



Consultation Paper to revise and revamp nomination facilities in the Indian Securities Market

February 02, 2024

Introduction

This consultation paper proposes revisions to nomination facilities for securities (such as shares, bonds, units of REITs/ InvITs / AIFs and other securities) held in dematerialized form in a demat account and for units of mutual fund schemes held in non-materialized form / Statement of Account addressing the objective of providing convenience to investors in the Indian securities market, and institution of uniformity in the facilities and procedures and affording certain choices and flexibilities in nomination facilities.

Such revised and revamped nomination facilities will operate without affecting the prevalent systems of law governing transmission and succession:

- Rule of Survivorship (in case of joint ownership or joint holdings)
- When a person has died leaving a Will; and
- When a person has died without leaving a Will, i.e. intestate

Coverage

In the Indian securities market, the majority of financial assets are held in dematerialized form through a demat account with a depository participant. This includes shares, bonds, units of REITs/InvITs/AIFs, and certain mutual fund schemes. Although mutual fund units are not initially in dematerialized form, they can be dematerialized upon the investor's request.

Investors holding physical shares of listed entities not incorporated under the Companies Act, lacking nomination provisions, can opt to dematerialize their holdings to avail the nomination facility. This aligns with the goal of achieving a hundred percent dematerialization of all listed securities, eliminating the need for further policy measures for residual physical holdings.

The coverage of the proposal shall be:

- a. the demat accounts (and securities held within such accounts),
- b. the units of mutual fund schemes held in a non-materialized form and expressed in a statement of account and
- c. The units of AIF held in a non-materialized form and expressed in a statement of account or in physical form (until dematerialization as mandated is completed)

General Rules

The following general rules will apply or continue to apply to **demat accounts, and the units of mutual fund schemes held in a non-materialized form.**

1. In joint accounts, the survivorship rule applies. If one account holder passes away, surviving joint holders retain rights and can manage nominations without affecting the mode of operation.
2. If all joint holders die simultaneously, the nominee/s inherit the demat account or mutual fund units, guided by the Will or legal heirs of the younger joint holder.
3. In Hindu Undivided Family demat accounts, the **new karta, upon the recorded karta's** death, is entitled to operate the account or transact in units.
4. For sole account holders, upon death, the nominee/s inherit the demat account or mutual fund units based on the Will or intestate succession rules.
5. If a nominee dies while the investor is alive, the legal heirs or representatives of the deceased nominee have no claim to the investor's holdings based solely on the nomination.
6. If more than one nominee is specified and one predeceases the investor, the surviving nominees inherit the holdings equally or proportionally based on the investor's specifications.
7. Investors with credit facilities secured by a pledge need discharge from creditors for nominee transfer and subsequent transmission to legal heirs. Nominations are optional, but single holders must declare if they opt not to nominate.
8. **Nominations are optional, except for single holdings where** investors must declare their choice explicitly.

Guardrails and additional measures

The following guardrails and additional measures are proposed with the objective of addressing concerns of investors that nomination facilities can be regarded as safe, secure, convenient, and reliable means for making, changing, or canceling nominations.

1. Nomination processes should be secure, using methods like **digital signatures, Aadhaar eSign, or dual authentication**. Thumb impressions need two independent witnesses.
2. Investors making nominations should provide personal identifiers and contact details of nominees for better identification and contact-ability.
3. Investors must receive acknowledgment for making, changing, or canceling nominations. Regulated entities should maintain records for a prescribed period.
4. Nomination facilities can be made, changed, or canceled without restrictions on the number of times.
5. Information on nominees and their share should be available upon investor request, including through account aggregator services.
6. The limit on the number of nominees will be increased to a very high two or three-digit number (e.g., **99 or 999**) to accommodate diverse investor needs.
7. Nomination facilities will allow the specification of percentage shares for nominees, with proportional division in case of predecease.
8. Nominees will not constitute joint holders unless all nominees agree.
9. Investors can specify guardians for minor nominees.
10. Investors can specify successive nominees, mapping them to specific nominees or percentages.
11. KYC completion or updating for nominees is optional during the investor's lifetime.
12. Investors have the option to specify that in the event of their permanent or temporary incapacitation, the nominated individual(s) can conduct transactions:
 - **For a single nominee**, they will be authorized to conduct transactions.
 - **For multiple nominees**, investors can specify the authorized nominee.
13. If an investor is incapacitated:
 - With the 'capacity to contract,' a Power of Attorney, mandate letter, or authorization letter can be used.
 - Without the 'capacity to contract,' a court guardianship certificate is required, along with a doctor's certificate, in-person verification, and thumb impression.
14. Transfer to nominees requires completion or reaffirmation of KYC and discharge from creditors. No additional documentation is needed. Claims and contests are between nominees and claimants, excluding depositories, mutual funds, or their registrars.
15. In joint holdings with survivorship rule, no additional documentation is needed from surviving joint holders.
16. In the absence of nominations, legal heirs or representatives must follow applicable legal procedures for transmission.

Measures Required to be taken by the regulated entities.

In order to give effect to the proposals, depositories and asset management companies managing mutual funds (and their registrars) must update and upgrade their systems, processes and procedures for the nomination facilities as under: -

1. Enable e-nomination in mutual funds by incorporating authentication through digital signature certificate, Aadhaar-based e-sign, and dual-factor authentication. Extend online transaction capability to joint accounts, following the bank account model: **1) first-named holder, 2) anyone or survivor, 3) either or survivor, or 4) joint**. This aligns with the existing practices and facilitates seamless e-nomination processes.
2. Enable secure and authenticated nominations by utilizing digital signature certificates, Aadhaar-based eSign, or physical signatures with dual/multi-factor authentication. Validate thumb impressions with two independent witnesses and provide acknowledgment for any nomination changes.
3. Collect contact details of nominees from investors, with an optional capture of the nominee's relationship in the form.
4. Provide due acknowledgment for making, changing, or canceling nominations.
5. Maintain records of nominations made, changed, or canceled as per prescribed periods.
6. Offer information on nominees and their share upon investor request, possibly through account aggregator service.
7. Include a simple **Y/N indication of registered nomination (without nominee names)** on statements, similar to a bank passbook. Detailed nomination information provided upon investor request, with acknowledgment for any changes made.
8. Allow multiple nominees without numerical limits, potentially extending to two or three digits based on public feedback. Investors can specify the nominee's percentage share; otherwise, equal transmission occurs if a nominee predeceases the investor. Transmission aligns with specified percentages for multiple nominees. Joint accounts are created only with unanimous nominee agreement. If transmission requests differ among nominees, unsettled funds/securities go to an escrow account, following guidelines for demat accounts or mutual funds. Unclaimed amounts adhere to existing norms for dividends and redemptions.
9. For minor nominees, optional provision for guardian details. Investors can specify successive nominees, mapping to specific individuals or percentages. Enable investors to complete or update KYC for nominees during their lifetime.

10. Enabling the investors/s an option of specifying that on such an investor being incapacitated, the nominee/s can conduct transactions. In the case of a single nominee, such nominee will be authorized to conduct the transactions.

- a) In case of multiple nominee/s, the investor can specify if the first named nominee or anyone of the nominees or a specified nominee will be authorized to conduct the transactions.
- b) In case of an incapacitated investor who
 - has the 'capacity to contract', then a Power of Attorney (POA) or a mandate letter or authorization letter may be used.

OR

- does not have the 'capacity to contract', then guardianship certificate from court would be required.

AND

- provision of a doctor's certificate, in-person verification by the relevant depository or registrar, obtaining of thumb impression of investor instead of signature / on-line login credentials

11. Implement revised nomination facilities as per proposal and regulations. Notify existing investors, allowing them to review, modify, or cancel nominations and introduce a standardized nomination form for new investors across mutual fund units and Demat Accounts.

Notes

- Public Comments should be made as per the format prescribed in the consultation paper latest by March 08, 2024
- To refer Annexure A – "List of Extant SEBI Circulars on Nominations" refer to SEBI Consultation Paper page number 16



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