

## **Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004**

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## **Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004**

In exercise of the powers conferred by Section 30 read with Sections 11(1) and 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations, namely:-

### **1. Short title and commencement :-**

- (1) These regulations may be called the Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004.
- (2) They shall come into force on the date of their publication in the Official Gazette.

### **2. Definitions :-**

- (1) In these regulations, unless the context otherwise requires,-
  - (a) "Act" means the Securities and Exchange Board of India Act, 1992 established under Section 3 of the Securities and Exchange Board of India Act, 1992 ;
  - (b) "Board" means the Securities and Exchange Board of India Act, 1992 established under Section 3 of the Securities and Exchange Board of India Act, 1992 ;
  - (c) "intermediary" means a person registered under Section 12 of the Securities and Exchange Board of India Act, 1992 also a foreign venture capital investor registered with the Board under the

Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulations, 2000;

(d) "relevant regulations" means the regulations as specified in the 'Schedule and any amendment thereto made from time to time;

(e) "Schedule" means a schedule appended to these regulations.

(2)

(a) Words and expressions used and not defined in these regulations shall have the meanings, if any, respectively assigned to them under the Act or any amendment there to or re-enactment thereof.

(b) Words and expressions used and not defined either in these regulations or in the Act, shall have the meanings, if any, respectively assigned to them under the Securities Contracts (Regulations) Act, 1956 or any amendment thereto or re-enactment thereof.

(c) Words and expressions used and not defined either in these regulations, or in the Act or in the Securities Contracts (Regulation) Act, 1956 shall have the meanings, if any, respectively assigned to them under the Companies Act, 1956 , or any amendment thereto or re-enactment thereof.

### **3. Criteria for determining a fit and proper person :-**

(1) "For the purpose of determining as to whether an applicant or the intermediary seeking registration under any one or more of the relevant regulations is a 'fit and proper person', the Board may take account of any consideration as it deems' fit, include but not limited to the following criteria-

(a) financial integrity;

(b) absence of convictions or civil liabilities;

(c) competence;

(d) good reputation and character;

(e) efficiency and honesty; and

(f) absence of any disqualification to act as an intermediary as stipulated in these regulations.

(2) A person shall not be considered as a "fit and proper person" for

the purpose of grant or renewal of certificate to act as an intermediary or to continue to act as an intermediary under any one or more of the relevant regulations, if he incurs any of the following disqualifications-

(a) the applicant or the intermediary, as the case may be or its whole time director or managing partner has been convicted by a Court for any offence involving moral turpitude, economic offence, securities laws or fraud;

(b) an order for winding up has been passed against the applicant or the intermediary;

(c) the applicant or the intermediary, or its whole time director, or managing partner has been declared insolvent and has not been discharged;

(d) an order, other than an order of suspension of certificate of registration as an intermediary, restraining, prohibiting or debarring the applicant or the intermediary, or its whole time director or managing partner from dealing in securities in the capital market or from accessing the capital market has been passed by the Board or any other regulatory authority and a period of three years from the date of the expiry the period specified in the order has not elapsed;

(e) an order canceling the certificate of registration of the applicant or the intermediary has been passed by the Board on the ground of its indulging in insider trading, fraudulent and unfair trade practices or market manipulation and a period of three years from the date of the order has not elapsed;

(f) an order withdrawing or refusing to grant any license/approval to the applicant or the intermediary, or its whole time director or managing partner which has a bearing on the capital market, has been passed by the Board or any other regulatory authority and a period of three years from the date of the order has not elapsed:

Provided that the Board may for reasons to be recorded in writing, allow the applicant or the intermediary, to seek registration before the lapse of three years as specified in clauses (d), (e) and (f).

(g) the applicant or the intermediary, is financially not sound;

(h) any other reason, to be recorded in writing by the Board, which in the opinion of the Board, renders such applicant or die intermediary, or its whole time director or managing partner unfit

to operate in the capital market.

Explanation I. - For the purpose of this regulation 'whole time director', in relation to-

(a) a mutual fund shall mean its sponsors, directors, principal officers, trustees or whole time directors of its asset management company;

(b) a venture capital fund,

i. where such venture capital fund is trust, shall mean the whole time directors of its trustee company.

ii. where such venture capital fund is a body corporate, shall mean its whole time directors or the trustees.

iii. For the purpose of clause (g) of sub-regulation (2), the Board shall take into consideration the capital adequacy or networth of the applicant or the intermediary, wherever it has been so specified in the relevant regulations.

#### **4. Amendment of relevant regulations :-**

The relevant regulations specified in the Schedule shall be amended in the manner stated therein.

#### SCHEDULE 1

#### SCHEDULE

#### **SCHEDULE**

[See Regulation 3]

#### **1. Amendment of Securities and Exchange Board of India, (Bankers to an Issue) Regulations, 1994.** - After Regulation 6, the following

regulation shall be inserted, namely :-

"6-A. Applicability of Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004. - The provisions of the Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004 shall, as far as may be, apply to all applicants or the bankers to an issue under these regulations".

#### **2. Amendment of Securities and Exchange Board of India, (Collective Investment Schemes) Regulations, 1999.** - After Regulation 9, the following regulation shall be inserted; namely:-

"9-A. Applicability of Security and Exchange Board of India criteria for fit and proper person) Regulation, 2004. - The provisions of the Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004 shall, as for as may be, apply to all applicants or the Collective Investment Management Companies under these regulations".

**3. Amendment of Securities and Exchange Board of India, (Credit Rating Agencies) Regulations, 1999.** - After Regulation 5, the following regulation shall be inserted, namely :-

"5-A. Applicability of Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004. - The provisions of the Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004 shall, as for as may be, apply to all applicants or the credit rating agencies under these regulations".

**4. Amendment of Securities and Exchange Board of India, (Custodian of Securities) Regulations, 1996.** - After Regulation 6, the following regulation shall be inserted, namely:-

"6-A. Applicability of Securities and Exchange Board of India (Criteria for Fit and proper person) Regulations, 2004. - The provisions of the Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004 shall, as for as may be, apply to all applicants or the custodians of securities under these regulations".

**5. Amendment of Securities and Exchange Board of India, (Debenture Trustees) Regulations, 1993.** - After Regulation 6, the following regulation shall be inserted, namely:-

"6-A. Applicability of Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004. - The provisions of the Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004 shall, as for as may be, apply to all applicants or the debenture trustees under these regulations".

**6. Amendment of Securities and Exchange Board of India, (Depositories and Participants) Regulations, 1996.** - After Regulation 6, the following regulation shall be inserted, namely:-

"6-A. Applicability of Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004. - The provisions of the Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004 shall, as for as may be, apply to all applicants or the depositories and participants under these regulations".

**7. Amendment of Securities and Exchange Board of India, (Foreign Institutional Investors) Regulations, 1995.** - After Regulation 6, the following regulation shall be inserted, namely:-

"6-A. Applicability of Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004. The provisions of the Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004 shall, as for as may be, apply to all applicants or the foreign institutional investors under these regulations".

**8. Amendment of Securities and Exchange Board of India, (Foreign Venture Capital Investors) Regulations, 2000.** - After Regulation 4, the following regulation shall be inserted, namely :-

"4-A. Applicability of Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004. - The provisions of the Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004 shall, as for as may be, apply to all applicants or the foreign venture capital investors under these regulations".

**9. Amendment of Securities and Exchange Board of India, (Merchant Bankers) Regulations, 1992.** - After Regulation 6, the following regulation shall be inserted, namely:-

"6-A. Applicability of Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004. - The provisions of the Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004 shall, as for as may be, apply to all applicants or the merchant bankers under these regulations".

**10. Amendment of Securities and Exchange Board of India, (Mutual Funds) Regulations, 1996.** After Regulation 7, the following regulation shall be inserted, namely:-

"7-A. Applicability of Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004. - The provisions of the Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004 shall, as for as may be, apply to all applicants or the mutual funds under these regulations".

**11. Amendment of Securities and Exchange Board of India, (Portfolio Managers) Regulations, 1993.** - After Regulation 6, the following regulation shall be inserted, namely:-

"6-A. Applicability of Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004. - The provisions of the Securities and

Exchange Board of India (Criteria for fit and proper person) Regulations, 2004 shall, as for as may be, apply to all applicants or the portfolio managers under these regulations".

**12. Amendment of Securities and Exchange Board of India, (Registrars to an Issue and Share Transfer Agents) Regulations, 1993.** - After Regulation 6, the following regulation shall be inserted, namely:-

"6-A. Applicability of Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004. The provisions of the Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004 shall, as for as may be, apply to all applicants or the registrars to an issue and share transfer agents under these regulations".

**13. Amendment of Securities and Exchange Board of India, (Stock Brokers and Sub-Brokers) Regulations, 1992.** - After Regulation 5, the following regulation shall be inserted, namely:-

"5-A. Applicability of Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004. - The provisions of the Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004 shall, as for as may be, apply to all applicants or the stock brokers, sub-brokers, trading members and clearing members under these regulations".

**14. Amendment of Securities and Exchange Board of India, (Under writers) Regulations, 1993.** - After Regulation 6, the following regulation shall be inserted, namely:-

"6-A. Applicability of Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004. The provisions of the Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004 shall, as for as may be, apply to all applicants or the underwriters under these regulations".

**15. Amendment of Securities and Exchange Board of India, (Venture Capital Funds) Regulations, 1996.** - After Regulation 4, the following regulation shall be inserted, namely:-

"4-A. Applicability of Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004. - The provisions of the Securities and Exchange Board of India (Criteria for fit and proper person) Regulations, 2004 shall, as for as may be, apply to all applicants or the venture capital under these regulations".

