

No.3/1/2012-FSLRC
Government of India
Ministry of Finance
Financial Sector Legislative Reforms Commission

New Delhi,
Dated 29.2.2012

ORDER

Subject: - Working Group on Securities

Vide Resolution No.18/1/2011-RE dated 24th March, 2011, Ministry of Finance, Department of Economic Affairs constituted the Financial Sector Legislative Reforms Commission (FSLRC) with a view to review and rewrite the financial sector laws to bring them in tune with the current requirements. As per para 3 of the Resolution, the Commission has been authorised to device its own procedure and to appoint consultants, advisors and experts and outsource research work to institutions of repute and expertise in the relevant area for the purpose for which the Commission has been set up.

2. The Commission has decided to constitute Working Groups to study different sectors/aspects of the financial sector in detail. Accordingly, with the approval of the competent authority, it has been decided to set up a Working Group on Securities with the following composition:-

i.	Prof Jayanth Varma	Chairman
ii.	Shri Ravi Narain	Member
iii.	Shri Madhu Kannan	Member
iv.	Shri Neeraj Gambhir	Member
v.	Shri Jayesh Mehta	Member
vi.	Shri S. A. Narayan	Member
vii.	Prof. K G Sahadevan	Member

The Working Group may co-opt other experts as special invitees.

3. The Terms of Reference of the Working Group will be as per Annexure 'A'. The Working Group will follow the broad principles and processes as approved by the Commission, while making their recommendations.

4. The Working Group will submit a draft report to the Commission by the end of July, 2012. The Working Group may also make interim presentations before the Commission for keeping the Commission informed as well as for seeking its advice.

5. The Working Group will be supported by the Headquarter Research Team of the Commission.

6. Desiring Members of the Working Group will be provided air tickets, as per their institutional entitlement/economy air fare, for air travel between their headquarters and the place of the Working Group meetings for attending meetings.


(A.K. Sinha)

Deputy Secretary to the Government of India

1. Chairman, FSLRC
2. Member Convenor, FSLRC
3. Secretary, FSLRC
4. All members of the Working Group on Securities.
5. Secretary, NIPFP.

(ए के सिन्हा/A. K. SINHA)
उप सचिव/Deputy Secretary
वित्त मंत्रालय/Ministry of Finance
आर्थिक कार्य विभाग/Deptt. of Eco. Affairs
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Copy to Research Team, FSLRC

Annexure 'A'

Terms of Reference of the Working Group on Securities

The WG on securities will work on all dimensions of organised financial trading. The terms of reference shall be as follows:

1. Review the existing legal framework including SC(R)A, SEBI Act, depositories legislation, RBI Amendment Act of 2006, FC(R)A, etc.
2. Review expert committee recommendations, and identify the legal changes which would implement existing recommendations.
3. Unification and harmonisation of the legal and regulatory treatment of all underlyings and all traded products. How would we treat OTC and exchange-traded derivatives in a unified framework? How should the word 'security' be defined, in a way that accommodates all dimensions of organised financial trading, and supports future innovations?

What should be done about commodity spot trading when delivery is done through dematerialised warehouse receipts? This may require examining the Warehouse Development and Regulation Act.

4. Should clearing corporations / clearinghouses be treated as a part of micro-prudential regulation or systemic stability? Are they systemically important components of the payments system?
5. What are the unique features of consumer protection in securities markets?
6. What are the unique features of micro-prudential regulation and systemic stability for securities markets?

7. What does financial law have to do, other than the main paths of consumer protection, micro-prudential regulation and systemic risk? What 'Aspects of Financial Contracts' require legislative attention, over and above these three pillars?

How do we obtain:

- (a) Enforceability of derivative contracts in view of their similarity to wagering contracts
 - (b) Enforceability of netting, cross margining and closeout of positions by the clearing corporation especially in the event of bankruptcy of market participants.
 - (c) Bankruptcy remoteness of collateral in derivative margining and other contexts
 - (d) Securitization especially of future cash flows
 - (e) Inter-linkage of central counter-parties (CCP) with the payment system and their ability to settle in central bank money
 - (f) Legal protection of exchanges and clearing corporations in respect of actions taken by them after a participant default
 - (g) Resolution of clearing corporations and other systemically important securities market intermediaries
8. To review the legal framework through which the regulatory agency would write subordinate legislation on issues of ownership, governance, and compensation policy for critical infrastructure providers.
 9. How should the issues of insider trading and fraud be dealt with, in a general way, which applies to all securities?
 10. The field of corporate governance is a complex interplay of company law and securities law. What, if anything, should securities law be doing?
 11. In the field of fund management, to review the structures used by mutual funds, private equity funds, etc., and examine the need for fundamentally different approaches.
 12. Any other relevant issue.