

Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002

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SCHEDULE 1 :- THE SCHEDULE

Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty)

Regulations, 2002

In exercise of the powers conferred by section 30, read with sub-section (3) of section 12 and section 19, of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations, namely:

CHAPTER 1 PRELIMINARY

1. Short title and commencement :-

(1) These regulations may be called the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

(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 (15 of 1992);

(b) "Board" means the Securities and Exchange Board of India constituted under section 3 of the Act;

(c) "certificate" means a certificate of registration granted to an intermediary under the relevant Regulations;

(d) "enquiry" means an enquiry held under these regulations;

(e) "enquiry officer" means an officer of the Board, not below the rank of a Division Chief, appointed by the Chairman or a member designated in this behalf to conduct enquiry and pass an order under these regulations;

(f) "intermediary" means a person referred to in sub-section (1) or sub-section (1A) of section 12 of the Act and includes an asset management company in relation to the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 and a Collective Investment Management Company in relation to the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999;

(g) "presenting officer" means a legal practitioner or an officer of the Board appointed by the Chairman or a member designated in

this behalf to present a case on behalf of the Board before the enquiry officer;

(h) "relevant Regulations" means any of the regulations referred to in regulation 4 made by the Board under section 30 of the Act for regulating the activities of intermediaries;

(i) "self-regulating organisation" means an organisation of intermediaries operating in the securities market duly recognised by or registered with the Board and includes a Stock Exchange.

(2) Words and expressions used and not defined in these regulations, but defined in the Act or in the rules or regulations made thereunder, shall have the meanings respectively assigned to them in the Act or rules or regulations made thereunder, as the case may be.

CHAPTER 2

ENQUIRY PROCEEDINGS

3. Procedure for holding enquiry :-

No order under these regulations shall be passed except after holding an enquiry by the enquiry officer.

4. Enquiry for contraventions of the regulations :-

An enquiry for the purpose of passing an order under these regulations may be held for ¹ contravention of any of the provisions of

(a) the Securities and Exchange Board of India (Stock-brokers and Sub-brokers) Regulations, 1992;

(b) the Securities and Exchange Board of India (Insider Trading) Regulations, 1992;

(c) the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992;

(d) the Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993;

(e) the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993;

(f) the Securities and Exchange Board of India (Underwriters) Regulations, 1993;

(g) the Securities and Exchange Board of India (Debenture

Trustees) Regulations, 1993;

(h) the Securities and Exchange Board of India (Bankers to an Issue) Regulations, 1994;

(i) the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995;

(j) the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 1995;

(k) the Securities and Exchange Board of India (Custodian of Securities) Regulations, 1996;

(l) the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996;

(m) the Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996;

(n) the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996;

(o) the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997;

(p) the Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 1998;

(q) the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999;

(r) the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999;

(s) the Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulations, 2000.

In Regulation 4, before the word "contravention of any of the provisions of" the following regulation, as amended from time to time" shall be inserted by the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) (Amendment) Regulations, 2005

5. Appointment of enquiry officer :-

(1) Where it appears to the Chairman or a member designated in this behalf that an intermediary has contravened any of the

provisions of a Regulation referred to in regulation 4, the Chairman or the member, as the case may be, may appoint an enquiry officer for the purpose of holding an enquiry into the matter:

Provided that the Chairman or the member, as the case may be, may appoint more than one enquiry officers if the subject-matter of enquiry contains technical or complicated questions of fact or law who will function as a bench to be presided by the senior amongst them.

(2) No officer who has dealt with the matter or who is directly or indirectly interested, or has an interest, in that intermediary or who has conducted an investigation or inspection in respect of the alleged violation shall be appointed as an enquiry officer.

6. Issuance of notice :-

²"(1) Where an Enquiry Officer is appointed, he shall, if he finds reasonable grounds to do so, issue a show cause notice to the intermediary concerned calling upon it to show cause as to why further action should not be taken against it under these Regulations, specifying therein the nature of the contraventions alleged to have been committed by him."

(2) There shall be annexed to the notice issued under sub-regulation (1) copies of documents relied on by the Board and extracts of relevant portions of documents containing the findings arrived at in any investigation or inspection held by the Board in respect of the alleged contravention.

(3) The notice under sub-regulation (1) shall require the intermediary

(i) to submit, within a period to be specified in the notice ³not exceeding twenty-one days, a written statement, if any to the enquiry officer appointed under sub-regulation (1) of regulation 5, and

(ii) To specify whether he desires to be heard in person before the enquiry officer.

⁴ Provided that the Enquiry Officer may extend the time mentioned under clause (i) for sufficient reasons to be recorded in writing."

In the securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty)

Regulations, 2002 , regulation 6, sub-regulation (1) shall be substituted in place of :- "(1) Where it is proposed to hold an enquiry against an intermediary under these regulations, an officer of the Board specified by the Chairman or the Member in this behalf, shall issue to the intermediary a notice stating therein the contravention of the relevant regulations alleged to have been committed by the intermediary." by the securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) (Amendment) Regulations, 2006.

In Regulation 6, in sub-regulation(3) the word "ordinarily" shall be omitted by the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) (Amendment) Regulations, 2005

In Regulation 6, in sub-regulation(3) after clause (ii) proviso shall be inserted by the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) (Amendment) Regulations, 2005

7. Manner of service of notice :-

The notice referred to in regulation 6 shall be served in the manner specified in regulation 22.

8. Reply by intermediary :-

The intermediary to whom the notice under regulation 6 has been issued ⁵submit to the enquiry officer his written statement within the period specified in the notice along with documentary evidence, if any, in support thereof and shall also state whether he desires to be heard in person: Provided that the enquiry officer may ⁶ to be recorded in writing for sufficient reasons , extend the period to submit written statement.

in Regulation 8 this word "shall" change "may" shall be substituted by the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) (Amendment) Regulations, 2005

In Regulation 8, after the words "for sufficient reasons" and before the comma, the following words shall be inserted "to be recorded in writing" by the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) (Amendment) Regulations, 2005

9. Notice of hearing :-

The enquiry officer shall issue, or caused to be issued, notice in the manner specified under regulation 22 stating the date and the place of hearing to the intermediary who may appear before the enquiry officer for hearing on the date so notified.

10. Ex parte proceedings :-

If any intermediary fails or refuses to appear before the enquiry officer, as required under regulation 9 or does not reply to the notice as required under regulation 8, the enquiry officer may proceed ex pane with the enquiry after recording the reasons and pass appropriate order on merits based on the material facts before him.

11. Representation before enquiry officer :-

The intermediary may appear before the enquiry officer in person or through any person duly authorised by him in this behalf:

Provided that no legal practitioner shall be permitted to represent the intermediary at the enquiry except where a legal practitioner has been appointed by the Chairman or a member designated in this behalf as a presenting officer under regulation 12.

12. Presenting officer :-

(1) The Chairman or a member designated in this behalf may appoint a presenting officer in an enquiry.

(2) The enquiry officer, if he considers it necessary, may advise the Board to appoint a presenting officer for the purpose of the enquiry and the Chairman or a member designated in this behalf on receipt of such advice shall appoint a presenting officer.

13. Imposition of penalty :-

(1) The enquiry officer shall, after considering the written statement and the oral submissions, if any, of the intermediary and the provisions of the relevant Regulations, submit a report to the Chairman or a member designated in this behalf and recommend for the imposition of any of the following penalties by the Chairman or the member, as the case may be, with the justification for the imposition thereof:

(a) Minor penalties

(i) warning or ***;

(ii) prohibiting the intermediary to take up any new assignment or mandate or launch a new scheme for a period upto six months;

(iii) debarring a partner or a whole time director of the intermediary from carrying out the activities as intermediary in the intermediary firm or company and other capital market related institutions for a period upto six months;

(iv) suspension of certificate of registration for a period upto three months;

(i) cancellation of certificate of registration;

(ii) suspension of certificate of registration for period exceeding three months;

(iii) taking of action under sub-clause (ii), (iii) or (v) of clause (a) for a period exceeding six months.

(2) On receipt of the report from the enquiry officer, the Chairman or the member, as the case may be, shall consider the same and issue a show-cause notice to the intermediary ⁸"enclosig there with a copy of the report of the enquiry officer" as to why the action as it considers appropriate should not be taken.

(3) The intermediary ⁹"may" within fifteen days of the date of the receipt of the showcause notice send a reply to the Chairman or the member, as the case may be.

¹⁰(4) The Chairman or Member, as the case may be, shall after considering the reply to the show cause notice, if received, pass such order as he may deem fit, as expeditiously as possible and endeavour shall be made by him to pass such order within one hundred and twenty days from the date of receipt of reply of the intermediary." ¹¹

"Explanation. For the purposes of this sub-regulation, 'the date of receipt of reply of the intermediary' includes the date on which the intermediary makes oral submissions in a hearing before the Chairman or Member, if granted by him."

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(6) The Board or the member shall impose major penalties only in the following circumstances, namely:

(a) the intermediary or any of its whole-time directors or partners or its proprietor has been found guilty of price or market manipulation of any scrip or index or assisting in such manipulation or of insider trading;

(b) the intermediary is guilty of violation of conditions of registration;

(c) the intermediary or any of its whole time directors or partners

or its proprietor is found to be not a fit or proper person;

(d) failure to obey directions of the Board passed under section 11 or section 11B of the Act or failure to obey order of an adjudicating officer imposing monetary penalty passed under section 15-I of the Act by the intermediary; or

(e) repeated defaults by the intermediary for which action can be taken against him under clause (a) of sub-regulation (1).

(7) Every order passed under sub-regulation (4) shall be dated and signed by the Chairman or the member, as the case may be.

in clause (a), in sub-clause (i), the words "warning or" appearing before the word "censure" shall be omitted, BY THE Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) (Third Amendment) Regulations, 2004

In Regulation 13, in sub-regulation(2) the following the words enclosing therewith a copy of the report of the enquiry officer" shall be inserted by the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) (Amendment) Regulations, 2005

In Regulation 13, in sub-regulation(3), the word shall change "may" shall be substituted by the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) (Amendment) Regulations, 2005

In Regulation 13, in sub-regulation(4), shall be substituted by the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) (Amendment) Regulations, 2005

In Regulation 13, after sub-regulation(4), the following explanation shall be inserted by the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) (Amendment) Regulations, 2005

In Regulation 13, after sub-regulation(5), shall be omitted by the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) (Amendment) Regulations, 2005

14. Intimation of the order :-

(1) A copy of the order passed under sub-regulation (4) of regulation 13 shall be sent to the intermediary.

(2) If the intermediary is a member of any self-regulating organisation, a copy of the order shall also be sent to such organisation.

SUMMARY PROCEDURE

15. Situations when summary procedure to be followed :-

It shall not be necessary to hold an enquiry under Chapter II in relation to an intermediary where

- (a) such intermediary has been declared insolvent or is wound up;
- (b) such intermediary fails to pay the registration, renewal or annual fees to the Board as per the provisions of the relevant Regulations;
- (c) such intermediary, being a Stock-broker, ceases to be a member of a recognised stock exchange or has been declared a defaulter in relation to the transactions at such exchange;
- (d) such intermediary fails to obey an order of any adjudication officer imposing a penalty under section 15-I of the Act;
- (e) such intermediary fails to submit documents or records to the Board within the time stipulated by the Board;
- (f) such intermediary fails to issue contract notes or to enter into agreement as required under the provisions of the relevant Regulations;
- (g) such intermediary does not satisfy the capital adequacy norms as specified in the relevant Regulations;
- (h) its proprietor or any of its partners or whole-time directors is convicted by a court of competent jurisdiction of an offence involving moral turpitude;
- (i) **13** [***]
- (j) such intermediary admits to have violated the provisions of the relevant Regulations;
- (k) in any other situation where the facts leading to the violation of the provisions of the relevant Regulations are undisputed:

Provided that no action shall be taken against an intermediary without giving an opportunity of making representation to such intermediary.

In the securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 ,) in regulation 15, clause (i) shall be omitted as follows : "(i) such intermediary surrenders its certificate of

registration to the Board;" by the securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) (Amendment) Regulations, 2006.

16. Procedure to be followed under this Chapter :-

(1) The Chairman or a member designated in this behalf shall appoint an officer of the Board, not below the rank of Division Chief, for passing appropriate orders in respect of matters specified in regulation 15.

(2)The officer shall issue to the intermediary, against whom the proceedings are being held, a notice requiring the intermediary to make a written submission in reply to the notice within such time, ¹⁴not exceeding fifteen days after the receipt of the notice, as may be specified in the notice. ¹⁵

"Provided that the Enquiry Officer may extend the time mentioned under sub-regulation (2) for sufficient reasons to be recorded in writing."

(3) If the intermediary fails to make a written submission to the notice within the period specified in the notice, the officer shall pass such orders as he considers appropriate in the circumstances on the merits and in the light of the material on record and shall submit a report to the Chairman or the member, as the case may be, and may recommend taking of any action under sub-regulation (1) of regulation 13 as he considers appropriate in the circumstance of the case and shall give reasons for taking such action.

(4) If the intermediary makes submission within the said period, the officer shall, after considering the submission so made, submit a report to the Chairman or the member, as the case may be, and may recommend taking of any action under sub- regulation (1) of regulation 13 as he considers appropriate in the circumstances of the case and shall give reasons for taking such action.

(5) The Chairman or the member, as the case may be, after receipt of recommendations from the officer under sub-regulation (3) or (4), shall pass such orders as he may deem appropriate.

In Regulation 16,in sub-regulation(2)the word "ordinarily" shall be omitted by the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) (Amendment) Regulations, 2005

In Regulation 16, after sub-regulation(2) the following proviso shall be inserted by the Securities and Exchange Board of India

(Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) (Amendment) Regulations, 2005

17. Publication of order :-

The Board shall issue a press release in respect of an order under these regulations in at least two newspapers of which at least one shall have nationwide circulation and shall also put the order on the website of the Board.

CHAPTER 4

MISCELLANEOUS AND CONSEQUENTIAL PROVISIONS

18. Removal of doubts :-

For the removal of doubts, it is hereby declared that the provisions of these regulations shall be without prejudice to any other action the Board may take under the Act or the respective regulations.

19. Effect of debannment, cancellation order :-

(1) On and from the date of debarment or suspension and suspension of the certificate, the intermediary shall not undertake any new assignment or contract or launch any new scheme and shall cease to carry on any activity as an intermediary during the period of such debarment or suspension and shall be subject to such other directions of the Board including directions relating to any records, documents or securities or money of the investors that may be in the custody or the control of such intermediary.

(2) On and from the date of cancellation of the certificate, the intermediary shall, with immediate effect, cease to carry on any activity as an intermediary and shall be subject to the directions of the Board with regard to the transfer of any records, documents or securities or money of the investors that may be in the custody or control of such intermediary.

20. Appeal to Securities Appellate Tribunal :-

An intermediary aggrieved by an order under these regulations may prefer an appeal to the Securities Appellate Tribunal against such order in accordance with section 15T of the Act.

21. Amendment of relevant Regulations :-

The Regulations specified in clauses (a) to (s) of regulation 4 shall stand amended in the manner specified in the Schedule.

22. Service of notice :-

¹ A notice issued under these regulations may be served on the

concerned person in the following manner, this is to say,-

(a) by delivering or tendering to that person or his duly authorised agent; or

(b) by transmitting a copy thereof by registered post with acknowledgement due, addressed to that person or his duly authorised agent, or by speed post or by such courier services as may be approved by the Board or by any other means of transmission of documents including Fax message or electronic mail service, which affords a record of delivery; or

(c) in case of service upon a stock broker the same may be served through the concerned stock exchange; or

(d) if it cannot be served under clauses (a), (b) or (c),

(i) by affixing the same on the outer door or some other conspicuous part of the premises in which that person resides or is known to have last resided, or carries on business or is last known to have carried on business or personally works for gain or is known to have last personally worked for gain:

Provided that written report thereof shall be witnessed by two persons; or

(ii) by posting such notice on the Board's website."

Section 22 shall be substituted in place of old as follows: [22. Service of notice (1) A notice issued under these regulations may be served on the intermediary by sending it to such intermediary at his registered office address or at principal office address as available on the records of the Board by registered post acknowledgement due or by speed post or by such courier service as may be approved by the Board. (2) If a notice cannot be served in the manner referred to in sub-regulation (1), the same shall be served by affixing on the door or some other conspicuous part of the premises of the registered office or the principal office of the intermediary. (3) In case of a stock broker, the notice shall be served through the concerned stock exchange.] by the Securities and Exchange Board of India (Manner of Service of Summons and Notices issued by the Board (Amendment) Regulations, 2007, ON [Noti. No. SEBI/LAD /DOP/2232/2007 {ADVT III/IV/692B/2007/Exty.,} dt. 23.4.2007, Gaz. of India, Exty., Pt. III Sec. 4, No. 93, dt. 23.4.2007, p. 2.] = 2007 CCS/P. 550/H. 219.

23. Saving of actions :-

(1) Notwithstanding amendment of the regulations as specified in regulation 21, anything done or any action taken including any proceeding for inspections or investigation or enquiry commenced or any notice issued under the said regulations before the commencement of these regulations shall be deemed to have been done or taken under the corresponding provisions of these regulations.

(2) In particular and without prejudice to the generality of the provisions of subregulation (1),

(i) an enquiry proceeding initiated by the Board under the relevant Regulations and pending before the Board before the commencement of these regulations shall be conducted and completed under the Relevant regulations as if those are not amended as specified in regulation 21;

(ii) any order appointing an enquiry officer under the relevant Regulations and pending before such enquiry officer immediately before the commencement of these regulations shall be deemed to have been ordered under the corresponding provisions of these regulations.

SCHEDULE 1

THE SCHEDULE