**The salient features are as follows:**

* The prior approval application for business transfer/ merger/demerger/amalgamation without change in control must be submitted to the Exchange before executing the business transfer agreement or filing the scheme with the NCLT/RD.
* Trading members applying for merger/demerger/business transfer have to obtain approval of SEBI as well even if the transferor/transferee is a non-NSE member. To obtain the approval of SEBI, member has to designate any of the Exchange as the “Designated Exchange” to forward the application to SEBI to get the NOC from SEBI.
* The Exchange shall provide the prior approval basis the NOC received from the SEBI on the application.
* The scheme/business transfer agreement shall include a clause regarding :
1. honouring of all the financial commitments/obligations/liabilities of all the extinguishing Trading Members that devolved prior to business transfer or may devolve subsequent to the business transfer and shall be treated as if it were the liability of the transferee entity.
2. Surrendering of membership by the transferor entity
3. In case of partial transfer, BTA to include activities to be undertaken by the transferor.
* The transferee entity will have to obtain **positive consent** from all the clients of the transferor entity, incase if liabilities are not getting transferred. An undertaking in this regard shall be required to be submitted to Exchange. In case of non-receipt of confirmation, such client cannot be transferred to the transferee and has to be closed out. Additionally, post surrender the deposits will be subject to lock-in period of 3 years.
* The transferee entity will have to obtain **consent** from all the clients of the transferor entity, incase if liabilities are getting transferred. An undertaking in this regard shall be required to be submitted to Exchange.
* The transferee entity will have to obtain **positive consent** from all the Authorized Persons of the transferor entity. AP’s not giving the consent has to be cancelled on or before the effective date.
* If liabilities are not transferred at the time of business transfer, the deposits will be subject to lock-in period of 3 years. If past, present and future liabilities are getting transferred, then lock-in of 3 years shall not be applicable and deposits shall be released subject to receipt of no objection from SEBI and other departments of the Exchange and surrender approval from SEBI.
* The promoter group of the merged entity shall comprise of only the promoters of the Trading Members.
* When two or more individual Trading Members merge to form either a partnership firm or a corporate, the dominant group of partners/promoter in such emerging Trading Member entity shall comprise of any or all such individual Trading Members
* In case a merger between two or more individual/partnership firms, Trading Members resulting in the formation of a new partnership firm or corporate; the dominant group of partners/promoter shareholders in such emerging firms or corporate Trading Member shall comprise of any or all the dominant partners/promoter shareholders of such merging Trading Members.
* In case of merger between two or more corporate Trading Members, the promoter group of shareholders in such emerging corporate Trading Member shall comprise of any or all the promoters of such merging Trading Members.
* The merged entity shall at all times consist of at least one or more Members of the promoter group of the merging Trading Members who would hold at least 51% of its total paid up capital (40% in case of listed companies)/profit sharing ratio.
* The scheme of merger shall provide for the appropriation/transfer of the entire amount of security deposits of the extinguishing Trading Members with the Exchange/NSE Clearing in favour of the merged entity. Such deposits of the extinguishing Trading Members will be refunded to the merged entity only after the expiry of the respective lock in period of each of the extinguishing Trading Members. No interest shall be paid by the Exchange/NSE Clearing on such deposits. These deposits may however be considered towards net worth/capital adequacy requirements/exposure limits of the merged entity, as also for margin purposes.
* The scheme of merger shall provide that the merged entity shall honour all the financial commitments/obligations/liabilities of all the extinguishing Trading Members that devolved prior to merger or may devolve subsequent to the merger and shall be treated as if it were the liability of the merged entity.
* In case of violations, disciplinary actions shall be taken as per the Exchange circular no. NSE/INSP/53530 dated September 02, 2022.

**FAQ for business transfer/ merger/demerger/amalgamation without change in control**

1. Who shall submit the application to the Exchange?

**Answer:** i) NSE application has to be submitted by the Trading Member. In case if transferor and transferee both are trading members of NSE, then both have to submit the application separately.

ii) SEBI application has to be submitted by the transferor and transferee both irrespective of membership status.

1. Who shall be signing the application and other documents?

**Answer:** designated director or director and compliance officer can sign the documents.

1. Who shall be providing the Annexure B of the Checklist?

**Answer:** Annexure B has to be provided by the member entity in case the merger is between non-member and member entity or vice versa. If the merger is between two or more member entities, both have to provide Annexure B.

1. Can the Shareholding pattern of the transferor and transferee be self certified?

**Answer:** All the shareholding patterns should be certified by the practicing CA/CS

1. If one of entity is a non-member, which entity to submit the SEBI application?

**Answer:** SEBI application has to be submitted by transferor and transferee both irrespective of the membership status. NSE application to be submitted by the member entity, incase transfer is between two member entities, both have to submit the application.

1. Whether draft scheme/business transfer agreement to be submitted to Exchaneg or the scheme filed with RD/NCLT/executed BTA.

**Answer:** Draft scheme/BTA to be submitted while applying for prior approval.

1. When will the deposit of merging member/transferor be released?

**Answer:** deposits shall be released after the lock-in period of 3years in case of non-transfer of liabilities. If past and present liabilities are transferred, then the deposits are not submitted to 3 years lock-in.

1. Is SEBI approval required in case of merger/de-merger/business transfer without change in control

**Answer:** Yes, SEBI approval is required in case of merger/de-merger/business transfer not amounting to change in control.

1. Do we need to submit proposed shareholding pattern and/or proposed networth certificate if there’s no change in current shareholding pattern and/or current networth pursuant to the proposed merger/de-merger/business transfer of the transferee entity?

**Answer:** Yes, proposed networth and the proposed shareholding pattern has to be submitted even if there’s no change pursuant to the proposed transfer of business/merger/demerger.

1. Do we have to status reports of all the exchanges and depositories?

**Answer:** Yes, status reports of all the Exchanges including the NSE and depositories, wherever member is registered, has to be submitted. In case member has applied for surrender, then you may submit the surrender letter.

1. If a member is not active in any one of a Exchange but is registered as on the date of application, should we submit the Status reports.

**Answer:** Yes. If a member is registered in a Exchange and is inactive, then also status report of the said Exchange has to be submitted.

1. Can we make changes in the format of the shareholding pattern?

**Answer:** No, format shouldn’t be changed.

1. What to mention in column “Under what capacity” of the Shareholding Pattern?

**Answer:** mention Promoter/Promoter Group/Person Acting in Concert, as applicable.