchange, bullion clearing corporations, bullion depository, vault manager or any intermediary associated with the bullion market, as the case may be.	Provisions for recovering of expenses of auditors may be inserted.

Public Comments

- The comments and suggestions from public are invited on the proposed amendments to IFSCA (Bullion Exchange) Regulations, 2020. Comments may be sent by email to Mr. Arjun Prasad, Deputy General Manager, IFSCA at arjun.pd@ifsc.gov.in and Mr. Ramakrishnan Padmanabhan, Deputy General Manager, IFSCA at ramakrishnan.pad@ifsc.gov.in latest by June 21, 2021.

8. The comments should be in the following format:

Name and occupation of the person			
Sr No	Number of the regulations	Proposed changes	Rationale