

SECURITIES AND EXCHANGE BOARD OF INDIA (CUSTODIAN OF SECURITIES) REGULATIONS, 1996

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SECURITIES AND EXCHANGE BOARD OF INDIA (CUSTODIAN OF SECURITIES) REGULATIONS, 1996

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992(15of 1992) the Securities and Exchange Board of India hereby makes the following, namely:-

CHAPTER 1 PRELIMINARY

1. Short title and commencement :-

- (1)These regulations may be called the Securities and Exchange Board of India (Custodian of Securities) Regulations, 1996.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions :-

In these regulations unless the context otherwise requires :-

- (a) "Act" means the Securities and Exchange Board of India Act, 1992 (15 of 1992).
- (b) "certificate" means a certificate of registration granted by the Board under these regulations.
- (c) "client" means any person who has entered into an agreement with a custodian of securities to avail of custodial services provided by the custodian of securities:
- (d) "custodian of securities" means any person who carries on or proposes to carry on the business of providing custodial services.
- ¹ (e) 'custodial services' in relation to securities of a client or gold or gold related instruments held by a mutual fund in accordance with the Securities and Exchange Board of India (Mutual Funds)

Regulations, 1996 means, safe keeping of such securities or gold or gold related instruments and providing services incidental thereto, and includes-

(i) maintaining accounts of securities or gold or gold related instruments of a client;

(ii) collecting the benefits or rights accruing to the client in respect of securities or gold or gold related instruments;

(iii) keeping the client informed of the actions taken or to be taken by the issuer of securities, having a bearing on the benefits or rights accruing to the client; and

(iv) maintaining and reconciling records of the services referred to in sub-clauses (i) to (iii)."

(f) "custody account" means an account of a client maintained by a custodian of securities in respect of securities;

(g) "enquiry officer" means an enquiry officer appointed by the Board, under regulation 29;

(h) "Form" means any of the forms set out in the First Schedule;

(i) "inspecting officer" means an inspecting officer appointed by the Board under regulation 21;

(j) "Schedule" means a Schedule annexed to these regulations.

In the Securities and Exchange Board of India (Custodian of Securities) Regulations, 1996, in Regulation 2, clause (e) shall be substituted in place of :- "(e) custodial services" in relation to securities means safekeeping of securities of a client and providing services incidental thereto and includes- "(i) maintaining accounts of securities of a client. (ii) collecting the benefits or rights accruing to the client in respect of securities. (iii) keeping the client informed of the actions taken or to be taken by the issuer of securities, having a bearing on the benefits or rights accruing to the client: and (iv) maintaining and reconciling records of the services referred to in sub-clauses (i) to (iii):" by the Securities and Exchange Board of India (Custodian of Securities) (Amendment) Regulations, 2006.

CHAPTER 2

REGISTRATION OF CUSTODIANS OF SECURITIES

3. Application for grant of certificate :-

(1) A person proposing to carry on business as custodian of

securities on or after the commencement of these regulations shall make an application to the Board for grant of a certificate.

(2) Any person who is carrying on business as a custodian of securities on the date of commencement of these regulations shall make an application to the Board for grant of certificate within a period of three months from the date of such commencement. Provided that the Board may in special cases where it is of the opinion that it is necessary to do so for reasons to be recorded in writing may extend that period upto a maximum of six months from the date of such commencement.

(3) An application for grant of a certificate under sub-regulation (1) or sub-regulation (2) shall be made in Form A and shall be accompanied by an application fee as specified in Part A of the Second Schedule and be paid in the manner specified in Part B thereof.

(4) Any person referred to in sub-regulation (2) who fails to make an application for grant of certificate within the period or the extended period specified therein, shall cease to carry on any activity as custodian of securities and shall be subject to the directions of the Board with regard to the transfer of records, documents or securities relating to his activities as custodian of securities.

4. Application to conform to requirements :-

An application under regulation 3 which is not complete in all respects or which does not conform to the instructions specified therein shall be rejected. Provided that, before rejecting any such application, the board shall give the applicant an opportunity to remove the objection, within such time as may be specified by the Board.

5. Furnishing of information, clarification, and personal representation :-

(1) The Board may require the applicant to furnish such further information or clarification regarding matters relevant to the activities of a custodian of securities for the purpose of consideration of the application.

(2) The applicant or his authorised representative shall, if so required, appear before the Board for personal representation, in connection with the grant of certificate.

6. Consideration of application for grant of certificate :-

(1) For the purpose of the grant of a certificate the Board shall take into account all matters which are relevant to the activities of a custodian of securities and in particular, whether:-

(a) the applicant fulfils the capital requirement in accordance with regulation 7;

(b) the applicant has the necessary infrastructure, including adequate office space, vaults for safe custody of securities and computer systems capability, required to effectively discharge his activities as custodian of securities;

"²(ba) the applicant has the requisite approvals under any law for the time being in force, in connection with providing custodial services in respect of gold or gold related instruments of a mutual fund, where applicable;"

(c) the applicant has in his employment adequate and competent persons who have the experience, capacity and ability of managing the business of the custodian of securities;

(d) the applicant has prepared a complete manual setting out the systems and procedures to be followed by him for the effective and efficient discharge of his functions and the arms length relationships to be maintained with the other businesses, if any, of the applicant;

(e) the applicant is a person who has been refused a certificate by the Board or whose certificate has been cancelled by the Board;

(f) the applicant, his director, his principal officer or any of his employees is involved in any litigation connected with the securities market;

(g) the applicant, his director, his principal officer or any of his employees has at any time been convicted of any offence involving moral turpitude or of any economic offence: and

³ (gg) the applicant is a fit and proper person.

(h) the grant of certificate is in the interest of investors.

(2) Notwithstanding anything contained in sub-regulation (1) the Board shall not consider an application made under regulation 3 unless the applicant is a body corporate.

In the Securities and Exchange Board of India (Custodian of Securities) Regulations, 1996, in Regulation 6, in sub-regulation (1), after clause (b), the following clause shall be inserted, namely:- "(ba) the applicant has the requisite approvals under any law for the time being in force, in connection with providing custodial services in respect of gold or gold related instruments of a mutual fund, where applicable;" by the Securities and Exchange Board of India (Custodian of Securities) (Amendment) Regulations, 2006.

[2] Inserted vide " SECURITIES AND EXCHANGE BOARD OF INDIA (CUSTODIAN OF SECURITIES) REGULATIONS, 1996" Dt. 5th January, 1998 Published in Securities and Exchange Board of India, Noti. No. S.O. 17(E), dated January 5) 1998, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 5th January, 1998, p. 8, No. 9 [F. No. SEBI/LE/2302/98] [L]

7. Capital requirement :-

(1) The capital requirement referred to in clause ((i) of sub-regulation (1) of regulation 6 shall be a net worth of a minimum of rupees fifty crores. Explanation: For the purposes of this regulation, the expression "net worth" means the paid up capital and the free reserves as on the date of the application.

(2) Notwithstanding anything contained in sub-regulation (1) any custodian of securities which

(a) has been approved by the Board under the provisions of Securities and Exchange Board of India (Mutual Fund) Regulations, 1993, or the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 1995 , or the Government of India Guide- lines for Foreign Institutional Investors dated September 14, 1992, even if it does not have the net worth specified in sub-regulation (1) may continue to function as a custodian of securities and shall within a period of one year from the date of commencement of these regulations raise its net worth to that specified in sub- regulation (1): ⁴ [Provided that the period specified above may be extended by the Board upto a maximum of 5 years;]

(b) has made an application under regulation 3 shall be permitted to fulfil his capital adequacy requirements within one month of the receipt of certificate under regulation 8.

Inserted by SEBI (Custodian of Securities) (Amendment) Regulations, 1996, w.e.f. 4-12-1996.

8. Procedure and grant of certificate :-

(1) After considering the application under regulation 3, with reference to the matters specified in regulation 6, if the Board on being satisfied that all particulars sought have been furnished and the applicant is eligible for the grant of a certificate shall send an intimation of the same to the applicant.

(2) On receipt of an intimation from the Board under sub-regulation (1), the applicant shall pay to the Board a registration fee specified in Part A of Second Schedule in the manner specified in Part B thereof.

(3) The Board shall thereafter grant a certificate in Form B to the applicant on receipt of the registration fee.

5 "Provided that the Board may restrict the certificate of registration to providing custodial services either in respect of securities or in respect of gold or gold related instruments of a client."

In the Securities and Exchange Board of India (Custodian of Securities) Regulations, 1996, in Regulation 8, after sub-regulation (3), the following proviso and sub-regulation shall be inserted, namely:- "Provided that the Board may restrict the certificate of registration to providing custodial services either in respect of securities or in respect of gold or gold related instruments of a client." by the Securities and Exchange Board of India (Custodian of Securities) (Amendment) Regulations, 2006.

9. Conditions of certificate :-

The certificate granted to custodian of securities shall be subject to the following conditions, namely:-

(a) it shall not commence any activities as custodian of securities unless it fulfils the capital requirement specified in regulation 7;

(b) it shall abide by the provisions of the Act and these regulations in the discharge of its functions as custodian of securities;

(c) it shall enter into a valid agreement with its client for the purpose of providing custodial services;

(d) it shall pay annual fees as specified in Part A of the Second Schedule in the manner specified in Part B thereof;

(e) if any information previously submitted by it to the Board is found by it to be false or misleading in any material particular, or if there is any change in such information, it shall forthwith inform the Board in writing; and

(f) besides providing custodial services, it shall not carry on any activity other than activities relating to rendering of financial services.

10. Procedure where certificate is not granted :-

(1) After considering an application for grant of certificate made under regulation 3, if the Board is satisfied that a certificate should not be granted, the Board may reject the application after giving the applicant a reasonable opportunity of being heard.

(2) The decision of the Board to reject the application shall be communicated within thirty days of such decision to the applicant in writing slating therein the grounds on which the application has been rejected

(3) An applicant, who is aggrieved by the decision of the Board under sub-regulation (1) may, within a period of thirty days from the date of receipt of communication under sub-regulation (2), apply to the Board for re-consideration of its decision.

(4) The Board shall, as soon as possible, in the light of the submissions made in the application for reconsideration made under sub-regulation (3) and wherever necessary, after giving the applicant a reasonable opportunity of being heard, convey its decision in writing to the applicant.

11. Effect of refusal to grant certificate :-

Any custodian of securities whose application for grant of certificate has been rejected by the Board shall, on and from the date of the receipt of the communication under sub-regulation (2)of regulation 10 cease to carry on any activity as custodian of securities and shall besubject to the directions of the Board with regard to the transfer of records documents or securities that may be in its custody or control relating to its activity as custodian of securities.

CHAPTER 3

GENERAL OBLIGATIONS AND RESPONSIBILITIES OF CUSTODIANS

12. Code of conduct :-

Every custodian of securities shall abide by the Code of Conduct as set out in the Third Schedule.

13. Segregation of activities :-

Where a custodian of securities is carrying on any activity besides that of acting as custodian of securities then,-

(i) the activities relating to his business as custodian of securities shall be separate and segregated from all other activities;

(ii) its officers and employees engaged in providing custodial services shall not be engaged in any other activity carried on by him.

14. Monitoring, review evaluating and inspecting systems and controls :-

(1) Every custodian of securities shall have adequate mechanisms for the purposes of reviewing, monitoring and evaluating the custodian's controls, systems, procedures and safeguards.

(2) The custodian of securities shall cause to be inspected annually the mechanism referred to in sub-regulation (1) by an expert and forward the inspection report to the Board within three months from the date of inspection.

15. Prohibition of assignment :-

No custodian of securities shall assign or delegate its functions as a custodian of securities to any other person unless such person is a custodian of securities.

16. Separate custody account :-

Every custodian of securities shall open a separate custody account for each client, in the name of the client whose securities are in its custody and the assets of one client shall not be mixed with those of another client.

17. Agreement with the client :-

Every custodian of securities shall enter into an agreement with each client on whose behalf it is acting as custodian of securities and every such agreement shall provide for the following matters namely:-

(a) the circumstances under which the custodian of securities will accept or release securities from the custody account;

(b) the circumstances under which the custodian of securities will accept or release monies from the custody account;

(c) the circumstances under which the custodian of securities will receive rights or entitlements on the securities of the client;

(d) the circumstances and the manner of registration of securities in respect of each client: and

(e) details of the insurance, if any to be provided for by the custodian of securities.

18. Internal controls :-

(1) Every custodian of securities shall have adequate internal controls to prevent any manipulation of records and documents including audits for securities and rights or entitlements arising from the securities held by it on behalf of its client.

(2) Every custodian of securities shall have appropriate safekeeping measures to ensure that such securities are protected from theft and natural hazard.

19. Maintenance of records and documents and furnishing of information :-

(1) Without prejudice to the provisions of any other law for the time being in force every custodian of securities shall maintain the following records and documents, namely :-

(a) records containing details of securities received and released on behalf of each client;

(b) records containing details of monies received and released on behalf of each client;

(c) records containing details of rights or entitlements of each client arising from the securities held on behalf of the client;

{d) records containing details of registration of securities in respect of each client:

(e) ledger for each client:

(f) records containing details of instructions received from and sent to clients; and

(g) records of all reports submitted to the Board.

(2) Every custodian of securities shall intimate to the Board the place where the records and documents under sub-regulation (1) are maintained.

(3) Every custodian of securities shall preserve the records and documents maintained under sub-regulation (1) for a minimum period of five years.

19A. Appointment of Compliance Officer :-

(1) Every custodian of securities shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc. issued by the Board or the Central Government and for redressal of investors' grievances.

(2) The compliance officer shall immediately and independently report to the Board any non-compliance observed by him."

Inserted by "The Securities and Exchange Board of India (Investment Advice by Intermediaries)(Amendment)Regulations, 2001

20. Information to the Board :-

(1) The Board/nay, at any time, call for any information from a custodian of securities with respect to any matter relating to its activity as custodian of securities. (2) Where any information is called for by the Board under sub-regulation (1), it shall be the duty of the custodian of securities to furnish such information within such reasonable period as the Board may specify.

CHAPTER 4

INSPECTION AND AUDIT

21. Boards right to Inspect :-

(1) The Board may appoint one or more persons as inspecting officer to undertake inspection of the books of account, records and documents of the custodian of securities for any of the following purposes, namely:-

(a) to ensure that the books of account, records and documents are being maintained by the custodian of securities in the manner specified in these regulations:

(b) to investigate into complaints received from investors, clients or any other person, on any matter having a bearing on the activities of the custodian of securities;

(c) to ascertain whether the provisions of the Act and these regulations are being complied with by the custodian of securities; and

(d) to investigate suo motu into the affairs of the custodian of securities in the interest of the securities market or in the interest of investors.

22. Notice before inspection :-

(1) Before ordering an inspection under regulation 21 the Board shall give not less ten days notice to the custodian of securities.

(2) Notwithstanding anything contained in sub-regulation (1), where the Board is satisfied that in the interest of the investors no such notice should be given, it may by an order in writing direct that the inspection of the affairs of the custodian of securities be taken up without such notice.

(3) During the course of an inspection, the custodian of securities against whom the inspection is being carried out shall be bound to discharge his obligations as provided in regulation 23.

23. Obligations of custodian on inspection by the Board :-

(1) It shall be the duty of the custodian of securities whose affairs are being inspected, and of every director, officer and employee thereof to produce to the inspecting officer such books, securities, accounts, records and other documents in its custody or control and furnish him with such statements and information relating to his activities of the custodian of securities, as the inspecting officer may require, within such reasonable period as the inspecting officer may specify.

(2) The custodian of securities shall allow the inspecting officer to have reasonable access to the premises occupied by such custodian or by any other person on his behalf and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the custodian of securities or such other person and also provide copies of documents or other materials which in the opinion of the inspecting officer are relevant for the purposes of the inspection.

(3) The inspecting officer, in the course of inspection shall be entitled to examine or to record the statements of any director, officer or employee of the custodian of securities.

(4) It shall be the duty of every director, officer or employee of the custodian of securities to give to the inspecting officer all assistance in connection with the inspection, which the inspecting officer may reasonably require.

24. Submission of report to the Board :-

The inspecting officer shall, as soon as possible, on completion of

the inspection submit an inspection report to the Board : Provided that if directed to do so by the Board, he may submit an interim report.

25. Communication of findings, etc., of the custodian of securities :-

(1) The Board shall, after consideration of the inspection report or the interim report referred to in regulation 24, communicate the findings of the inspection officer to the custodian of securities and give him an opportunity of being heard.

(2) On receipt of the reply if any, from the custodian of securities, the Board may call upon the custodian of securities to take such measures as the Board may deem fit in the interest of the securities market and for due compliance with the provisions of the Act, the rules framed thereunder and these regulations.

25A. Appointment of Auditor :-

The Board shall have the power to appoint an auditor to inspect or investigate, as the case may be, into the books of accounts, records, documents or affairs of the applicant or the custodian, as the case may be : Provided that the auditors so appointed shall have the same powers as vested in the inspecting officer under regulation 21 and the applicant or custodian and its directors, officers and employees shall be under the same obligations, towards the auditor so appointed, as are mentioned in regulation 23.

25B. Board to recover the expenses :-

The Board shall be entitled to recover from the custodian or the applicant, as the case may be, such expenses including fees paid to the auditors as may be incurred by it for the purposes of inspecting the books of accounts, records and documents of the applicant or the custodian, as the case may be.]

CHAPTER 5

PROCEDURE FOR ACTION IN CASE OF DEFAULT

26. Suspension of certificate :-

The Board may suspend the certificate granted to a custodian of securities where the custodian of securities:

(a) contravenes any of the provisions of the Act, the rules framed thereunder or these regulations;

(b) fails to furnish any information relating to his activity as custodian of securities as required by the Board;

(c) furnishes to the Board information which is false and misleading in any material particular;

(d) does not submit periodic returns or reports as required by the Board;

(e) does not co-operate in any enquiry or inspection conducted by the Board;

(f) fails to update its systems and procedures as recommended by the Board;

(g) fails to resolve the complaints of clients or fails to give a satisfactory reply to the Board in this behalf;

(h) is guilty of misconduct or makes a breach of the Code of Conduct specified in the Third Schedule: and

(i) fails to pay annual fees.

27. Cancellation of certificate :-

The Board may cancel the certificate granted to a custodian of securities :- (a) when it is guilty of fraud or has been convicted of an offence involving moral turpitude; or (b) it has been guilty of repeated defaults of the nature specified in regulation 26. Explanation.-In this regulation, "fraud" has the same meaning as is assigned to it in S.17 of the Indian Contract Act, 1872 (9 of 1872).

28. Manner of making order of cancellation or suspension :-

No order of suspension or cancellation of certificate shall be made by the Board against a custodian of securities, except after holding an enquiry in accordance with the procedure specified in regulation 29.

29. Manner of holding enquiry before suspension or cancellation :-

(1) For the purpose of holding an enquiry under regulation 28, the Board may appoint one or more enquiry officers.

(2) The enquiry officer shall issue to the custodian of securities, at its registered office or its principal place of business, a notice setting out the grounds on which action is proposed to be taken against it and calling upon it to show cause against such action

within a period of fourteen days from the date of receipt of the notice.

(3) The custodian of securities may, within fourteen days from the date of receipt of such notice, furnish to the enquiry officer a written reply, together with copies of documentary or other evidence relied on by it or sought by the Board from the custodian of securities.

(4) The enquiry officer shall give a reasonable opportunity of hearing to the custodian of securities to enable him to make submissions in support of its reply made under sub-regulation (3).

(5) Before the enquiry officer, the custodian of securities may either appear in person or through any person duly authorised by the-custodian of securities : Provided that no lawyer or advocate shall be permitted to represent the custodian of securities at the enquiry : Provided further that where a lawyer or an advocate has been appointed by the Board as a presenting officer under sub-regulation (6), it shall be lawful for the custodian of securities to present its case through a lawyer or advocate.

(6) The enquiry officer may, if he considers it necessary, ask the Board to appoint a presenting officer to present its case.

(7) The enquiry officer shall, after taking into account all relevant facts and submissions made by the custodian of securities, submit a report to the Board and recommend the penal action, if any, to be taken against the custodian of securities as also the grounds on which the proposed action is justified.

30. Show-cause notice and order :-

(1) On receipt of the report from the enquiry officer, the Board shall consider the same and issue to the custodian of securities a show-cause notice as to why the penal action as proposed by the enquiry officer should not be taken against it.

(2) The custodian of securities shall, within fourteen days of the date of the receipt of the show- cause notice, send a reply to the Board.

(3) The Board, after considering the reply of the custodian of securities to the show-cause notice, if received within a period of fourteen days shall, as soon as possible but not later than thirty days from the receipt of the reply or the date of hearing, if any,

whichever is later, pass such order as it deems fit, including an order for the suspension or cancellation of the certificate.

(4) Every order made under sub-regulation (3) shall be self-contained and shall give reasons for the conclusions stated therein, including the justification for the penalty, if any .imposed by that order.

31. Effect of suspension and cancellation of certificate :-

(1) On and from the date of the suspension of the certificate, the custodian of securities shall cease to carry on any activity as a custodian of securities during the period of suspension, and shall be subject to the directions of the Board with regard to any records, documents or securities that may be in its custody or control, relating to its activities as custodian of securities.

(2) On and from the date of cancellation of the certificate, the custodian of securities shall with immediate effect, cease to carry on any activity as a custodian of securities, and shall be subject to the directions of the Board with regard to the transfer of any records, documents or securities that may be in its custody or control relating to its activities as custodian of securities.

32. Publication of order of suspension or cancellation :-

The order of suspension or cancellation of certificate passed under sub-regulation 3 of Regulation 30 shall be published by the Board in at least two daily newspapers.