

SECURITIES AND EXCHANGE BOARD OF INDIA (UNDERWRITERS) REGULATIONS, 1993

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**SECURITIES AND EXCHANGE BOARD OF INDIA
(UNDERWRITERS) REGULATIONS, 1993**

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board with the previous approval of the Central Government, 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 (Underwriters) Regulations, 1993.

(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-

¹(a) "Act" means the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(aa) "body corporate" shall have the meaning assigned to it in or under clause (7) of section 2 of the Companies Act, 1956 (1 of 1956);

(ab) "certificate" means a certificate of registration issued by the Board;

(ac) "change of status or constitution" in relation to an underwriter means any change in its status or constitution of whatsoever nature and includes –

(i) in case of a body corporate –

(A) amalgamation, demerger, consolidation or any other kind of corporate restructuring falling within the scope of section 391 of the Companies Act, 1956 (1 of 1956) or the corresponding provision of any other law for the time being in force;

(B) change in its managing director or whole-time director; and

(C) any change in control over the body corporate;

(ii) any change between the following legal forms – individual, partnership firm, Hindu undivided family, private company, public company, unlimited company or statutory corporation and other similar changes;

(iii) in case of a partnership firm any change in partners not amounting to dissolution of the firm;

(ad) "change in control", in relation to an underwriter being a body corporate, means:-

(i) if its shares are listed on any recognised stock exchange, change in control within the meaning of regulation 12 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997;

(ii) in any other case, change in the controlling interest in the body corporate;

Explanation: For the purpose of sub-clause (ii), the expression "controlling interest" means an interest, whether direct or indirect, to the extent of at least fifty one percent of voting rights in the body corporate;"

(b) "form" means a form specified in Schedule I;

(c) "inspecting authority" means one or more person appointed by the Board to exercise powers conferred under Chapter IV:

(d) "principal officer" means,-

- (i) in relation to a proprietary concern, the proprietor himself;
 - (ii) in relation to a firm or an association of persons or any body of individuals or a body corporate, a secretary, treasurer, partner, manager or director of the firm, association or body corporate;
 - (iii) any person connected with the management or administration of the firm, association or the body corporate upon whom the Board has served a notice of its intention of treating him as the principal officer thereof;
- (e) "regulations" means the Securities and Exchange Board of India (Underwriters) Regulations, 1993:
- ² (f) 'underwriter' means a person who engages in the business of underwriting of an issue of securities of a body corporate;
- (fa) 'underwriting' means an agreement with or without conditions to subscribe to the securities of a body corporate when the existing shareholders of such body corporate or the public do not subscribe to the securities offered to them;
- (g) all other words and expressions used in these regulations but not defined, and defined in the Act and the rules shall have the same meanings respectively assigned to them in the Act or the rules, as the case may be.

In the Securities and Exchange Board of India (Underwriters) Regulations, 1993 in regulation 2, after the opening part and before clause (b), the following clauses shall be inserted, namely:-

"(a) "Act" means the Securities and Exchange Board of India Act, 1992 (15 of 1992); (aa) "body corporate" shall have the meaning assigned to it in or under clause (7) of section 2 of the Companies Act, 1956 (1 of 1956); (ab) "certificate" means a certificate of registration issued by the Board; (ac) "change of status or constitution" in relation to an underwriter means any change in its status or constitution of whatsoever nature and includes – (i) in case of a body corporate – (A) amalgamation, demerger, consolidation or any other kind of corporate restructuring falling within the scope of section 391 of the Companies Act, 1956 (1 of 1956) or the corresponding provision of any other law for the time being in force; (B) change in its managing director or whole-time director; and (C) any change in control over the body corporate; (ii) any change between the following legal forms – individual, partnership firm, Hindu undivided family, private company, public company, unlimited company or statutory corporation and other similar changes; (iii) in case of a partnership firm any change in partners not amounting to dissolution of the firm; (ad) "change in

control", in relation to an underwriter being a body corporate, means:- (i) if its shares are listed on any recognised stock exchange, change in control within the meaning of regulation 12 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997; (ii) in any other case, change in the controlling interest in the body corporate; Explanation: For the purpose of sub-clause (ii), the expression "controlling interest" means an interest, whether direct or indirect, to the extent of at least fifty one percent. of voting rights in the body corporate;" by the Securities and Exchange Board of India (Underwriters) (Amendment) Regulations, 2006.

In the Securities and Exchange Board of India (Underwriters) Regulations, 1993, in regulation 2, clause (f), shall be substituted, in place of :- "(f) "rules" means the Securities and Exchange Board of India (Underwriters) Rules, 1993;" by the Securities and Exchange Board of India (Underwriters) (Amendment) Regulations, 2006.

CHAPTER 2

REGISTRATION OF UNDERWRITERS

3. Application for grant of certificate :-

3

(1) No person shall act as underwriter unless he holds a certificate granted by the Board under these regulations.

(2) Notwithstanding anything contained in sub-regulation (1), every stock broker or merchant banker holding a valid certificate of registration under section 12 of the Act, shall be entitled to act as an underwriter without obtaining a separate certificate under these regulations.

(3) A stock broker or merchant banker acting as an underwriter under sub-regulation (2) shall be governed by these regulations in other respects.

In the Securities and Exchange Board of India (Underwriters) Regulations, 1993, regulation 3 shall be inserted, as follows :- "3. Registration as underwriter (1) No person shall act as underwriter unless he holds a certificate granted by the Board under these regulations. (2) Notwithstanding anything contained in sub-regulation (1), every stock broker or merchant banker holding a valid certificate of registration under section 12 of the Act, shall be entitled to act as an underwriter without obtaining a separate certificate under these regulations. (3) A stock broker or merchant banker acting as an underwriter under sub-regulation (2) shall be governed by these regulations in other respects." by the Securities and Exchange Board of India (Underwriters) (Amendment) Regulations, 2006, on [Notification No. F. No.

SEBI/LAD/DOP/0709/2006. dt. 7th Sep., 2006[Gazette of India, Ext., Pt. II-S.3(ii), No. 999, dt. 7th Sep., 2006, p.30.] = 2006 CCS/P. 1194/H. 426.

4. Furnishing of further information, clarification, etc. :-

(1) The Board may require the applicant to furnish further information or clarification regarding matters relevant to underwriting to consider the application for grant of a certificate.

⁵[(2) If the Board, on receipt of further information, is of the opinion that the information so furnished is not sufficient to decide on the application and seeking further information through correspondence is likely to delay the matter, it may require the applicant or its principal officer to appear before the Board in order to give an opportunity to the applicant to give further clarifications on the application made under ⁶ regulation 3A.]

Substituted by the SEBI (Underwriters) Amendment Regulations, 1997, w.e.f. 17-1-1997.

In the Securities and Exchange Board of India (Underwriters) Regulations, 1993, in regulation 4, in sub-regulation (2), for the words "regulation 3" occurring at the end, the words "regulation 3A" shall be substituted, by the Securities and Exchange Board of India (Underwriters) (Amendment) Regulations, 2006.

5. Application to conform to the requirements :-

Subject to the provisions of ⁷sub-regulation (2) of regulation 3A any application, which is not complete in all respects and does not conform to the instructions specified in the form, shall be rejected:

Provided that before rejecting any such application, the applicant shall be given an opportunity to remove within ⁸[one month] such objections as may be indicated by the Board:

⁹ [Provided further that the Board may, on sufficient reasons being shown, extend the time by another one month in order to enable the applicant to comply with the requirements of the Board.]

In the Securities and Exchange Board of India (Underwriters) Regulations, 1993, in regulation 5, for the words "sub-regulation (2) of regulation 3", the words "sub-regulation (2) of regulation 3A" shall be substituted, by the Securities and Exchange Board of India (Underwriters) (Amendment) Regulations, 2006.

Substituted for "the time specified", by the SEBI (Underwriters) Amendment Regulations, 1997, w.e.f. 17-1-1997.

Inserted, by the SEBI (Underwriters) Amendment Regulations, 1997, w.e.f. 17-1-1997.

6. Consideration of application :-

The Board shall take into account for considering the grant of a certificate, all matters which are relevant to or relating to underwriting and in particular the following, namely, whether the applicant-

(a) has the necessary infrastructure, like adequate office space, equipments and manpower to effectively discharge his activities;

(b) has any past experience in the underwriting or has in his employment minimum two persons who had the experience in underwriting;

(c) or any person, directly or indirectly connected with the applicant has not been granted registration by the Board under the Act.

¹[Explanation.-For the purposes of this clause the Board shall take into account whether a previous application for a certificate of any person directly or indirectly connected with the applicant has been rejected by the Board or any disciplinary action has been taken against such person under the Act or any of the rules or any of the regulations made under the Act:]

(d) fulfils the capital adequacy requirements specified in regulation 7:

(e) or any of its director, partner or principal officer is or has at any time been convicted for any offence involving moral turpitude or has been found guilty of any economic offence;

² [(f) is a fit and proper person.]

1. Inserted, by the SEBI (Underwriters)Amendment Regulations, 1997, w.e.f. 17-1-1997.

2. Inserted by the SEBI (Underwriters)Amendment Regulations, 1998, w.e.f. 5-1-1998.

7. Capital adequacy requirement :-

(1) The capital adequacy requirement referred to in sub-regulation (d) of regulation 6 shall not be less than the net worth of rupees twenty lakhs.

¹ (2) Notwithstanding anything contained in sub-regulation (1), every stock-broker, who acts as an underwriter shall fulfill the capital adequacy requirements specified by the stock exchange of which he is a member."

1. Regulation 7 sub-regulation (2), shall be substituted by Securities and Exchange Board of India (Underwriters) (Amendment) Regulations, 2002. , Gaz. of India, Exty., Ft. II-Sec. 3(ii), No. 1039, dt. 10.12.2002, p. 3.

8. Procedure for registration :-

The Board on being satisfied that the applicant is eligible, shall send an intimation ¹ [within one month of the such satisfaction] to the applicant mentioning that he has been found eligible for the grant of certificate and grant a certificate in Form B subject to payment of fees as specified in regulation 12.

1. Inserted by the SEBI (Underwriters)Amendment Regulations, 1997, w.e.f. 17-1-1997.

9. Renewal of certificate :-

(1) An underwriter may, if he so desires, make an application in Form A for renewal of certificate before three months of the expiry of the period of the certificate.

14 (1A) An application for renewal made under sub-regulation (1) shall be accompanied by a non- refundable application fee as specified in Schedule II.

(2) The application for renewal of certificate under sub-regulation (1) shall be dealt with in the same manner as if it were an application for grant of a certificate made under regulation 3.

In the Securities and Exchange Board of India(Underwriters) Regulations, 1993, in regulation 9, after sub- regulation (1), the following sub-regulation shall be inserted, namely:- "(1A) An application for renewal made under sub-regulation (1) shall be accompanied by a non-refundable application fee as specified in Schedule II." by the Securities and Exchange Board of India (Underwriters) (Amendment) Regulations, 2006.

10. Procedure where registration is not granted :-

(1) Where an application for grant of a certificate under regulation 3 or of renewal under regulation 9 does not fulfil the requirements set out in regulation 6, the Board may reject the application, after giving an opportunity of being heard.

¹ [(2) The decision shall be communicated by the Board within thirty days of such decision stating therein the grounds on which the application has been rejected,]

(3) Any applicant may, being aggrieved by the decision of the

Board under sub-regulation (2), apply within a period of thirty days from the date of receipt of such intimation, to the Board for reconsideration of its decision.

(4) On receipt of the application made under sub-regulation (3) the Board shall reconsider its decision and communicate its findings thereon as soon as possible in writing to the applicant.

1. Substituted, by the SEBI (Underwriters) Amendment Regulations, 1997, w.e.f. 17-1-1997.

11. Effect of refusal to grant or renew certificate :-

Any underwriter whose application for grant or renewal of a certificate has been refused by the Board shall on and from the date of the receipt of the communication under subregulation (2) of regulation 10 cease to act as an underwriter :

¹ [Provided that if the Board is satisfied that it is in the interest of the investors, it may permit the underwriter to undertake the underwriting commitments already entered into by him during the validity period of the certificate.]

1. Inserted by the SEBI(Underwriters)Amendment Regulations, 1997, w.e.f. 17-1-1997.

12. Payment of fees, and the consequences of failure to pay fees :-

(1) Every applicant eligible for grant or renewal of a certificate shall pay fees in such manner and within the period specified in Schedule II: ¹[* * *]

Provided ²[***] that a stock broker or a merchant banker, ³[* * *] who has been granted a certificate under section 12 of the Act and pays fees under the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992, ⁴ [* * *] Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992, shall not be required to pay fees under sub-regulation (1).

(2) Where an underwriter fails to pay the fees as provided in sub-regulation (1), the Board may suspend the certificate, whereupon the underwriter shall forthwith cease to act as an underwriter.

1. First proviso omitted, by the SEBI(Underwriters) Amendment Regulations, 1997, w.e.f. 17-1-1997.

2. Word 'further' omitted, by the SEBI (Underwriters) Amendment Regulations, 1997, w.e.f. 17-1-1997.

3. In Regulation 12, sub-regulation (1), in the proviso, the words shall be omitted by Securities and Exchange Board of India (Underwriters) (Amendment) Regulations, 2002. , Gaz. of India, Exty., Ft. II-Sec. 3(ii), No. 1039, dt. 10.12.2002, p. 3.

4. In Regulation 12, sub-regulation (1), in the proviso, the words shall be omitted by Securities and Exchange Board of India (Underwriters) (Amendment) Regulations, 2002. , Gaz. of India, Exty., Ft. II-Sec. 3(ii), No. 1039, dt. 10.12.2002, p. 3.

CHAPTER 3

GENERAL OBLIGATIONS AND RESPONSIBILITIES

13. To abide by the Code of Conduct :-

Every underwriter shall at all times abide by the Code of Conduct as specified in Schedule III.

14. Agreement with clients :-

Every underwriter shall enter into an agreement referred to in **22**"clause (b) of sub-regulation (1) of regulation 9A" with each body corporate on whose behalf he is acting as underwriter and the said agreement shall, amongst other things, provide for the following, namely :-

(i) the period for which the agreement shall be in force:

23 (ia) the allocation of duties and responsibilities between the underwriter and the client;

(ii) the amount of underwriting obligations;

(iii) the period, within which the underwriter has to subscribe to the issue after being intimated by or on behalf of such body corporate:

(iv) the amount of commission or brokerage payable to the underwriter:

(v) details of arrangements, if any, made by the underwriter for fulfilling the underwriting obligations.

In the Securities and Exchange Board of India(Underwriters) Regulations, 1993, in regulation 14, in the opening paragraph, for the words, brackets and figures "clause (b) of rule 4", the words, brackets and figures "clause (b) of sub-regulation (1) of regulation 9A" shall be substituted, by the Securities and Exchange Board of India (Underwriters) (Amendment) Regulations, 2006.

In the Securities and Exchange Board of India(Underwriters) Regulations, 1993, in regulation 14, after clause (i), the following clause shall be inserted, namely:- "(ia) the allocation of duties and responsibilities between the underwriter and the client;" by the

Securities and Exchange Board of India (Underwriters) (Amendment) Regulations, 2006.

15. General responsibilities of an underwriter :-

(1) The underwriter shall not derive any direct or indirect benefit from underwriting the issue other than the commission or brokerage payable under an agreement for underwriting.

(2) The total underwriting obligations under all the agreements referred to in clause (b) of rule 4 shall not exceed twenty times the net worth referred to in regulation 7.

(3) Every underwriter in the event of being called upon to subscribe for securities of a body corporate pursuant to an agreement referred to in ²⁴ "clause (b) of sub-regulation (1) of regulation 9A" shall subscribe to such securities within 45 days of the receipt of such intimation from such body corporate.

In the Securities and Exchange Board of India (Underwriters) Regulations, 1993, in regulation 15, in sub-regulation (3), for the words, brackets and figures "clause (b) of rule 4", the words, brackets and figures "clause (b) of sub-regulation (1) of regulation 9A" shall be substituted, by the Securities and Exchange Board of India (Underwriters) (Amendment) Regulations, 2006.

16. To maintain proper books of account and records, etc. :-

(1) Subject to the provisions of any other law, every underwriter shall keep and maintain the following books of account and documents, namely:-

(a) in relation to underwriter being a body corporate-

(i) a copy of the balance sheet and profit and loss account as specified in sections 211 and 212 of the Companies Act, 1956 (1 of 1956);

(ii) a copy of the auditor's report referred to in section 227 of the Companies Act, 1956 (1 of 1956);

(b) in relation to an underwriter not being a body corporate-

(i) records in respect of all sums of money received and expended by them and the matters in respect of which the receipt and expenditure take place; and

(ii) their assets and liabilities.

(2) Without prejudice to sub-regulation (1), every underwriter shall, after the close of each financial year as soon as possible but not later than six months from the close of the said period furnish to the Board, if so required, copies of the balance sheet, profit and loss account, statement of capital adequacy requirement and such other documents as may be required by the Board under regulation 16.

(3) Every underwriter shall also maintain the following records with respect to-

(i) details of all agreements referred to in clause (b) of rule 4;

(ii) total amount of securities of each body corporate subscribed to in pursuance of an agreement referred to in ²⁵ "clause (b) of sub-regulation (1) of regulation 9A";

(iii) statement of capital adequacy requirements as specified in regulation 7;

(iv) such other records as may be specified by the Board for underwriting.

(4) Every underwriter shall intimate to the Board, the place where the books of account, records and documents are maintained.

In the Securities and Exchange Board of India (Underwriters) Regulations, 1993, in in regulation 16, in sub-regulation (3), for the words, brackets and figures "clause (b) of rule 4" wherever they occur, the words, brackets and figures "clause (b) of sub-regulation (1) of regulation 9A" shall be substituted, by the Securities and Exchange Board of India (Underwriters) (Amendment) Regulations, 2006.

17. Period of maintenance of books of account, records and other documents :-

Every underwriter shall preserve the books of account and other records and documents mentioned under this chapter for a minimum period of five years.

17A. Appointment of Compliance Officer :-

1

(1) Every underwriter 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."

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

18. Power to call for information :-

(1) The Board may at any time call for any information from an underwriter with respect to any matter relating to underwriting business.

(2) Where any information is called for under sub-regulation (1) it shall be the duty of the underwriter to furnish such information.

CHAPTER 4

INSPECTION AND DISCIPLINARY PROCEEDINGS

19. Boards right to inspect :-

(1) Where it appears to the Board so to do, it may appoint one or more persons as inspecting authority to undertake the inspection of the books of account, other records and documents of the underwriter for any of the purposes specified in sub-regulation (2).

(2) The purposes referred to in sub-regulation (1) shall be as follows, namely :-

(a) to ensure that the books of account and other records and documents are being maintained in the manner required:

(b) that the provisions of the Act, rules and regulations are being complied with;

(c) to investigate into the complaints received from investors, other underwriters or any other person or any matter having a bearing on the activities of the underwriter: and

(d) to investigate suo motu in the interest of securities business or investors' interest into the affairs of the underwriter.

20. Procedure for inspection :-

(1) Before undertaking an inspection under regulation 19, the Board shall give a reasonable notice to the underwriter, for that purpose.

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

(3) On being empowered by the Board, the inspecting authority shall undertake the inspection and the underwriter against whom an inspection is being carried out shall be bound to discharge his obligations as provided under regulation 21.

21. Obligations of underwriter on inspection by the Board :-

(1) It shall be the duty of every director, proprietor, partner, officer and employee of the underwriter who is being inspected to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with the statements and information relating to an underwriter within such time as the inspecting authority may require.

(2) The underwriter shall allow the inspecting authority to have a reasonable access to the premises occupied by such underwriter 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 underwriter or any such other person on their behalf and also provide copies of documents or other materials which in the opinion of the inspecting authority are relevant for the purposes of the inspection.

(3) The inspecting authority shall in the course of inspection, be entitled to examine or record statements of any principal officer, director, partner, proprietor and employee.

(4) It shall be the duty of every director, proprietor, partner, officer or employee of the underwriter to give to the inspecting authority all assistance in connection with the inspection which the underwriter may reasonably be expected to give.

22. Submission of report to the Board :-

The inspecting authority shall, as soon as may be possible, submit an inspection report to the Board.

23. Communication of findings, etc., to the underwriter :-

(1) The Board shall after consideration of the inspection report communicate the findings to the underwriter to give him an

opportunity of being heard before any action is taken by the Board on the findings of the inspecting authority.

(2) On receipt of the explanation, if any, from the underwriter, the Board may call upon the underwriter 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, rules and regulations.

24. Appointment of Auditor :-

Notwithstanding anything contained above the Board may appoint a qualified auditor to investigate into the books of account or the affairs of the underwriter:

Provided that the auditor so appointed shall have the same powers of the inspecting authority as stated in regulation 19 and the obligation of the underwriter and his employees in regulation 21 shall be applicable to the investigation under this regulation.

Explanation.-For the purposes of this regulation, the expression "qualified auditor" shall have the same meaning as given to it in Section 226 of the Companies Act, 1956 .

CHAPTER 5

PROCEDURE FOR ACTION IN CASE OF DEFAULT

25. Liability for action in case of default :-

(1) An underwriter or a stock broker or a merchant banker entitled to carry on business of underwriting without obtaining a separate certificate under rule 3 who,-

(a) fails to comply with any conditions subject to which certificate has been granted;

(b) contravene any of the provisions of the Act, rules or regulations,- shall be liable to any of the penalties specified in sub-regulation (2).

(2) The penalties referred to in sub-regulation (1) may be either:-

(a) suspension of registration ¹[under the grounds specified in sub-regulation (1) of regulation 26] after enquiry for a specified period; or

(b) cancellation of registration ¹ [under the grounds specified in sub-regulation (2) of regulation 26].

1. Inserted by the SEBI(Underwriters)Amendment Regulations, 1997, w.e.f. 17-1-1997.

26. Suspension, cancellation of certificate :-

(1) A penalty of suspension of certificate granted to an underwriter or a certificate of registration granted under section 12 of the Act to a stock broker or a merchant banker entitled to carry on business of underwriting without obtaining a certificate under rule 3, may be imposed where an underwriter or such stock broker or merchant banker-

(i) violates the provisions of the Act, rules or regulations;

(ii) does not follow the code of conduct specified at Schedule III;

(iii)

(a) fails to furnish any information relating to this business as underwriter as required by the Board;

(b) furnishes wrong or false information;

(c) does not submit financial returns as required by the Board;

(d) does not co-operate in any enquiry conducted by the Board;

(iv) indulge in manipulation or price rigging or cornering activities;

(v) is guilty of misconduct or improper or unbusinesslike or unprofessional conduct:

(vi) fails to maintain the capital adequacy requirement in accordance with the provisions of regulation 7;

(vii) fails to pay the fees as specified in regulation 12;

(viii) violates the conditions of registration;

(ix) fails to fulfil his underwriting obligations:

Provided that the Board for reasons to be recorded in writing may in case of repeated defaults of the type mentioned above, impose a penalty of cancellation of certificate on the underwriter or cancellation of certificate of registration granted under section 12 of the Act on a stock broker or a merchant banker.

(2) A penalty of cancellation of certificate granted to an underwriter or a certificate of registration granted under section 12 of the Act to a stock broker or a merchant banker entitled to carry on the

business of underwriting under rule 3, may be imposed where they-

(i) indulge in deliberate manipulation or price rigging or cornering activities affecting the securities market and the investors' interest;

(ii) fail to fulfil the capital adequacy referred to in regulation 7;

(iii) are guilty of fraud, or is convicted of a criminal offence;

(iv) violate any provision of Securities and Exchange Board of India (Insider Trading) Regulations, 1992, or;

(v) violate the provisions of the Act, rules and regulations;

(vi) fail to fulfil more than once their underwriting obligations.

27. Manner of making order of suspension and cancellation of certificate :-

No order of penalty of suspension or cancellation shall be imposed except after holding an enquiry in accordance with the procedure specified in regulation 28.

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

(1) For the purpose of holding an enquiry under regulation 27, the Board may appoint an enquiry officer.

(2) The enquiry officer shall issue to the underwriter a notice at the registered office or the principal place of business of the underwriter.

(3) The underwriter may, within thirty days from the date of receipt of such notice, furnish to the enquiry officer or reply together with copies of documentary or other evidence relied on by him or sought by the Board from the underwriter.

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

(5) Before the enquiry officer, the underwriter may either appear in person or through any person duly authorised by the underwriter:

Provided that no lawyer or advocate shall be permitted to represent the underwriter at the enquiry:

Provided further that where a lawyer or an advocate has been appointed by the Board as a presiding officer under sub-regulation

(6), it shall be lawful for the underwriter to present its case through a lawyer or advocate.

(6) If it is considered necessary, the enquiry officer may 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 underwriter, submit a report to the Board and recommend the penalty to be awarded as also the justification of the penalty proposed.

29. Show-cause notice and order :-

(1) On receipt of the report from the enquiry officer, the Board shall consider the same and issue a show-cause notice as to why the penalty as it considers appropriate should not be imposed.

(2) The underwriter shall within ¹ [thirty] days of the date of the receipt of the show-cause notice send a reply to the Board.

(3) The Board after the considering the reply to the show-cause notice, if received shall as soon as possible but not later than thirty days from the receipt of the reply, if any, pass such order as it deems fit.

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

(5) The Board shall send a copy of the order under sub-regulation (3) to the underwriter.

1. Substituted for 'twenty-one' by the SEBI(Underwriters) Amendment Regulations, 1997, w.e.f. 17-1-1997.

30. Effect of suspension and cancellation of certificate granted to underwriter :-

(1) On and from the date of suspension of the certificate or certificate of registration granted to a stock broker or a merchant banker under section 12 of the Act, the underwriter shall cease to act as an underwriter during the period of suspension :

Provided that the Board may, in the interest of the investors and securities market, permit the underwriter to complete his underwriting obligations specified in the agreement referred to in clause (b) of rule 4.

(2) On and from the date of cancellation of certificate or certificate of registration granted to a stock broker or a merchant banker under section 12 of the Act, the underwriter shall with immediate effect cease to act as an underwriter.

31. Publication of order of suspension :-

The order of the Board passed under sub-regulation (3) of regulation 29, shall be published in at least two daily newspapers by the Board.

32. Appeal to the Central Government :-

1 Any person aggrieved by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, (i.e. after 16th December 1999), under these regulations may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter"

1. Substituted for regulation 32 "Any person aggrieved by an order of the Board under the regulations may prefer an appeal to the Central Government under the Securities and Exchange Board of India (Appeal to the Central Government) Rules, 1993." by the Securities and Exchange Board of India (Appeal to the Securities Appellate Tribunal) (Amendment) Regulations, 2000

SCHEDULE 1

1

SCHEDULE 2

2

1. . :-

Every underwriter shall pay a sum of Rupees five lakhs as registration fees at the time of the grant of certificate by the Board.

2. . :-

Every underwriter to keep registration in force shall pay renewal fee of Rs 2 lakhs every three years from the fourth year from the date of initial registration.

3. . :-

(a) The fee referred to in Paragraph 1 shall be paid by the underwriter within fifteen days from the date of receipt of intimation from the Board under Regulation 8.

(b) The fee referred to in Paragraph 2 shall be paid by the underwriter within fifteen days of receipt of intimation from the Board disposing of the application for renewal made under sub-

regulation (1) of Regulation 9.

3A. . :-

33 The non-refundable fee payable along with an application for registration under sub-regulation (1A) of regulation 3A or an application for renewal of registration under sub-regulation (1A) of regulation 9 shall be a sum of twenty five thousand rupees.

In the Securities and Exchange Board of India (Underwriters) Regulations, 1993, in in Schedule II, after paragraph 3, the following paragraph shall be inserted, namely:- "3A. The non-refundable fee payable along with an application for registration under sub-regulation (1A) of regulation 3A or an application for renewal of registration under sub-regulation (1A) of regulation 9 shall be a sum of twenty five thousand rupees." by the Securities and Exchange Board of India (Underwriters) (Amendment) Regulations, 2006.

4. . :-

The fees specified in Paragraphs 1 and 2 shall be payable by the Underwriter by a demand draft in favour of 'Securities and Exchange Board of India' payable at Mumbai or at the respective regional office.

SCHEDULE 3

CODE OF CONDUCT FOR UNDERWRITERS

Schedule III

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

[Regulation 13]

CODE OF CONDUCT FOR UNDERWRITERS

1. An Underwriter shall make all efforts to protect the interests of its clients.
2. An Underwriter shall maintain high standards of integrity, dignity and fair
ness in the conduct of its business.
3. An Underwriter shall ensure that it and its personnel will act in an
ethical
manner in all its dealings with a body corporate making an issue of
securities
(hereinafter referred to in the schedule as "the issuer").
4. An Underwriter shall endeavor to ensure all professional dealings are
effected
in a prompt, efficient and effective manner.
5. An Underwriter shall, at all times, render high standards of service,

exercise

due diligence, ensure proper care and exercise independent professional judgment.

6. An Underwriter shall not make any statement, either oral or written, which would misrepresent

- a. the services that the Underwriter is capable of performing for its client, or has rendered to any other Issuer Company;
- b. his Underwriting commitment.

7. An Underwriter shall avoid conflict of interest and make adequate disclosure of his interest.

8. An Underwriter shall put in place a mechanism to resolve any conflict of interest situation that may arise in the conduct of its business or where any conflict of interest arises, shall take reasonable steps to resolve the same in an equitable manner.

9. An Underwriter shall make appropriate disclosure to the client of its possible source or potential areas of conflict of duties and interest while acting as Underwriter which would impair its ability to render fair, objective and unbiased services.

10. An Underwriter shall not divulge to other Issuer, Press or any party any confidential information about its Issuer Company, which has come to its knowledge and deal in securities of any Issuer Company without making disclosure to the Board as required under the regulations and also to the Board of Directors of the Issuer Company.

11. An Underwriter shall not discriminate amongst its clients, save and except on ethical and commercial considerations.

12. An Underwriter shall ensure that any change in registration status/any penal action taken by board or any material change in financials which may adversely affect the interests of clients/investors is promptly informed to the clients and any business remaining outstanding is transferred to another registered person in accordance with any instructions of the affected clients/investors.

13. An Underwriter shall maintain an appropriate level of knowledge and competency and abide by the provisions of the Act, regulations and circulars and Guidelines issued by the Board. The Underwriter shall also comply with the award of the Ombudsman passed under Securities and Exchange Board of India (Ombudsman) Regulations, 2003.

14. An Underwriter shall ensure that the board is promptly informed about any action, legal proceedings etc. initiated against it in respect of any material breach or non compliance by it, of any law, rules, regulations, directions of the board or of any other regulatory body.

15. An Underwriter shall not make any untrue statement or suppress any material fact in any documents, reports, papers or information furnished to the Board.

16. (a) An Underwriter or any of his employees shall not render, directly or

indirectly any investment advice about any security in the publicly accessible media, whether real-time or non-real-time, unless a disclosure of his interest including its long or short position in the said security has been made, while rendering such advice.

(b) In case, an employee of an Underwriter is rendering such advice, the Underwriter shall ensure that he shall disclose his interest, the interest of his dependent family members and that of the employer including their long or short position in the said security, while rendering such advice.

17. An Underwriter or any of its directors, partners or manager having the management of the whole or substantially the whole of affairs of the business, shall not either through its account or their respective accounts or through their associates or family members, relatives or friends indulge in any insider trading.
18. An Underwriter shall not indulge in any unfair competition, which is likely to be harmful to the interest of other underwriters carrying on the business of underwriting or likely to place such other underwriters in a disadvantageous position in relation to the Underwriter while competing for, or carrying out any assignment.
19. An Underwriter shall have internal control procedures and financial and operational capabilities which can be reasonably expected to protect its operations, its clients and other registered entities from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions.
20. An Underwriter shall provide adequate freedom and powers to its compliance officer for the effective discharge of his duties.
21. An Underwriter shall develop its own internal code of conduct for governing its internal operations and laying down its standards of appropriate conduct for its employees and officers in the carrying out of their duties. Such a code may extend to the maintenance of professional excellence and standards, integrity, confidentiality, objectivity, avoidance of conflict of interests, disclosure of shareholdings and interests etc.
22. An Underwriter shall ensure that good corporate policies and corporate governance is in place.
23. An Underwriter shall ensure that any person it employs or appoints to conduct business is fit and proper and otherwise qualified to act in the capacity so employed or appointed (including having relevant professional training or experience).
24. An Underwriter shall ensure that it has adequate resources to supervise diligently and does supervise diligently persons employed or appointed by it to conduct business on its behalf.
25. An Underwriter shall be responsible for the acts or omissions of its employees and agents in respect to the conduct of its business.

26. An Underwriter shall ensure that the senior management, particularly decision makers have access to all relevant information about the business on a timely basis.
27. An Underwriter shall not be party to or instrumental for
 - a. Creation of false market;
 - b. Price rigging or manipulation, or;
 - c. Passing of unpublished price sensitive information in respect of securities which are listed and proposed to be listed in any stock exchange to any person or intermediary.