

“CERC: Draft Guidelines for Registration and Filing Application for Establishing and Operating Over the Counter (OTC) Platform”

The CERC on 26th January, 2022 notified the Draft Guidelines for Registration and Filing Application for Establishing and Operating Over the Counter (OTC) Platform. The key highlights of the draft are mentioned below,

1. Registration for operation of OTC Platform: Entities shall not operate OTC Platforms unless registration has been granted under the Power Market Regulations (PMR), 2021.

2. Criteria for Eligibility:

General Criteria	Technological criteria	Financial criteria
<ul style="list-style-type: none"> i. Company shall be incorporated in India under the Companies Act, 2013. ii. Shareholding by non-residents, shall conform to all applicable laws and regulations. iii. Applicant shall have key managerial personnel, as defined in the Companies Act, 2013, with a minimum experience of five years in operating or developing technology services or products, preferably for the power sector. iv. The following shall not be eligible to establish and operate OTC Platforms: <ul style="list-style-type: none"> a) power exchange or its associates b) trading licensee or its associates c) grid-connected entities <i>i.e.</i>, Gencos, Discoms, OA consumers or entities acting on their behalf, or their associates. 	<ul style="list-style-type: none"> i. The applicant shall own and maintain robust technology infrastructure with a high degree of reliability, availability, scalability, and security in respect of its systems, data, and network, appropriate to support its operations and manage the associated risks. ii. The applicant’s infrastructure shall be capable of disseminating transaction information on a real-time basis or near real-time basis. 	<ul style="list-style-type: none"> i. Minimum Net worth of the applicant shall be Rs.1 (one) Crore as on any date falling within 30 days immediately preceding date of application for grant of registration. ii. The Company or any of its Associates, partners, promoters, or Directors shall not have been declared insolvent.

3. Procedure for Application: Form-I shall be filed along with application fee as specified in the Fee Regulations. Application shall be published along with details as per Form-II, inviting suggestions up to 30 days, and replies shall be submitted on the suggestions received.

4. Grant of Registration: The non-transferrable registration shall be in force for a period of five years from the date of grant unless it is revoked or cancelled earlier. Commission may renew the registration for five years at a time, after making necessary inquiries.

5. Annual Registration Charge: Annual registration charge shall be payable by 30th of April every year as per the Fee Regulations.

6. Operating Framework: Operator shall ensure the Platform operates according to its Business Rules, and shall adhere to the following requirements:

- a. Participation: Operator shall have fair and transparent criteria for participation on the Platform. It shall undertake diligence during on boarding of participants and maintain their data with identification using Legal Entity Identifier (LEI) or Permanent Account Number (PAN).

- b. Access to Information: Operator shall make analytics services, information such as historical trade analysis, or such other information, available to participants in a fair, non-discriminatory basis.

7. Risk Management Framework: Operator shall place a risk management framework covering all aspects of operations, such that risks are identified and managed prudently. Operator shall ensure access control for participants and prevent unauthorised access. It shall not engage in services, where there is likelihood of conflict of interest and ensure the operations follow conditions of registration, with legal and regulatory requirements. Platform shall not engage in negotiation, execution, clearance, or settlement of contracts, and shall not influence decision making of participants in any manner.

8. Preservation, Access, and Reporting of Data:

- a. Data related to activities on the Platform shall be maintained for at least ten years. Data sought for any investigation under Indian laws or regulations shall be maintained for three years from the date of completion of the investigation.
- b. Operator shall provide data in the format, within the timeframe as required by the Commission. They shall submit copies of Annual Reports including Directors' report, Auditors' report, Balance Sheet and Profit and Loss Account along with all Schedules and notes to the accounts, within nine months after closure of the respective financial year; and inform the Commission of any event(s) resulting in disruption of activities or market abuse, if observed, without undue delay.

9. Revocation of Registration:

- a. Commission may revoke registration under the violation of PMR 2021 or these Guidelines or any other rules or regulations or conditions of registration, provided that the Commission shall give the Operator a reasonable opportunity to be heard.
- b. In case of rejection of renewal application or revocation of registration, Operator shall stop operations within 90 days unless Commission has indicated any other specific date to stop operations, additionally the original registration shall be surrendered.

The draft amendment can be accessed [here](#)

CER Opinion

- 1. Role of OTC Platform in Power Market:** In the context of illiquid market, OTC platforms play a key role in bringing together buyers and sellers, and help in trade in such products. In 2007, Security and Exchange Board of India (SEBI) permitted stock exchanges to launch order driven trade-matching platform, which essentially offer features of an OTC platform. It is important to note that OTC platform is generally limited to debt securities, which are illiquid as compared to the equity market and hence lack competitive price discovery.

OTC platforms can play role in information dissemination and order matching for illiquid products. However, efforts should be to ensure greater competitiveness across all products in the power market. In the current context, DEEP platform has served such a role, but it continues to lack liquidity and competitiveness. Stakeholders also do not have visibility to contracts available for trade and contracts matched thereof. Availability of information from OTC platform should attract regulatory attention while issuing guidelines for the same.

- Public Information Disclosure by OTC Platform:** Non-availability of information makes it challenging to develop analytical tools that can help in optimisation of available resources (the key objective of NEP u/s 3 of the Act). The OTC Platform should share the detailed data in public domain so as to enable efficient decision-making by the stakeholders.

In the context of capital market, SEBI mandates reporting of OTC transactions at reporting platforms of the stock exchanges. These guidelines must also mandate availability of detailed information on contracts matched, including contracts not matched but were available for trade. These should be reported by all OTC platforms at the registered power exchanges.

- Negative List (Clause 6.1 (iv)):** As per the draft guidelines, “*grid connected entities such as generating companies, distribution licensees open access consumers or any person acting on their behalf, or any of their associates*”, are included in the “*Negative List*”. It is suggested that all transmission licensees, being grid-connected entities, should also thus be included in the same list as mentioned in Clause 6.1 (iv) (c).

The negative list mentioned in Clause 6.1 (iv) seems to apply only in the context of ‘*application for setting up and operating a platform*’ to ensure that the negative list is followed in its ‘*true spirit*’, the purchase and the merging of existing OTC platforms should not be allowed by the entities the negative list.

- Financial Criteria (Clause 6.3 (i)):** The draft guidelines states, “*In terms of sub-clause (a) of clause (1) of Regulation 43 of PMR 2021, the minimum Net worth of the applicant shall be Rs.1 (one) Crore as on any date falling within 30 days immediately preceding the date of filing the application for grant of registration.*” It is suggested that the net worth of the applicant must be certified by a practising Chartered Accountant to prove that it meets the prescribed minimum value. Further, in case the net worth of the OTC operator falls below “*Rs. 1 (one) Crore*”, it should promptly be informed to the Commission within one (1) week of such change by the CEO/CFO of the OTC Platform operator.
- Procedure for Filing Application (Clause 8.2):** The draft guidelines states, “*The applicant shall publish the application along with details of the proposed OTC platform on its website as per Form-II inviting public objections and suggestions up to a period of 30 days from the date of publication of such notice on the website.*”

The provision to publish application for OTC platform on ‘its website’ need to address the search and transaction cost associated with stakeholders trying to locate the same. Provision for making available link to such information through CERC website would address this concern.

- Conditions of Registration (Clause 11 (ii)):** The draft guidelines states, “*the OTC Platform Operator shall inform the Commission in writing, whenever there is any material change in the information already submitted by the OTC Platform Operator to the Commission.*” It is suggested that such information must be also made available in the public domain so that the public at large may also review the changes thereof.
- Operating Framework (Clause 12 (i) (a) and (ii)):** The draft guidelines states, “*An OTC Platform Operator shall: Have objective, fair and transparent criteria for participation on its OTC Platform.*” Given that the OTC platform is only an information exchange platform, the reference to the “*participation*” in the OTC platform thus needs to be clarified.

The draft guidelines also states, “*Access to Information: An OTC Platform Operator shall make available analytics services, information such as historical trade analysis, or such other information, to all participants in a fair and non-discriminatory basis.*” Availability of information is the key to ensuring transparency and competitiveness in power markets. Any information associated with the OTC platform and the transactions undertaken therein should be available in the public domain in as much detail so as to

ensure that this information enhances transparency and competitiveness in the power market also ensures that there is no market manipulation being resorted to.

8. **Compliance Framework (Clause 13.3 and 13.4):** The Commission should develop a compliance framework to ensure that the OTC platform is not engaged in “*the negotiation, execution, clearance, settlement, promotion or soliciting of the contracts*”. Public scrutiny is one of the useful and easiest forms of compliance framework. The regulatory gap in ensuring this compliance can be addressed to a great extent by ensuring that the OTC platform shares all the detailed information in the public domain.
9. **Transparency (Clause 16):** This Clause in the draft guidelines may be rephrased as “*An OTC Platform Operator shall disclose conflict of interest, if any, arising from participation of related parties or group agencies to the Commission, within one (1) month of the participation of such related parties or group agencies.*” (*Emphasis added*). Such disclosure should also be made promptly on the website of the OTC operator.
10. **Market Abuse (Clause 17.2 (iii)):** This Clause states “*inform the Commission of any event(s) resulting in disruption of activities or market abuse, if observed, without undue delay.*” The reference to “market abuse” does not carry sufficient regulatory teeth as the OTC platform operator is itself expected to define, identify and report the market abuse. Such a provision would be self-defeating as the OTC platform operator will not have any incentive to engage itself in identifying the market abuse. Furthermore, in the absence of a clear definition of “market abuse”, the individual OTC platform operators may end up having their own criteria to define such a situation. Moreover, market abuse would not be limited to a single OTC platform, but it may extend across various market participants across various platforms.
11. **Market Monitoring Framework:** Section 66 of the Electricity Act 2003 empowers the Commission to develop a healthy power market, which also needs an effective market monitoring framework. A Market Monitoring Framework should ensure that it is able to identify market abuse across all market platforms including power exchanges as well as OTC platforms, and take corrective actions thereof.