SECURITIES LAWS AND COMPLIANCES
PART A — SECURITIES LAWS
STUDY VI - CAPITAL MARKET INTERMEDIARIES

LEARNING OBJECTIVES

The study will enable the students to understand

- Market intermediaries involved in the primary market
- Market intermediaries involved in the secondary market
- Overview of SEBI Regulations applicable to Primary and Secondary Market Intermediaries
- Overview of SEBI (Procedure For Holding Enquiry By Enquiry Officer And Imposing Penalty) Regulations, 2002

INTRODUCTION

Capial market intermediaries are a vital link between the regulators, issuers and investor. Any aberrations in the capital markets has presumably direct bearing on the intermediaries, their governance processes and practices which in turn affect the confidence of the markets. It is therefore necessary to ensure good governance practice of the intermediaries and also to have constant monitoring and survillience on the acts of intermediaries. Securities and Exchange Board of India Act, 1992 was framed to provide for the establishment of a Board to protect the interest of investors in securities and to promote the development of and regulate the securities market and for matter connected therewith and incidental thereto.

As per Section 11 of SEBI Act, it is the duty of SEBI to register and regulate the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trsutees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisors and such other intermediaries who may be associated with securities market in any manner. SEBI has issued regulations in respect of each intermediary to ensure proper services to be rendered by them to the investors and the capital market.

In the present regime a dozen regulations govern different categories of intermediaries. The broad framework of such regulations is similar to one another. SEBI has issued Securities and Exchange Board of India (Intermediaries) Regulations, 2008. The new regulations seek to consolidate the common requirements and put in place a comprehensive framework which will apply to the intermediaries and prescribe the obligations, procedure, limitations etc. in so far as the common requirements are concerned. The new regulations seek to simplify procedures to make the registration/ regulation process of intermediaries less burdensome and cost effective without diluting the regulatory oversight. The regulation is primarily principle based and some significant changes in the framework are given below¬:

1. Permanent Registration
   Subject to compliance with the SEBI Act, regulations, updation of relevant disclosures and payment of fees registration shall be permanent.
2. Registration for multiple activities

The process for registration for undertaking multiple activities by the same intermediary has been simplified.

3. Registration Form- information divided into two parts
   Part 1 of the form will be disclosed and available to the public and Part II will contain such information which will be retained with the Board as regulatory filing.
4. Fit and Proper person requirements
   The criteria to determine whether the intermediary is a Fit and Proper person have been revised and are now principle based.
5. Suspension/Cancellation of certificate of registration
   The manner of suspension/cancellation of any certificate granted to any person has been provided in the regulations. Consequently the SEBI (Procedure for holding enquiry by enquiry officer and imposing penalty) Regulations, 2002 will be repealed. The procedure for suspension/cancellation has been simplified and the time taken in this regard is sought to be reduced. These Regulations would also bring changes in various related Regulations. However, as on the date of publishing this study material, the SEBI (Intermediaries) Regulations, 2008 have not been issued, the study lesson is based on the existing Regulations issued by SEBI for various intermediaries.

I. PRIMARY MARKET INTERMEDIARIES

The following market intermediaries are involved in the primary market:

1. Merchant Bankers/Lead Managers.
2. Registrars and Share Transfer Agents.
3. Underwriters.
4. Bankers to issue.
5. Debenture Trustees.

1. MERCHANT BANKERS

From 1st July, 1998 SEBI has advised that merchant bankers shall undertake only those activities which relate to securities market. These activities are:

a. Managing of public issue of securities;
b. Underwriting connected with the aforesaid public issue management business;
c. Managing/Advising on international offerings of debt/equity i.e. GDR, ADR, bonds and other instruments;
d. Private placement of securities;
e. Primary or satellite dealership of government securities;
f. Corporate advisory services related to securities market including takeovers, acquisition and disinvestment;
g. Stock broking;
h. Advisory services for projects;
i. Syndication of rupee term loans;
j. International financial advisory services.

The activities of the merchant bankers in the Indian capital market are regulated by SEBI (Merchant Bankers) Rules, 1992 and SEBI (Merchant Bankers) Regulations, 1992. While the rules were notified by the Central Government in exercise of the powers conferred by section 29 of SEBI Act,

1992, the regulations were notified by SEBI in exercise of the powers conferred by section 30 of SEBI Act, 1992 after approval of the Central Government. Both the rules and the regulations took effect on 22nd December, 1992 on their publication in the Gazette of India. Central Government vide its notification dated 07 September, 2006 has recinded the SEBI (Merchant Bankers) Rules, 1992. On the date of publication of this study material, the new Rules are yet to be notified.

SEBI (Merchant Bankers) Regulations, 1992

'Merchant Banker' means any person engaged in the business of issue management by making arrangements regarding selling buying or subscribing to securities or acting as manager/consultant/advisor or rendering corporate advisory services in relation to such issue management.

The term issue means an offer of sale or purchase of securities by any body corporate, or by any other person or group of persons on its or his or their behalf, as the case may be, to or from the public or the holders of securities of such body corporate or person or group of persons through a merchant banker.

Regulation 3 of SEBI (Merchant Bankers) Regulations, 1992 lays down that an application by a person desiring to become merchant banker shall be made to SEBI in the prescribed form seeking grant of a certificate alongwith a non-refundable application fee as specified in Schedule II of the Regulations.

Regulation 4 and 5 deal with the methodology for application and furnishing of information, clarification and personal representation by the applicant. Incomplete or non-conforming applications shall be rejected after giving an opportunity to remove the deficiencies within a time specified by SEBI.

Regulation 6 lists out the following considerations for being taken into account by SEBI to grant the certificate of registration.

a. the applicant shall be a body corporate other than a non-banking financial company as defined under clause(f) of section 45-I of the RBI Act, 1934;
b. the applicant has the necessary infrastructure like adequate office space, equipments and manpower to effectively discharge his activities;
c. the applicant has in his employment a minimum of two persons who have the experience to conduct the business of the merchant banker;
d. a person directly or indirectly connected with the applicant has not been granted registration by SEBI;
e. the applicant fulfills the capital adequacy requirement;
f. the applicant, his partner, director or principal officer is not involved in any litigation connected with the securities market which has an adverse bearing on the business of the applicant;
g. the applicant, his director, partner or principal officer has not at any time been convicted for any offence involving moral turpitude or has been found guilty of any offence;
h. the applicant has the professional qualification from an institution recognised by the Government in finance, law or business management;
i. the applicant is a fit and proper person;
j. grant of certificate to the applicant is in the interest of investors.

Capital adequacy

Regulation 7 prescribes that the capital adequacy requirement shall be a networth of not less than five crore rupees.
'Networth' means the sum of paid-up capital and free reserves of the applicant at the time of making application.
Regulation 8, 9, 9A and 10 deal with procedure for registration, renewal of certificate conditions of registration and procedure where registration is not granted.
Regulation 11 stipulate that on refusal of registration by SEBI, the applicant shall cease to carry on any activity as a merchant banker from the date of receipt of SEBI's refusal letter.
Regulation 12 provides for payment of fees and consequences of failure to pay annual fees. It provides that SEBI may suspend the registration certificate if merchant banker fails to pay fees.

General obligations and responsibilities of Merchant Banker

Chapter III of the Regulations containing Regulations 13 to 28 deal with general obligations and responsibilities of Merchant Bankers.
Regulation 13 stipulates that every merchant banker shall abide by the code of conduct which has been specified in Schedule III. SEBI has substituted the Schedule III vide SEBI (Merchant Bankers) (Amendment) Regulations, 2003. The code of conduct as provided in the revised schedule is as under:
Code of Conduct for Merchant Bankers

1. A merchant banker shall make all efforts to protect the interests of investors.
2. A merchant banker shall maintain high standards of integrity, dignity and fairness in the conduct of its business.
3. A merchant banker shall fulfil its obligations in a prompt, ethical, and professional manner.
4. A merchant banker shall at all times exercise due diligence, ensure proper care and exercise independent professional judgement.
5. A merchant banker shall endeavour to ensure that—
   a. inquiries from investors are adequately dealt with;
   b. grievances of investors are redressed in a timely and appropriate manner;
   c. where a complaint is not remedied promptly, the investor is advised of any further steps which may be available to the investor under the regulatory system.
6. A merchant banker shall ensure that adequate disclosures are made to the investors in a timely manner in accordance with the applicable regulations and guidelines so as to enable them to make a balanced and informed decision.
7. A merchant banker shall endeavour to ensure that the investors are provided with true and adequate information without making any misleading or exaggerated claims or any misrepresentation and are made aware of the attendant risks before taking any investment decision.
8. A merchant banker shall endeavour to ensure that copies of the prospectus, offer document, letter of offer or any other related literature is made available to the investors at the time of issue or the offer.

9. A merchant banker shall not discriminate amongst its clients, save and except on ethical and commercial considerations.
10. A merchant banker shall not make any statement, either oral or written, which would misrepresent the services that the merchant banker is capable of performing for any client or has rendered to any client.
11. A merchant banker shall avoid conflict of interest and make adequate disclosure of its interest.
12. A merchant banker 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.
13. A merchant banker shall make appropriate disclosure to the client of its possible source or potential areas of conflict of duties and interest while acting as merchant banker which would impair its ability to render fair, objective and unbiased services.
14. A merchant banker shall always endeavour to render the best possible advice to the clients having regard to their needs.
15. A merchant banker shall not divulge to anybody either orally or in writing, directly or indirectly, any confidential information about its clients which has come to its knowledge, without taking prior permission of its clients, except where such disclosures are required to be made in compliance with any law for the time being in force.
16. A merchant banker shall ensure that any change in registration status/any penal action taken by the Board or any material change in the merchant banker's financial status, 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 intermediary in accordance with any instructions of the affected clients.
17. A merchant banker shall not indulge in any unfair competition, such as weaning away the clients on assurance of higher premium or advantageous offer price or which is likely to harm the interests of other merchant bankers or investors or is likely to place such other merchant bankers in a disadvantageous position while competing for or executing any assignment.
18. A merchant banker shall maintain arms length relationship between its merchant banking activity and any other activity.
19. A merchant banker shall have internal control procedures and financial and operational capabilities which can be reasonably expected to protect its operations, its clients, investors and other registered entities from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions.
20. A merchant banker shall not make untrue statement or suppress any material fact in any documents, reports or information furnished to the Board.
21. A merchant banker shall maintain an appropriate level of knowledge and competence and abide by the provisions of the Act, regulations made thereunder, circulars and guidelines, which may be applicable and relevant

to the activities carried on by it. The merchant banker shall also comply with the award of the Ombudsman passed under the Securities and Exchange Board of India (Ombudsman) Regulations, 2003.

22. A merchant banker shall ensure that the Board is promptly informed about any action, legal proceedings, etc., initiated against it in respect of material breach or non-compliance by it, of any law, rules, regulations, directions of the Board or of any other regulatory body.
23. (a) A merchant banker or any of its employees shall not render, directly or indirectly, any investment advice about any security in any publicly accessible media, whether real-time or non-real-time, unless a disclosure of his interest including a long or short position, in the said security has been made, while rendering such advice.
    b. In the event of an employee of the merchant banker rendering such advice, the merchant banker shall ensure that such employee shall also disclose the interests, if any, of himself, his dependent family members and the employer merchant banker, including their long or short position in the said security, while rendering such advice.
24. A merchant banker shall demarcate the responsibilities of the various intermediaries appointed by it clearly so as to avoid any conflict or confusion in their job description.
25. A merchant banker shall provide adequate freedom and powers to its compliance officer for the effective discharge of the compliance officer's duties.
26. A merchant banker 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 carrying out their duties. Such a code may extend to the maintenance of professional excellence and standards, integrity, confidentiality, objectivity, avoidance or resolution of conflict of interests, disclosure of shareholdings and interests, etc.
27. A merchant banker shall ensure that good corporate policies and corporate governance are in place.
28. A merchant banker 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).
29. A merchant banker shall ensure that it has adequate resources to supervise diligently and does supervise diligently persons employed or appointed by it in the conduct of its business, in respect of dealings in securities market.
30. A merchant banker shall be responsible for the Acts or omissions of its employes and agents in respect of the conduct of its business.
31. A merchant banker shall ensure that the senior management, particularly decsion makers have access to all relevant information about the business on a timely basis.
32. A merchant banker shall not be a party to or instrument 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 in the securities market.

Regulation 13A provides that no merchant banker other than a bank or a public financial institution who has been granted a certificate of registration shall carry on any business other than that of the securities market from June 30th 1998.

Regulations 14 to 17 deal with maintenance of books of accounts, records, submission of half-yearly results, rectifying deficiencies pointed out in the auditors report etc.

Lead Merchant Banker

Regulations 18 to 25 provide the guidelines in relation to Lead Merchant Bankers.

Regulation 18 lays down that all public issues should be managed by at least one merchant banker functioning as the lead merchant banker. However, in the case of issue of rights shares to the existing members with or without the right of renunciation, the amount of the issue of the body corporate does not exceed Rs. 50 lakhs, the appointment of lead merchant banker shall not be insisted upon. Every lead merchant banker shall, before taking up the assignment relating to an issue, enter into an agreement with the issuing company setting out their mutual rights, liabilities and obligations relating to such issue and in particular to disclosures, allotment and refund.

Responsibilities of Lead Managers

Regulation 20 provides that no lead manager shall agree to manage or be associated with any issue unless his responsibilities relating to the issue mainly those of disclosures, allotment and refund are clearly defined, allocated and determined and a statement specifying such responsibilities is furnished to SEBI at least 1 month before the opening of the issue for subscription but where there are more than 1 lead merchant banker to the issue the responsibility of each such lead merchant banker shall clearly be demarcated and the statement specifying such responsibilities shall be furnished to SEBI at least 1 month before the opening of the issue for subscription. No lead merchant banker shall agree to manage the issue made by any body corporate if such body corporate is an associate of the lead merchant banker.

Regulation 21 stipulates that a lead merchant banker shall not associate himself with any issue if a merchant banker not holding a certificate from SEBI is associated with the issue.

Minimum underwriting obligation

Regulation 22 lays down that in respect of every issue to be managed, the lead merchant banker holding a certificate under Category I shall accept a minimum underwriting obligation of 5% of the total underwriting commitment or Rs. 25 lakhs whichever is less but if the lead merchant banker is unable to accept the minimum underwriting obligation, that lead merchant banker shall make arrangement for having the issue underwritten to that extent by a merchant banker associated with the issue and shall keep SEBI informed of such arrangement.

Due Diligence by Merchant Banker

Regulation 23 requires the lead merchant banker, to be responsible for verification of the contents of a prospectus or the letter of offer in respect of an issue and reasonableness of the views expressed therein, to submit to SEBI at least 2 weeks prior to the opening of the issue for subscription, a due diligence certificate in the prescribed form. The draft prospectus/letter of offer forwarded to SEBI is in conformity with the documents, materials and papers relevant to the issue, that all the legal requirements connected with the said issue have been duly complied with and that the disclosures made in draft prospectus/letter of offer are true, fair and adequate to enable the investors to make a well informed decision as to the investments in the proposed issue. Merchant Banker shall also examine various documents including those relating to litigation like commercial disputes, patent disputes, disputes with collaborators etc. and also discuss with the company its directors and other officers and other agencies on matters including objects of the issue, projected profitability, price justification etc. before giving the due diligence certificate.

A merchant banker shall also include in the due diligence certificate, important documents including documents in support of the track record and experience of the promoters and their professional competence, listing agreement of the company for existing securities traded on the stock exchanges, consent letters from company's auditors, bankers to issue, bankers to the company, lead managers, brokers, proposed trustees etc., auditor's certificate regarding tax benefits available to the company, shareholders and debenture holders, reports from Government agencies/ expert agencies/consultants/company regarding market demand and supply for the product, industry scenario, standing of the foreign collaborators etc., certification of revaluation of company's assets given by government valuer, certificate of compliance with FEMA/MRTP/RBI regulations in relation to prospectus/NRI allotments/foreign collaboration terms obtained from Company's Solicitors. In other words, the merchant bankers have to apply their mind to every important aspects of the company's past performance and future prospects in order to protect the interest of the capital market and the investors.

The merchant banker shall ensure that every draft offer document submitted to SEBI shall be accompanied by undertakings and certificates from CEO of the company, Company Secretary/Promoters/Lead Manager to assure that all necessary arrangements have been made to ensure compliance of the various laws falling within their responsibility and to offer due protection to the investors. These matters included investors complaints, refunds, issue of certificates for the securities, promoters contribution, underwriting arrangements etc.

The lead managers among other things should issue clear instructions/advice to the investors and the bankers and ensure compliance in regard to the utilisation of the stock invest scheme, buy back arrangement for purchase of non-convertible portion (khokha) of partly convertible debentures (PCD), creation of trust for disposal of odd lots etc.

The Merchant Bankers should see that the listed company appoints a

compliance officer to directly liaise with SEBI in regard to implementation/ compliance of the various laws, rules and regulations and directives and for settlement of investors complaints. The name of the compliance officer should be intimated to SEBI and also mentioned in the offer document relating to the capital issue with details, telephone number, fax number and address of the said compliance officer.

The lead manager shall ensure that the disclaimer clause (not to hold SEBI responsible for the statements in the offer documents) and the risk factors are printed prominently in the offer document/prospectus while highlighting issue highlights, capital structure etc.

The lead manager should also see that the various intermediaries associated by the issue are registered with SEBI and that they are competent and capable to discharge their responsibilities. They should also ensure that the bankers to the issue are appointed in all the mandatory collection centres all over the country. The issue material meant for the public should be despatched well in advance to the stock exchanges, brokers, underwriters etc. to avoid compliance of non-availability of application forms. In the case of rights issue the lead manager should see to it that the letters of offer are despatched to all the existing shareholders at least one week before the date of opening of the issue.

As regards underwriting, the lead manager should observe all the conditions prescribed by SEBI and that in the case of a devolvement on underwriters have been complied with. Any dispute in this regard shall be brought to the notice of SEBI by the lead manager.

Wrong and misleading advertisements should be prevented by the lead manager, ensuring compliance with SEBI guidelines on the subject.

Regulation 24 states that the lead manager responsible for the issue shall furnish to SEBI the following documents:

(a) particulars of the issue; (b) draft prospectus or the draft letter of offer; (c) any other literature to be circulated to the investors including the existing shareholders and (d) such other documents relating to prospectus or letter of offer which are relevant. These documents shall be furnished to SEBI at least 2 weeks prior to the date of filing the draft prospectus/letter of office with the ROC and/or the Regional Stock Exchange or with both. In case SEBI makes any modification or suggestion in respect of draft prospectus or letter of offer, the lead manager shall ensure that these are incorporated in the said documents before issue to the investors.

The draft prospectus/letter of offer shall be filed along with such fees as are prescribed and in the manner specified.

Post issue responsibility of lead manager

Regulation 25 enjoins that the lead manager undertaking the responsibility for refunds or allotment of securities in respect of any issue shall continue to be associated with the issue till the subscribers receive the share or debenture certificate or refund of excess application money. Even where a person other than the lead manager is entrusted with the refund or allotment of securities, the lead manager shall continue to be responsible for ensuring that such other person discharges the requisite responsibilities in accordance with the

provisions of the Companies Act, 1956 and the listing agreement entered into by the issuing company with the stock exchange.
Regulation 28 lays down that the merchant banker shall disclose to SEBI as and when required information in relation to his responsibilities of management of the issue, change in the information or particulars previously furnished, previous issues managed by him or with which he was associated, breach of capital adequacy requirement if any and his activities as a manager, underwriter, consultant or advisor to an issue.

Prohibition to acquire shares

Regulations 26 and 27 deal with this matter.
Regulation 26 lays down that no merchant banker or any of its directors, partners or manager or principal officer shall either on their own account or through their associates or relatives, enter into any transaction in securities of bodies corporate on the basis of unpublished price sensitive information obtained by them during the course of any professional assignment either from the clients or otherwise.
Regulation 27 requires every merchant banker to submit to SEBI complete particulars of any transaction for acquisition of securities of any body corporate whose issue is being managed by that merchant banker, within 15 days from the date of entering into such transaction.
Regulation 28A requires every merchant banker to appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications guidelines, instructions etc. issued by SEBI or Central Government and for redressal of investor grievances. Compliance officer is required to immediately and independently report to SEBI, any non-compliance observed by him and ensure that observations made or deficiencies pointed out by SEBI on/in the draft prospectus or letter of offer as the case may be, do not occur.

Procedure for inspection

Chapter IV containing Regulations 29 to 34 lays down the procedure for inspection of the merchant bankers offices and records by SEBI.
Regulation 29 empowers SEBI to appoint one or more persons as inspecting authority to undertake inspection of books of accounts, records etc. of the merchant banker, to ensure that such books and records are maintained in the prescribed manner, the provisions of SEBI Act and the rules and regulations thereunder are complied with to investigate into complaints from investors, other merchant bankers or other persons on any matter having a bearing on the activities of the merchant banker and to investigate suo-motu in the interest of the securities business or investors interest into the working of the merchant banker.
Regulation 30 and 31 authorise SEBI to undertake such inspection with or without notice and the obligations of the merchant bankers in relation to such inspection.
Regulation 32 provides for the submission of an inspection report to SEBI by the inspecting authority on completion of inspection. Regulation 33 requires that SEBI or chairman shall after consideration of inspection or investigation report take such action as SEBI or chairman may deem fit and appropriate

including action under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

Regulation 34 permits SEBI to appoint a qualified auditor to investigate into the books of accounts or the affairs of the merchant banker and such auditor shall have the same powers of the inspecting authority referred to above.

Procedure for action against merchant banker in case of default

Chapter V containing Regulations 35 to 43 deals with the procedure for taking action against the merchant banker in case of default.

Regulation 35 provides that a merchant banker who fails to comply with any conditions subject to which certificate has been granted and contravenes any of the provisions of the Act, rules or regulations, he shall be dealt in the manner provided under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

2. REGISTRARS AND SHARE TRANSFER AGENTS

The Registrars to an Issue and Share Transfer Agents constitute an important category of intermediaries in the primary market. They render very useful services in mobilising new capital and facilitating proper records of the details of the investors, so that the basis for allotment could be decided and allotment ensured as per SEBI Guidelines.

They also render service to the existing companies in servicing the share capital contributed by the investors. The system of share transfers gives liquidity to the investment and helps the investors to easily acquire or dispose off shares in the secondary market. The share transfer agents who have the necessary expertise, trained staff, reliable infrastructure and SEBI licence render service to the corporates by undertaking and executing the transfer and transmission work relating to the company's shares and securities. Thus they have a role to play both in the primary and the secondary markets. Though, after the introduction of the Depository system in India, very large corporates are required to switch-over to dematerialised system of share holding which does not involve issue of individual share certificates or securities to the investors, large existing companies still continue in the old system of security issue and their transfer and transmission are being handled by the company's own securities department or in the alternative by the share transfer agents. Unless and until the old system is totally eliminated, the share transfer agents will continue to have a role to play in the Indian capital market by rendering service to the corporates in the area of public issue as well as share transfer and share transmission.

SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993

SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 were notified by SEBI on 31st May, 1993 in exercise of the powers conferred by Section 30 of SEBI Act, 1992, with the approval of Central Government.

Some of the important definitions under these Regulations are given below:

1. 'Issue' means an offer of sale or purchase of securities by any body corporate or by any other person or group of persons on its or his or their behalf to or from the public or the holders of the securities of such body corporate or person or group of persons.

2. ‘Registrar to an Issue’ means the person appointed by a body corporate or any person or group of persons to carry on the following activities on its or his or their behalf i.e.:
   i. collecting application for investor in respect of an issue;
   ii. keeping a proper record of applications and monies received from investors or paid to the seller of the securities;
   iii. (a) assisting body corporate or person or group of persons in determining the basis of allotment of the securities in consultation with the stock exchange;
      b. finalising the list of person entitled to allotment of securities;
      c. processing and despatchment of allotment letters, refund orders or certificates and other related documents in respect of the issue;
3. ‘Share Transfer Agent’ means:
   i. any person who on behalf of any body corporate, maintains the records of holders of securities issued by such body corporate and deals with all matters connected with the transfer and redemption of its securities;
   ii. the department or division, by whatever name called, of a body corporate performing the activities as share transfer agents if at any time the total number of holders of its securities issued exceed one lakh.

Chapter I of the Regulations contains preliminary items and Chapter II consisting of Regulations 3 to 12 dealing with procedure for applying for registration as Registrar to an Issue (RTI) and Share Transfer Agents (STA), either as Category-I to carry on both the activities of RTA and STA or Category-II to carry on the activity either as Registrar to an Issue or as a Share Transfer Agent. The application should be complete and conform to the requirements otherwise it will be rejected. But an opportunity will be given to remove the objections as may be indicated by SEBI. In case of failure the application may be rejected.

Criteria for Registration

Regulation 6 lays down that SEBI shall take into account the following matters while considering the applications for registration. It shall assess 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 activities;
c. any person directly or indirectly connected with him has been granted registration by SEBI under the Act;
d. fulfills the capital adequacy requirement;
e. has been subjected to any disciplinary proceedings under the Act;
f. 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;
g. is a fit and proper person.

Regulation 7 stipulates the capital adequacy requirement (networth for category I and category II certificates.

Regulations 8 to 10 lay down the procedure for registration, renewal of certificate, conditions of registration, period of validity of certificate and the

procedure where registration is not granted. It is made clear that the applicant will be given due opportunity of being heard before rejection of his application. Regulation 11 says that in case of refusal to grant or renew a certificate of registration, the concerned person shall cease to carry on any activity as registrar or share transfer agent.

Regulation 12 prescribes payment of fees and indicates the consequences of failure to pay fees. In the latter case SEBI may suspend the certificate with the consequence that the RTA shall cease to carry on his activity from the date of suspension of the certificate.

General Obligations and Responsibilities

Chapter III consisting of Regulations 13 to 15 lays down the general obligations and responsibilities of RTAs.

Regulation 13 lays down that the RTA holding a certificate shall at all time abide by the Code of Conduct specified below:

Code of Conduct

1. A Registrar to an Issue and share transfer agent shall maintain high standards of integrity in the conduct of its business.
2. A Registrar to an Issue and share transfer agent shall fulfil its obligations in a prompt ethical and professional manner.
3. A Registrar to an Issue and share transfer agent shall at all times exercise due diligence, ensure proper care and exercise independent professional judgement.
4. A Registrar to an Issue and share transfer agent shall exercise adequate care, caution and due diligence before dematerialisation of securities by confirming and verifying that the securities to be dematerialised have been granted listing permission by the stock exchange/s.
5. A Registrar to an Issue and share transfer agent shall always endeavour to ensure that—
   a. inquiries from investors are adequately dealt with;
   b. grievances of investors are redressed without any delay;
   c. transfer of securities held in physical form and confirmation of dematerialisation/rematerialisation requests and distribution of corporate benefits and allotment of securities is done within the time specified under any law.
6. A Registrar to an Issue and share transfer agent shall make reasonable efforts to avoid misrepresentation and ensure that the information provided to the investors is not misleading.
7. A Registrar to an Issue and share transfer agent shall not reject the dematerialisation/rematerialisation requests on flimsy grounds. Such request could be rejected only on valid and proper grounds and supported by relevant documents.
8. A Registrar to an Issue and share transfer agent shall avoid conflict of interest and make adequate disclosure of its interest.
9. A Registrar to an Issue and share transfer agent 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 coflict of interest arises, shall take reasonable steps to resolve the same in an equitable manner.

10. A Registrar to an Issue and share transfer agent shall make appropriate disclosure to the client of its possible source or potential areas of conflict of duties and interest which would impair its ability to render fair, objective and unbiased services.
11. A Registrar to an Issue and share transfer agent shall not indulge in any unfair competition, which is likely to harm the interests of other Registrar to the Issue and share transfer agent or investors or is likely to place such other registrar in a disadvantageous position in relation to the Registrar to Issue and share transfer agent while competing for or executing any assignment.
12. A Registrar to an Issue and share transfer agent shall always endeavour to render the best possible advice to the clients having regard to their needs.
13. A Registrar to an Issue and share transfer agent shall not divulge to other clients, press or any other person any confidential information about its clients which has come to its knowledge except with the approval/ authorisation of the clients or when it is required to disclose the information under any law for the time being in force.
14. A Registrar to an Issue or share transfer agent shall not discriminate amongst its clients, save and except on ethical and commercial considerations.
15. A Registrar to an Issue and share transfer agent shall ensure that any change in registration status/any penal action taken by the Board or any material change in financials which may adversely affect the interests of clients/investors is promptly informed to the clients.
16. A Registrar to an Issue and share transfer agent shall maintain the required level of knowledge and competency and abide by the provisions of the Act, rules, regulations, circulars and directions issued by the Board. The Registrar to an Issue and share transfer agent shall also comply with the award of the Ombudsman passed under Securities and Exchange Board of India (Ombudsman) Regulations, 2003.
17. A Registrar to an Issue and share transfer agent shall co-operate with the Board as and when required.
18. A Registrar to an Issue and share transfer agent shall not neglect or fail or refuse to submit to the Board or other agencies with which he is registered, such books, documents, correspondence, and papers or any part thereof as may be demanded/requested from time to time.
19. A Registrar to an Issue and share transfer agent shall ensure that the Board is promptly informed about any action, legal proceeding, 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.
20. A Registrar to an Issue and share transfer agent shall take adequate and necessary steps to ensure that continuity in data and record keeping is maintained and that the data or records are not lost or destroyed. Further, it shall ensure that for electronic records and data, up-to-date back up is always available with it.
21. A Registrar to an Issue and share transfer agent shall endeavour to resolve

all the complaints against it or in respect of the activities carried out by it as quickly as possible.

22. (a) A Registrar to an Issue and share transfer agent or any of its employees shall not render, directly or indirecty any investment advice about any security in the publicly accessible media, whether real-time or non-real-time, unless a disclosure of its long or short position in the said security has been made, while rendering such advice.
    b. In case an employee of a Registrar to an Issue and share transfer agent is rendering such advice, the Registrar to an issue and share transfer agent shall ensure that it also discloses its own interest, the interests of his dependent family members and that of the employer including their long or short position in the said security, while rendering such advice.
23. A Registrar to an Issue and share transfer agent shall handover all the records/data and all related documents which are in its possession in its capacity as a Registrar to an Issue and/or share transfer agent to the respective clients, within one month from the date of termination of agreement with the respective clients or within one month from the date of expiry/cancellation of certificate of registration as Registrar to an Issue and/or share transfer agent, whichever is earlier.
24. A Registrar to an Issue and share transfer agent shall not make any exaggerated statement, whether oral or written, to the clients either about its qualifications or capability to render certain services or about its achievements in regard to services rendered to other clients.
25. A Registrar to an Issue and share transfer agent shall ensure that it has satisfactory internal control procedures in place as well as adequate financial and operational capabilities which can be reasonably expected to take care of any losses arising due to theft, fraud and other dishonest acts, professional misconduct or omissions.
26. A Registrar to an Issue and share transfer agent shall provide adequate freedom and powers to its compliance officer for the effective discharge of its duties.
27. A Registrar to an Issue and share transfer agent 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 carrying out its duties as a Registrar to an Issue and share transfer agent and as a part of the industry. 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.
28. A Registrar to an Issue and share transfer agent shall ensure that good corporate policies and corporate governance are in place.
29. A Registrar to an Issue and share transfer agent 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).
30. A Registrar to an Issue and share transfer agent shall be responsible for the acts or omissions of its employees and agents in respect of the conduct

of its business.

31. A Registrar to an Issue and share transfer agent shall not, in respect of any dealings in securities, be party to or instrumental for—
    a. creation of false market;
    b. price rigging or manipulation;
    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.

    Regulation 13A prohibits an RTA from acting as such Registrar in case he or it is an associate of the body corporate issuing the securities. For the purposes of this regulation, Registrar to an Issue or the body corporate, as the case may be, shall be deemed to be an associate of other where—
    i. he or it controls directly or indirectly not less than10% of the voting power of the body corporate or of Registrar to an issue, as the case may be or he or any of his relative is a director of the body corporate or of the Registrar to an issue, as the case may be. The term ‘relative’ shall have the same meaning as assigned to it under Section 6 of the Companies Act, 1956.

    The RTA has to maintain proper books and records as prescribed in Regulation 14 and preserve the account books and other records for a minimum period of 3 years. Regualtion 15A provides that every Registrar to an Issue and share transfer agent 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 SEBI or Central Government and for redressal of investor grievances. Compliance officer shall immediately and independently report to SEBI any non-compliance observed by him.

Procedure for Inspection

Chapter IV containing Regulation 16 to 21 deals with procedure for inspection by SEBI appointed inspecting authority to ensure that the books of accounts and documents are maintained as prescribed and that the provisions of SEBI Act and the rules and regulations thereunder are complied with. Investigation may be undertaken on the basis of complaints received from the investors, other registrars or any other intermediaries in respect of RTA.

Regulation 17 lays down the procedure and Regulation 18 indicates the obligations of the RTA in relation to such inspection/investigation.

Regulations 19 and 20 stipulate that the inspecting authority shall on the conclusion of his inspection submit a report to SEBI. SEBI after considering the inspection or investigation report take such action as SEBI or chairman may deem fit and appropriate including action under SEBI (Procedure for Holding Enquiry officer and Imposing Penalty) Regulations, 2002.

Regulation 21 authorities SEBI to appoint an Auditor to investigate into the books of account or the affairs of the RTA and STA. The Auditor shall have the same powers as SEBI appointed inspecting authority.

Liability for Action in Case of Default

A registrar to an Issue who—

i. fails to comply with any conditions subject to which registration has been

granted.
ii. Contravenes any of the provisions of the Act, rules or regulations.
iii. Contravenes the provisions of the SCRA and the rules made thereunder, provisions of the Depositories Act or rules made thereunder, the rules, regulations or bye laws of the stock exchange,

shall be dealt with in the manner provided under SEBI (Procedure for holding enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

Operational Guidelines

On 11th October, 1994, SEBI issued Operational Guidelines and instructions to be followed by RTAs. The instructions stipulate:

1. agreement to be entered into by RTA with issuer/body corporate.
2. records to be maintained by RTA.
3. periodical reports to be furnished to SEBI.
4. mandatory obligations relating to despatch of allotment letters/certificates/ refund orders/cancelled stock invest/duplicate refund orders or revalidation of refund orders.
5. Other directions such as non-acceptance of work disproportionate to its capacity redressal of complaints, proper records of mail returned and undelivered.

The draft agreement between RTA and Issuer company shall fix specific responsibility either on the company or on the RTA in relation to the following items of work. Due diligence is required to be exercised in this regard.

Pre-Issue Work

1. Finalisation of bankers to issue, list of branches, controlling and collecting branches.
2. Design of application form, bank schedule, pre-printed stationery.
3. Preparing and issuing detailed instructions on procedure to be followed by collecting and controlling branches.
4. Arranging, despatch of application schedule for listing of applications to collecting and controlling branches.
5. Placing of orders for and procuring pre-printed stationery.

Issue Work

1. Collection of daily figure from bankers to the issue.
2. Expediting despatch of applications, final certificate to the controlling branches.
3. Collection of application along with final certificate and schedule pages from controlling branches of bankers to the issue.
4. Informing Stock Exchange/SEBI and providing necessary certificates to Lead Manager on closure of issue.
5. Preparing ‘Obligation of Underwriters statement’ in the event of under subscription and seeking extension from stock exchange for processing.
6. Scrutiny of application received from bankers to issue.
7. Numbering of application and banks schedule and batching them for control purposes.
8. Transcribing information from documents to magnetic media for computer processing.
9. Reconciliation of number of applications, securities applied and money

received with final certificate received from bank.

10. Identify and reject applications having technical faults.
11. Prepare statement for deciding basis of allotment by the company in consultation with the Stock Exchange.
12. Finalising basis of allotment after approval of the stock exchange.
13. Seeking extension of time from SEBI.
14. Allotment of shares on the formula derived by stock exchange (In the case of allotment of employee it shall be ensured that only full time employee actually on rolls are given the allotment on the basis of list of employees furnished under the signature of MD/Company Secretary).
15. Obtaining certificate from auditors that the allotment has been made as per the basis of allotment.
16. Preparation of reverse list, list of allottees and non-allottees as per the basis of allotment approved by stock exchange.
17. Preparation of allotment register cum return statement register of members, index register.
18. Preparation of list of brokers to whom brokerage is to be paid.
19. Printing covering letters for despatching share certificates, for refunding application money/stock invest, printing of allotment letter cum refund order.
20. Printing postal journal for despatching share certificate or allotment letters and refund orders by registered post.
21. Printing, distribution schedule for submission to stock exchange.
22. Preparing share certificate on the computer.
23. Preparing register of member and specimen signature cards.
24. Arranging share certificate in batches for signing by authorised signatories.
25. Trimming share certificate and affixing common seal of the company.
26. Attaching share certificate to covering letter.
27. Mailing of documents by registered post.
28. Binding of application forms, application schedule and computer outputs.
29. Payment of consolidated stamp duty on allotment letters/share or debenture certificates or procuring and affixing stamp of appropriate value.
30. Issuing call notices for allotment money to allottees.
31. Issue of duplicate refund order.
32. Revalidation of refund orders.
33. Segregation of stock invest from application and safe custody thereof.
34. Preparation of separate schedule/list for stock invest applications.
35. Filing of right hand portion of stock invest in respect of allottees.
36. Lodging stock invest with computerised stock invest statement to collecting banks.
37. Cancellation of stock invest in case of non-allottees.
38. Printing of covering letters and despatching of cancelled stock invest to non-allottees.
39. Particular attention should be paid to Redressal of Investor Grievances promptly and furnishing prescribed reports in time to SEBI.

3. UNDERWRITERS

Underwriting is an arrangement whereby certain parties assure the issuing

company to take up shares, debentures or other securities to a specified extent in case the public subscription does not amount to the expected levels. For this purpose, an arrangement (agreement) will be entered into between the issuing company and the assuring party such as a financial institution, banks, merchant banker, broker or other person.

It is necessary for a public company which invites public subscription for its securities to ensure that its issue is fully subscribed. The company cannot depend on its advertisements to bring in the full subscription. In case of any short-fall, it has to be made good by underwriting arrangements made in advance of the opening of the public issue. Provisions related to underwriting have been discussed in the chapter 'Public Issue of Shares'.

The lead managers are required to satisfy themselves about the networth of the underwriters and their outstanding commitments and disclose the same to SEBI. In this connection each underwriter should furnish an undertaking to the lead manager about their networth and outstanding commitments. Both the lead managers and the directors are required to give a statement in the prospectus that in their opinion the underwriters have the necessary resources to discharge their liabilities, if any, in full. Penal action will be taken against underwriters for not taking up the assured amount of security in case of development and to debar them from the underwriting public issues in future. Special responsibilities are placed on the merchant bankers in this regard. Underwriters represent one of the key elements among the capital market intermediaries. They facilitate raising of capital by assuring to take up the unsubscribed portion upto a specified limit.

SEBI (Underwriters) Regulations, 1993

These regulations were notified by SEBI in exercise of the powers conferred by Section 30 of SEBI Act, 1992 with the approval of Central Government. They came into force from 8th October, 1993.

Chapter I contains preliminary matters including definitions. Some of the important definitions are given below:

a. 'issue' means an offer of sale of securities by any body corporate or by any other person or group of persons on its or his or their behalf, as the case may be, to the public or the holders of the securities of such body corporate or person or group of persons.
b. '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.
c. 'underwriter' means a person who engages in the business of underwriting of an issue of securities of a body corporate.

Chapter II deals with the procedure for registration of underwriters and it contains Regulations 3 to 12.

Regulation 3 lays down that the applicant seeking the certificate shall apply to SEBI in form A. Regulation 4 and 5 requires the applicant to furnish further information and clarification to SEBI regarding matters relevant to underwriting. If the Board on receipt of further information is of the opinion that the information so furnished is not sufficient to decideon the application and

seeking further information through correspondance may delay the matter, it may require the applicant or its principal officer to appear before SEBI in order to give an opportunity to the applicant to give further clarifications on the application.

Regulation 5 provides that an application not complete in all respects and not conforming to instructions specified in the form would be rejected. The applicant would be given an opportunity to remove within one month, the objections as may be indicated by SEBI. SEBI may however extend the time by another one month in order to enable the applicant to comply with the requirements of SEBI.

Regulation 6 prescribes the following conditions for consideration of the application:

1. the applicant shall have necessary infrastructure like adequate office space, equipments and manpower and past experience in underwriting, employing at least two persons with such experience. No person directly or indirectly connected with the applicant should have been granted registration by SEBI.

   SEBI 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 SEBI or any disciplinary action has been taken against such person under the Act or any rules/regulations.
2. the applicant should be a fit and proper person, fulfilling the capital adequacy requirements and no director, partner or principal officer should have been at any time convicted for an offence involving moral turpitude or found guilty of any economic offence.

Regulation 7 prescribes for the following capital adequacy requirement:

1. The networth should not be less than Rs. 20 lakhs.
2. The stock broker-underwriter should have capital adequacy as prescribed by the stock exchange.
3. The merchant banker-underwriter shall fulfill capital adequacy as laid down in Merchant Banker's Regulations.

Regulations 8 and 9, 9A, 9B deal with procedure for registration and renewal of certificate, conditions of registration, period of validity of certificate.

Regulations 10 and 11 deal with the procedure where registration is not granted and the effect of refusal to grant or renew the certificate. Regulation 12 prescribes fees payable and consequences of failure to pay fees.

Obligations and Responsibilities of Underwriters

Chapter III consisting of Regulation 13 to 18 deals with these matters. Every underwriter shall abide by the code of conduct at all times.

Regulations 14 and 15 contain provisions regarding the matters on which every underwriter shall enter into an agreement with the body corporate and his general responsibilities.

The contents of the agreement shall include the period of agreement, the amount of underwriting obligations, the period by which the underwriter should subscribe, the amount of commission/brokerage payable, and other details for fulfilling the underwriting obligations. The general responsibilities of the underwriter are as follows:

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 shall not exceed 20 times the networth.
3. Every underwriter, in the event of being called upon to subscribe for securities of a body corporate pursuant to an agreement shall subscribe to such securities within 45 days of the receipt of such intimation from such body corporate.

Regulation 16 to 18 relate to maintenance of proper accounts, books and records and their preservation for 5 years and SEBI's power call for and obtain information from the underwriter.

Appointment of Compliance Officer

Regulation 17A requires every underwriter to appoint a compliance officer responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc. issued by SEBI or the Central Government and for redressal of investors' grievances. The compliance officer is required to report to SEBI immediately and independently any non-compliance observed by him.

Inspection and Disciplinary Proceedings

Chapter IV containing Regulations 19 to 24 makes provisions on this subject. SEBI is empowered to appoint inspectors to ensure that books of accounts, records etc. are maintained properly and the Act along with the rules and regulations are duly complied with. SEBI is also empowered to investigate into complaits from investors, other underwriters etc. as well as under their own power to investigate suo motu in the interest of securities business and the investors.

Regulations 20 and 21 lay down the procedure for inspection and obligations of underwriter during such inspections.

Regulations 22 relate to submission of inspection report to SEBI.

Regulation 23 provides that SEBI Board or chairman after the consideration of inspection or investigation report may take action under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

Regulation 24 authorities SEBI to appoint a qualified auditor to investigate into the affairs and the accounts of the underwriter with the same powers as applicable in the case of SEBI appointed inspector.

Procedure for Action in case of default

Chapter V containing Regulation 25 to 32 lays down the procedure for action in case of default. An underwriter or a stock broker or a merchant banker entitled to carry on business of underwriting who fails to comply with any conditions subject to which certificate has been granted and who contravenes any of the provisions of the Act, rules or regulations, shall be dealt with in the manner provided under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

4. BANKERS TO AN ISSUE

The Banks render crucial service in mobilisation of capital for companies. While one or more banks may function as Bankers to the Issue as well as

collection banks, others may do the limited work of collecting the applications for securities along with the remittance in their numerous branches in different centres. The banks are expected to furnish prompt information and records to the company and to the lead manager for monitoring and progressing the issue work. For this purpose, the company has to enter into an agreement with different banks specifying the conditions, terms and remuneration for services to be rendered by each such bank.

SEBI (Bankers to an Issue) Regulations, 1994

SEBI notified these regulations' effectiveness from 14th July, 1994 in exercise of the powers conferred by Section 30 of SEBI Act, 1994 after approval by the Central Government.

Chapter I deals with preliminary matters and definitions. Banker to an Issue means a scheduled bank carrying on all or any of the following activities:

1. Acceptance of application and application monies;
2. Acceptance of allotment or call monies;
3. Refund of application monies;
4. Payment of dividend or interest warrants.

Chapter II containing Regulations 3 to 11 deals with registration of Bankers to an Issue with SEBI.

Regulations 3 to 5 prescribe that the application by a scheduled bank for grant of certificate as a banker to an issue should be made to SEBI in Form A conforming to the instructions therein failing which, it shall be rejected after giving due opportunity to remove such defects within specified time. SEBI may call for and obtain further information or clarification from the applicant.

Consideration of Application

Regulation 6 prescribes the matters that are considered by SEBI in relation to the application:

a. the applicant has the necessary infrastructure, communication and data processing facilities and manpower to effectively discharge his activities;
b. the applicant or any of its directors is not involved in any litigation connected with the securities market and which has an adverse bearing on the business of the applicant or has not been convicted of any economic offence;
c. the applicant is a scheduled bank and a fit and a proper person;
d. the applicant is a fit and proper person;
e. grant of certificate to the applicant is in the interest of investors.

Procedure for Registration

Regulations 7, 8, 8A and 8B deal with the procedure for registration and renewal of the certificate, conditions of registration and period of validity of certificate. Regulation 9 relates to the procedure where the registration is not granted, leading to the rejection of the application after giving an opportunity to the applicant to be heard. The applicant has right to appeal for reconsideration and SEBI shall reconsider the application and communicate its decision to the applicant in writing.

Regulation 10 lays down that the applicant whose application is refused by SEBI shall cease to carry on any activity as a banker to an issue from the date on which he receives the communication of refusal.

Regulation 11 imposes the duty on the applicant to pay the fees as prescribed. Non-payment of fees may result in suspension of the registration and the applicant shall cease to carry on the activity as a banker to the issue during the period of suspension.

General Obligations and Responsibilities

Regulation 12 requires every banker to an issue to maintain the following records:

a. the number of applications received, the names of the investors, the dates on which the applications were received and the amounts so received from the investors;
b. the time within which the applications received from the investors were forwarded to the body corporate or registrar to an issue as the case may be;
c. the dates and amount of the refund monies paid to the investors;
d. dates, names and amount of dividend/interest warrant paid to the investors.

The Banker to an issue shall intimate SEBI about the place where these documents are kept and shall preserve them for a minimum period of 3 years.

Regulation 13 requires the banker to inform SEBI as to the number of issues for which he was engaged as banker and certain other additional information regarding the monies received, the refunds made and the dividend/interest warrant paid.

Regulation 14 requires the banker to enter into an agreement with the body corporate for whom he is the banker to an issue with regard to the following matters:

a. the number of centres at which the application and the application monies of an issue of a body corporate will be collected from the investors;
b. the time within which the statements regarding the applications and the application monies received from the investors investing in an issue of a body corporate will be forwarded to the registrar to an issue of the body corporate, as the case may be;
c. the daily statement will be sent by the designated controlling branch of the bankers to the issue to the registrar to an issue indicating the number of body corporate and the amount of application money received.

Regulation 15 requires the banker to inform SEBI about disciplinary action taken, if any by the RBI against him in relation to issue payment work. If as a result of such action the banker is prohibited from carrying on the activities, the certificate shall be deemed to have been cancelled or suspended as the case may be.

Code of Conduct

Regulation 16 prescribes that every banker to an issue shall abide by the Code of Conduct as specified in Schedule III of the Regulations.

Compliance Officer

Regulation 16A provides that every banker to an issue is required to appoint a compliance officer responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc. issued by SEBI or Central Government. He shall also be entrusted with the responsibility of redressal of investors' grienvances. He is required to immediately and

independently report to SEBI regarding any non-compliance observed by him.

Procedure for Inspection

Chapter IV containing Regulation 17 to 22 deals with inspection of Banker to an Issue.

Regulation 17 and 18 authorise SEBI to request RBI to undertake inspection of the books of accounts, records and documents of the banker, to ensure their proper maintenance, and compliance with SEBI Act, Rules and Regulations, to investigate into the complaints received from investors, body corporates or any other person in relation to the work of the banker as a banker to an issue and to investigate into any other matter referred by SEBI.

Regulation 19 lays down that RBI shall on receipt of the request from SEBI take appropriate steps to undertake inspection of Bankers to an Issue for such purposes as may be required by SEBI.

Regulation 20 requires that the banker shall offer all assistance and cooperation to RBIs inspecting officers to facilitate the inspection.

Regulation 21 stipulates that the RBI shall furnish to SEBI, copy of the inspection report along with copies of other relevant documents in support of the observations made by the inspecting authority.

Action on Inspection or Investigation Report

SEBI Board or the Chairman after consideration of inspection or investigation report may take such action as the Board or SEBI may deem fit and appropriate including action under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

Procedure for Action in Case of Default

Regulation 23 provides that banker to an Issue who fails to comply with any conditions subject to which certificate has been granted, contravenes any of the provisions of the Act, rules or regulations, shall be dealt with in the manner provided under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

5. DEBENTURE TRUSTEES

Debentures, Bonds and other hybrid instruments in most cases unless otherwise specified, carry securities for the investors unlike in the case of equity and preference shares. It is necessary that the company makes proper arrangements to extend assurances and comply with legal requirements in favour of the investors who are entitled to this type of security. Intermediaries such as Trustees who are generally Banks and Financial Institutions render this service to the investors for a fee payable by the company. The issuing company has to complete the process of finalising and executing the trust deed or document and get it registered within the prescribed period and file the charge with the Registrar of Companies (ROC) in respect of the security offered.

SEBI (Debenture Trustees) Regulations, 1993

These regulations were notified by SEBI effective from 29th December, 1993 in exercise of the powers conferred by Section 30 of SEBI Act, 1992 after previous approval of the Central Government.

Some of the important definitions are given below:

a. ‘Debenture’ means a debenture as defined in Section 2(12) of Companies

Act, 1956.

b. ‘Debenture Trustee’ means a trustee of a trust deed for securing any issue of debentures of a body corporate.
c. ‘Trust Deed’ means a deed executed by the body corporate in favour of the trustee named therein for the benefit of the debenture holders.

Chapter I contains preliminary matters and definitions. The term ‘associate’ in relation to a debenture trustee, or body corporate shall include a person—

i. who directly or indirectly, by himself, or in combination with relatives, exercises control over the debenture trustee or the body corporate, as the case may be,
ii. in respect of whom the debenture trustee or the body corporate, as the case may be, directly or indirectly, by itself or in combination with other persons, exercises control, or
iii. whose director, is also a director, of the debenture-trustee or the body corporate as the case may be.

The expression ‘control’ has the same meaning as defined under Regulation 2(c) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

Principal officer, as defined in Regulation 2(f) means,

i. a secretary, manager or director of the body corporate; or
ii. any person connected with the management or administration of the body corporate upon whom the Board has served notice of its intention of treating him as the principal officer thereof.

Chapter II consisting Regulations 3 to 12 deals with the procedure for registration of debenture trustees.

Regulation 3 stipulates that the application shall be made in Form A. An application for registration made shall be accompanied by a non-refundable application fee as prescribed in Regulation 4 authorises SEBI to call for and obtain further information from the applicant before granting the registration. The applicant or its principal officer may, if so required, appear before the Board for personal representation. Regulation 5 stipulates that an application which is incomplete and does not conform to instructions shall be rejected after giving an opportunity to the applicant to remove such objections within time specified.

Regulation 6 lays down that SEBI shall take into account the following matters in considering the application, namely that the applicant:

1. has the necessary infrastructure like adequate office space, equipments, and manpower to effectively discharge his activities;
2. has any past experience as a debenture trustee or has in his employment minimum two persons who had the experience in matters which are relevant to a debenture trustee; or
3. any person, directly or indirectly connected with the applicant has not been granted registration by SEBI under the Act;
4. has in his employment at least one person who possesses the professional qualification in law from an institution recognised by the Government; or
5. any of its director or principal officer is or has at any time been convicted for any offence involving moral turpitude or has been found quality of any

economic offence and is a fit and proper person;
6. is a fit and proper person;
7. fulfills the capital adequacy requirements specified in Regulation 7A of SEBI Regulations.

Regulation 7 lays down that to be a debenture trustee the applicant shall be a scheduled bank carrying on commercial activity, a public financial institution, an insurance company or a body corporate.

Regulation 7A of the Regulations provide that the capital adequacy requirement of debenture trustee shall not be less than the networth of Rs. One crore. A debenture trustee holding a Certificate of Registration as on the date of commencement of SEBI (Debenture Trustee) (Amendment) Regulation, 2003 shall fulfill the networth requirements within two years from the date of such commencement.

Regulations 8 and 9, 9A, 9B deal with the procedure for registration and the renewal thereof, conditions of registration, time period for disposal of application and period of validity of certificate.

Regulation 10 lays down that if an applicant does not fulfill the requirements of Regulation 6 above, it may be rejected after giving reasonable opportunity to the applicant for being heard. The rejection shall be conveyed in writing by SEBI and the applicant may again apply for reconsideration of SEBI. After due reconsideration SEBI shall communicate its bindings in writing to the applicant.

Regulations 11 and 12 deal with effect of refusal to grant or renew the certificate by SEBI and non-payment of fees by the applicant. In the absence of a valid certificate the trustee shall cease to act as a debenture trustee.

Responsibilities and Obligations of Debenture Trustees

Chapter III containing Regulations 13 to 18 deals with this topic. Regulation 13 lays down that no debenture trustee who has been granted a certificate by SEBI shall act as debenture trustee unless he enters into a written agreement with the body corporate before the opening of the subscription list for issue of debentures and the agreement inter alia contains that debenture trustee has agreed to act as such under the trust deed for securing an issue of debentures for the body corporate and the time limit within which the security for the debentures shall be created.

Regulation 13A stipulates that no debenture trustee shall act as such for any issue of debentures in case:

a. it is an associate of the body corporate; or
b. it has lent and the loan is not yet fully repaid or is proposing to lend money to the body corporate.

However, the requirement shall not be applicable in respect of debentures issued prior to the commencement of Companies (Amendment) Act, 2000 where—(i) recovery proceedings in respect of the assets charged against security has been initiated or the body corporate has been referred to Board for Industrial and Financial Reconstruction under Sick Industrial Companies (Special Provisions) Act, 1985 prior to commencement of SEBI (Debenture Trustee) Regulations, 2003.

Regulation 14 provides that every debenture trustee shall amongst other

matters accept the trust deed which contains the matters specified in Schedule IV to the Regulations.

Duties of Debenture Trustees

Regulation 15 casts the following duties on the debenture trustees:

1. call for periodical reports from the body corporate;
2. take possession of trust property in accordance with the provisions of the trust deed;
3. enforce security in the interest of the debenture holders;
4. do such acts as necessary in the event the security becomes enforceable;
5. carry out such acts as are necessary for the protection of the debenture holders and to do all things necessary in order to resolve the grievances of the debenture holders;
6. ascertain and specify that:
    a. in case where the allotment letter has been issued and debenture certificate is to be issued after registration of charge, the debenture certificates have been despatched by the body corporate to the debenture holders within 30 days of the registration of the charge with ROC;
    b. debenture certificates have been despatched to the debenture holders in accordance with the provisions of the Companies Act;
    c. interest warrants for interest due on the debentures have been despatched to the debenture holders on or before the due dates;
    d. debentureholders have been paid the monies due to them on the date of redemption of the debentures;
7. ensure on a continuous basis that the property charged to the debenture is available and adequate at all time to discharge the interest and principal amounts payable in respect of the debentures and that such property is free from any other encumbrances save and except those which are specifically agreed to by the debenture trustee.
8. exercise due diligence to ensure compliance by the body corporate, with the provisions of the Companies Act, the listing agreement of the stock exchange or the trust deed;
9. to take appropriate measures for protecting the interest of the debenture holders as soon as any breach of the trust deed or law comes to his notice;
10. to ascertain that the debentures have been converted or redeemed in accordance with the provisions and conditions under which they are offered to the debentureholders;
11. inform SEBI immediately of any breach of trust deed or provision of any law;
12. appoint a nominee director on the Board of the body corporate in the event of:
    i. two consecutive defaults in payment of interest to the debentures; or
    ii. default in creation of security for debentures; or
    iii. default in redemption of debentures.
13. communicate to the debenture holders on half yearly basis the compliance of the terms of the issue by the body corporate, defaults, if any, in payment of interest or redemption of debentures and action taken therefor;

14. A debenture trustee may call or cause to be called by the body corporate a meeting of all the debenture holders on—
    a. a requisition in writing signed by at least one-tenth of the debentureholders in value for the time being outstanding.
    b. the happening of any event, which constitutes a default or which in the opinion of the debenture trustees affects the interest of the debentureholders.
15. No debenture trustee can relinguish its assignment in respect of the debenture issue of any body corporate, unless and until another debenture trustee is appointed in its place by the body corporate.
16. A debenture trustee is required to maintain the networth requirements on a continuous basis. He is under an obligation to inform SEBI immediately in respect of any shortfall in the networth. He is also not entitled to undertake new assignments until it restores the networth to the level of specified requirement within the time specified by the Board.
17. Debenture trustee may inspect books of accounts, records, registers of the body corporate and the trust property to the extent necessary for discharging its obligations.

Code of Conduct

Regulation 16 requires that every debenture trustee shall abide by the code of conduct as specified in Schedule III to the Regulations.

Maintenance of Records

Regulations 17 and 18 deal with maintenance of books of accounts, records and documents relating to trusteeship functions for a period of not less than five financial years preceding the current financial year. Every debenture trustee would inform SEBI about the place where the books of accounts records and documents are maintained and furnishing of various information to SEBI by the debenture trustee.

Appointment of Compliance Officer

Every debenture trustee is required to appoint a compliance officer responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc. issued by SEBI or Central Government. He is also responsible for redressal of investor grievances. Compiance officer is under an obligation to immediately and independently report to SEBI any non-compliance observed by him. He would also report any non-compliance of the requirements specified in the listing agreement with respect to debenture issues and debentureholders, by the body corporate to SEBI.

Information to the Board

Debenture trustee is required to submit the following information and documents to SEBI, as and when SEBI may require—

a. The number and nature of the grievances of the debentureholders received and resolved.
b. Copies of the trust deed.
c. Non-Payment or delayed payment of interest to debentureholders, if any, in respect of each issue of debentures of a body corporate.
d. Details of despatch and transfer of debenture certificates giving therein the

dates, modes etc.

e. Any other particular or document which is relevant to debenture trustee.

Inspection and Disciplinary Proceedings

Chapter IV consisting of Regulation 19 to 24 deals with inspection and disciplinary proceedings.

Regulation 19 authorises SEBI to appoint one or more persons as inspecting authority to undertake the inspection of books of accounts, records and documents of the debenture trustee to ensure their proper maintenance and compliance with SEBI Act, Rules and Regulation, disposal of investors complaints promptly and to investigate suo moto in the interest of the securities business or investors interest into the affairs of the debenture trustee.

Regulations 20 to 22 deal with procedure for inspection, obligations of the trustee to fully assist and co-operate in the inspection, submission of report by the inspecting authority.

Action on Inspection or Investigation Report

SEBI Board or chairman, may after consideration of inspection or investigation report take such action as the Board or chairman may deem fit and appropriate including action under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

Regulation 24 permits SEBI to appoint a qualified auditor to investigate the record and affairs of the debenture trustee with the same powers given to the inspecting authority.

Procedure for action in case of default

Regulation 25 of Chapter V lays down that a debenture trustee would be dealt with in the manner provided under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, if he fails to comply with the conditions of registration, contravenes the provisions of SEBI Act/Companies Act, Rules and Regulations.

II. SECONDARY MARKET INTERMEDIARIES

Stock brokers, sub-brokers, portfolio managers, custodians, share transfer agents constitute the important intermediaries in the Secondary market.

1. STOCK BROKER & SUB BROKERS

A stock broker plays a very important role in the secondary market helping both the seller and the buyer of the securities to enter into a transaction. The buyer and seller may be either a broker or a client. The transaction entered cannot be annulled except in the case of fraud, willful misrepresentation or upon prima-facie evidence of a material mistake in the transaction, in the judgement of the existing authorities. If a member of the stock exchange (broker) has orders to buy and to sell the same kind of securities, he may complete the transaction between his clients concerned. When executing an order the stock broker may on behalf of his client buy or sell securities from his own account i.e. as principal or act as an agent. For each transaction he has to issue necessary contract note indicating whether the transaction has been entered into by him as a principal or as an agent for another. While buying or selling securities as a principal, the stock broker has to obtain the consent of his client and the prices charged

should be fair and justified by the conditions of the market.
A sub-broker is one who works along with the main broker and is not directly registered with the stock exchange as a member. He acts on behalf of the stock broker as an agent or otherwise for assisting the investors in buying, selling or dealing in securities through such stock brokers.
No stock broker or sub-broker shall buy, sell or deal in securities unless he holds a certificate of registration granted by SEBI under the Regulations made by SEBI in relation to them.

SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992

SEBI (Stock Brokers & Sub-Brokers) Regulations, 1992 were notified by SEBI in exercise of the powers conferred by section 30 of SEBI Act, 1992 and came into effect on 23rd October, 1992.
Chapter II of the Regulations containing Regulations 3 to 10 deal with registration of Stock Brokers. An application by a stock broker for grant of a certificate of registration shall be made through the Stock exchange or stock exchanges, as the case may be, of which he is admitted as a member. The stock exchange shall forward the application form to SEBI as early as possible but not later than 30 days from the date of its receipt.
SEBI may require the applicant to furnish such further information or clarifications regarding the dealings in securities and related matters to consider the application for granting a certificate of registration. The applicant or its principal officer shall, if so required, appear before SEBI for personal representation.
SEBI shall take into account the following aspects before granting a certificate:

a. whether the applicant is eligible to be admitted as a member of a stock exchange;
b. whether he has the necessary infrastructure like adequate office space, equipment and manpower to effectively discharge his activities;
c. whether he has any past experience in the business of buying, selling or dealing in securities;
d. whether he was subjected to disciplinary proceedings under the rules, regulations and bye-laws of a stock exchange with respect to his business as a stock broker involving either himself or any of his partners, directors or employees; and
e. whether he is a fit and proper person.

SEBI, on being satisfied that the stock broker is eligible, shall grant a certificate of registration to him and send an intimation to that affect to the stock exchange or stock exchanges as the case may be. Regulation 6A lays down the conditions of registration. The stock broker holding a certificate shall at all times abide by the Code of Conduct as specified in Schedule II of the Regulations.

Rejection of application of Brokers

Where an application for grant of a certificate does not fulfil the requirements, as prescribed in the Regulations, SEBI may reject the application after giving a reasonable opportunity of being heard. The refusal to grant the registration certificate shall be communicated by SEBI

within 30 days of such refusal to the concerned stock exchange and to the applicant stating therein the grounds on which the application has been rejected. An applicant may, being aggrieved by the decision of SEBI, may apply within a period of 30 days from the date of receipt of such intimation, to SEBI for reconsideration of its decision. SEBI shall reconsider an application made and communicate its decision as soon as possible in writing to the applicant and to the concerned stock exchange. The stock broker whose application for grant of a certificate has been refused by SEBI shall not, on and from the date of the receipt of SEBI's communication, buy, sell or deal in securities as a stock broker.

Every applicant eligible for grant of a certificate of registration shall pay such fees and in such manner as specified in Schedule III to the regulations. However SEBI may on sufficient cause being shown, permit the stock broker to pay such fees at any time before the expiry of 6 months from the date on which such fees become due. Where a stock broker fails to pay the fees as provided, SEBI may suspend the registration certificate, where upon the stock broker shall cease to buy, sell or deal in securities as a stock broker.

Registration of sub-brokers

Chapter III of the Regulations containing Regulations 11 to 16 deal with registration of sub-brokers. An application by a sub-broker for the grant of certificate shall be made in Form-B. Such application from the sub-broker applicant shall be accompanied by a recommendation letter in Form-C from a stock broker of a recognised stock exchange with whom the former is to be affiliated along with two references including one from his banker. The application form shall be submitted to the stock exchange of which the stock broker with whom he is to be affiliated is a member.

The stock exchange on receipt of an application shall verify the information contained therein and shall also certify that the applicant is eligible for registration as per criteria specified below:

1. In the case of an individual:
    a. the applicant is not less than 21 years of age;
    b. the applicant has not been convicted of any offence involving fraud or dishonesty;
    c. the applicant has at least passed 12th standard equivalent examination from an Institution recognised by the Government. However, SEBI may relax this criterion on merits having regard to the applicant's experience;
    d. the applicant is a fit and proper person.
2. In the case of partnership firm or a body corporate, the partners or directors as the case may be shall comply with the requirements stated above. It is also to be assessed whether the applicant has necessary infrastructure like adequate office spece, equipment and manpower to effectively discharge his activities. The applicant should be person recognised by the stock exchange as a sub-broker affiliated to a member broker of the stock exchange. The stock exchange shall forward the application form of such applicants, alongwith

recommendation letter issued by the stock broker with whom he affiliated alongwith a recognition letter issued by the stock exchange to SEBI within 30 days from the date of its receipt.

SEBI on being satisfied that the sub-broker is eligible, shall grant a certificate in Form-E to the sub-broker and send an intimation to that affect to the stock exchange or exchanges as the case may be. SEBI may grant a certificate of registration to the applicant subject to the terms and conditions as stated in SEBI (Stock Brokers and Sub-Brokers) Rules, 1992.

Where an application for grant of a certificate does not fulfil the requirements mentioned in Regulation 11A, SEBI may reject the application after giving a reasonable opportunity of being heard. The refusal to grant the certificate shall be communicated by SEBI within 30 days of such refusal to the concerned stock exchange and to the applicant in writing stating therein the grounds on which the application has been rejected. An applicant being aggrieved by the decision of SEBI may, within a period of 30 days from the date of receipt of such intimation apply to SEBI for reconsideration of the decision.

SEBI shall reconsider an application made and communicate its decision to the applicant in writing and to the concerned stock exchange as soon as possible.

A person whose application for grant of a certificate has been refused by SEBI shall, on and from the date of communication of refusal cease to carry on any activity as a sub-broker. The sub-broker has the following general obligations:

a. pay the fees as per Schedule III;
b. abide by the Code of Conduct specified in Schedule II;
c. enter into an agreement with the stock broker for specifying the scope of his authority and responsibilities;
d. comply with the rules, regulations and bye laws of the stock exchange;
e. not be affiliated to more than one stock broker of one stock exchange.

The sub-broker shall keep and maintain the books and documents specified in the Regulations.

No director of a stock broker can act as a sub-broker to the same stock broker.

The general obligations and responsibilities, procedure for inspection and for taking action in case of default shall be the same for both stock brokers and sub-brokers.

Registration of Trading and Clearing Members

Chapter IIIA of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 contain Regulation 16A to 16I dealing with registration of trading and clearing members. Regulation 16A on the procedure for application for registration requires that an application for grant of certificate of registration by a trading member of a derivatives exchange or derivatives segment of a stock exchange shall be made in Form-AA of Schedule-I, through the concerned derivatives exchange or derivatives segment of a stock exchange of which he is a member. Similarly an application for grant of certificate of registration by a clearing member or self clearing member of

the clearing corporation or clearing house of a derivatives exchange or derivatives segment of a stock exchange shall be made in Form-AA of Schedule-I, through the concerned clearing corporation or clearing house of which is he a member. However, a trading member who also seeks to act as a clearing member or self clearing member shall make separate applications for each activity. The concerned exchange shall forward the application to SEBI as early as possible but not later than 30 days from the date of its receipt.

SEBI may require the applicant or the concerned stock exchange or segment or clearing house or corporation to furnish such other information or clarification regarding the trading and settlement in derivatives and matters connected thereto, to consider the application for grant of a certificate. The applicant or its principal officer, if so required shall appear before SEBI for personal representation.

SEBI shall take into account the following aspects while considering the application, namely—

1. whether the applicant is eligible to be admitted as a trading member or a clearing member as the case may be;
2. whether the applicant has the necessary infrastructure like adequate office space, equipment and man power to effectively undertake his activities; and
3. whether he is/was subjected to disciplinary procedures under the rules, regulations and bye-laws of any stock exchange with respect to his business, involving either himself or any of his partners, directors or employees;
4. whether the applicant has any financial liability which is due and payable to the Board under these regulations.

The applicant shall also have a net worth as may be specified from time to time and the approved user and sales personnel of the trading member shall have passed a certification programme approved by SEBI. An applicant who desires to act as a clearing member shall also have a minimum net worth of Rs. 300 lakhs and shall deposit at least a sum of Rs. 50 lakhs or higher amount with a clearing corporation or a clearing house of the derivatives exchange or derivatives segment in the form specified from time to time. An applicant who derives to act as a self clearing member, in addition shall complying with the requirement of minimum networth of Rs. 100 lakhs and shall deposit atleast a sum of Rs. 50 lacs or higher amount with the clearing corporation or clearing house of the derivatives exchange or derivatives segment in the form specified from time to time.

Net worth in this context shall mean paid up capital plus free reserves and other securities approved by SEBI from time to time (but does not include fixed assets, pledged securities, value of members card, non allowable securities which are unlisted, bad deliveries, doubtful dates and advances of more than three months and debt/advances given to the associate persons of the members), pre-paid expenses, losses, intangible assets and 30% value of marketable securities.

Registration Procedure for Trading and Clearing Member

On being satisfied that the applicant is eligible, SEBI shall grant a certificate in Form-DA of Schedule-I to the applicant and send an intimation to that effect to the derivative segment of the stock exchange or derivatives exchange or clearing corporation or clearing house as the case may be. Where an application does not fulfil the requirements, SEBI may reject the application after giving a reasonable opportunity to the applicant of being heard. The refusal to grant such certificate shall be communicated by SEBI within 30 days of such refusal to the concerned segment of stock exchange or clearing corporation or clearing house and to the applicant stating therein the grounds on which the application has been rejected. If aggrieved by the decision of SEBI as referred to above, the applicant may apply within a period of 30 days from the date of receipt of such information to SEBI for reconsideration of its decision. SEBI shall reconsider the application and communicate its decision as soon as possible in writing to the applicant and to the concerned segment of stock exchange or clearing house or corporation.

If certificate of registration is refused to an applicant he shall not from the date of receipt of SEBI's letter of rejection deal in or settle the derivatives contracts as a member of the derivatives exchange as a member of derivatives exchange, segment, clearing corporation or clearing house. Every applicant eligible for grant of certificate as a trading or clearing member or self clearing member, shall pay such fee as may be specified. If the fee is not paid, SEBI may suspend or cancel the registration after giving an opportunity of being heard where upon the trading or clearing member shall cease to deal in and settle the derivatives contract.

Change in Status and Constitution of the Sub-brokers, Surrender of Certificate of Registration of Sub-brokers and Change of Affiliation of Sub-brokers

The Circular MIRSD-DR 1/SRP/Cir- 43/28408/04 issued by SEBI on December 15, 2004 clarify the procedure to be adopted in case of any of Conversion of the sub broker from one form to another (Proprietorship, Partnership Corporate and Reconstitution of Partnership) and Merger / Amalgamation of sub broker entities.

This circular supercedes SEBI circular SMD/Policy/Cir-10/98 dated March 04, 1998 regarding transfer of affiliation of sub brokers on corporatisation of individual brokers and circular SMD/DBA II/ CIR-31/2001 dated May 31, 2001 regarding issue of paper advertisement on cancellation of sub broker registration.

I. *Change in status and constitution*

   Rule 5 of the SEBI (Stock-brokers and Sub-brokers) Rules, 1992 prescribes the conditions for grant of certificate of registration to a sub-broker. Rule 5 (c) of the said Rules prescribes that in case of any change in the status and constitution, the sub-broker is required to obtain prior approval of the SEBI to continue to buy, sell or deal in securities in any stock exchange. The rule is applicable *inter alia* for Conversion of the sub broker from one form to another (Proprietorship,

Partnership Corporate and Reconstitution of Partnership.) and Merger/Amalgamation of sub broker entities. These two cases also require a fresh registration under the Regulations for the surviving/incoming sub broker.

Procedure in these two kinds of cases is required to be followed asper the Rules.

Fees, as may be due, as per Schedule III (II) of the SEBI (Stock Broker and Sub Broker) Regulations, 1992 as on the date of application for prior approval, is required to be paid along with the application.

The prior approval is valid for six months i.e., within 6 months of the date of prior approval, the outgoing sub-broker(s) can apply for surrender of registration and the surviving/incoming sub-broker(s) can apply for fresh registration to SEBI.

Both these applications (for surrender and fresh registration) can be submitted together to SEBI through the Exchange, along with the letter of de-recognition of the outgoing sub-broker(s) and the letter of recognition of the surviving / incoming sub-broker(s) issued by the Exchange.

The outgoing and the surviving/incoming sub-broker(s) is required to submit, along with the said applications, an undertaking that they would be jointly/severally liable for all liabilities/obligations (including monetary penalties) for violations, if any, of the provisions of the SEBI Act, 1992 and the SEBI (Stock Brokers and Sub-brokers) Rules and Regulations, 1992 that have taken place before the change in status and constitution.

Until the surviving/incoming sub broker is granted registration by SEBI, the outgoing sub-broker can continue to trade.

II. Surrender of registration by sub-broker

An application for surrender of registration is required to be made to SEBI by the sub-broker, along with the following:

a. the letter of de-recognition issued by the Exchange;
b. a certificate from the affiliating broker that the sub broker has been disabled from trading;
c. copies of two advertisements issued by the affiliating broker informing the investors/general public about the cancellation of his/their sub broker(s) and advising them not to deal with such sub broker(s). One advertisement shall be issued in a local newspaper where the sub broker's Registered Office/ Head Office/Corporate Office is situated and another in English daily/ vernacular newspaper with wide circulation;
d. the original certificate of registration for cancellation. In case the surrender is made by the affiliating broker, the application for surrender is required to be made by the broker along with evidence of service of notice of termination of agreement; and,
e. an undertaking that it/he would be liable for all liabilities/obligations (including monetary penalties, if any) for violations if any, of the provisions of the SEBI Act and the SEBI (Stock-brokers and Sub-brokers) Rules and Regulations, 1992 that have taken place before

the surrender.

Fees, as may be due, as per Schedule III (II) of the SEBI (Stock Broker and Sub Broker) Regulations, 1992 as on the date of de-recognition of the sub broker by the Exchange, is required to be paid along with the application for surrender.

On receipt of the application for surrender and being found suitable in all respects, the procedure as prescribed in the SEBI (Stock Broker and Sub broker) Regulations, 1992 read with Regulation 15(i) the SEBI (Procedure for Holding Inquiry) Regulations, 2002, is followed by SEBI. The sub broker may, if he so desires, make a representation for dispensing with the procedure, along with the application for surrender in terms of proviso to regulations 16(i) of the SEBI (Procedure for Holding Inquiry and Imposing Penalty) Regulations, 2002.

If the surrender application is accepted by SEBI, registration would be cancelled by SEBI with effect from the date of de-recognition by the Exchange. Until SEBI cancels the registration and issues no due certificate, the deposit, if any, of the sub- broker shall not be released to the sub-broker by the Exchange.

The procedure prescribed in this section do not apply for surrenders contemplated in section I above.

III. Forwarding of application

On receipt of the application(s) for prior approval and/or for surrender and/or registration, as the case may be, of the sub-broker(s), the clearing member is required to forward the same to SEBI within a month of receipt of the application by the Exchange only after it has approved the same and recognized and/ derecognized the sub-broker(s) concerned, along with a confirmation (if not possible to confirm, details may be given) on the following:

a. no complaint/arbitration/disciplinary proceeding/investigation/inquiry is pending against the sub-broker with the exchange,
b. as on date of application, the sub-broker, has paid fees as per Schedule III (II) of the Regulations, along with interest, if any, till the date on which the exchange has de-recognised the sub broker.

IV. Change of constitution of the affiliating broker

The change in status and constitution of the affiliating broker would not constitute change in status and constitution of the sub-broker. However, if the change in status and constitution of the affiliating broker results in a fresh registration for the broker, the outgoing broker is required to ensure that all the sub-brokers affiliated to him either surrender their registrations or get their registrations affiliated against the new registration number of the incoming broker in accordance with the following:

i. If the registrations of the sub-brokers are to be surrendered, the surrender requests of the sub-brokers must be submitted to SEBI before or at the time of application for change in status and constitution of the broker and the procedure in section II of this circular shall be followed.

ii. If brokers are to be affiliated with the incoming broker, the incoming broker must submit applications for change of affiliation from the outgoing broker to the incoming broker, along with its application for fresh registration. The sub-brokers shall enter into a fresh stock broker – sub-broker agreement with the incoming broker in terms of regulation 15(1)(c) of the said Regulations and a copy of the same shall be enclosed with the application for change of affiliation. The application for change of affiliation shall also be accompanied with the original certificate of registration of the sub-broker for carrying out the necessary changes. Though the affiliation of the sub-broker will change, it shall be liable for all its activities before the change of affiliation.

V. Change in name of sub-broker or affiliating broker

The circular prescribes that change in name of the sub broker or in name of affiliating broker would not amount to change in status and constitution of the sub-broker and hence no approval is required for the same. If a sub-broker changes name, it is the responsibility of the affiliating broker to submit the registration certificate of such sub-broker to SEBI through the concerned exchange for recording change of name on the registration certificate. If the name of the affiliating broker changes, the broker is required to submit the registration certificates of all its sub brokers to SEBI through the concerned exchange for carrying out appropriate changes on the certificate. All requests for recording such changes in the certificate of registration must be sent to SEBI within 7 days of change of name.

Code of Conduct

The code of conduct specified for the stock broker as stipulated in Schedule-II shall be applicable as amended to the trading member, clearing member and self-clearing member and such members shall at all times abide by the same. The trading member shall obtain details of the prospective clients in “know your client” format as specified by SEBI before executing an order on behalf of such client. The trading member shall mandatorily furnish “risk disclosure document” disclosing the risk inherent in trading in derivatives to the prospective clients in the form specified. The trading or clearing member shall deposit a margin money or any other deposit and shall maintain position or exposure limit as specified by SEBI or the concerned exchange or segment or clearing corporation or clearing house from time to time.

General Obligations and Responsibilities

Regulation 17 and 18 deal with the maintenance of books of accounts and records etc. It is laid down that every stock broker shall keep and maintain books of accounts, records and documents namely – Register of Transactions (Sauda book); clients ledger; general ledger; journals; cash book; bank pass book; documents register including particulars of securities received and delivered in physical form and the statement of account and other records relating to receipt and delivery of securities provided by the depository participants in respect of dematerialised

securities, members contract books showing details of all contracts entered into by him with other members of the same exchange or counterfoils or duplicates of memos of confirmation issued to such other members; counterfoils or duplicates of contract notes issued to clients; written consents of clients in respect of contracts entered into as principals; margin deposit book; registers of accounts of sub-brokers; an agreement with sub-broker specifying scope of authority, and responsibilities of the stock brokers as well as sub-brokers and an agreement with the sub-broker and with the client of sub-broker to establish privity of contract between the stock broker and the client of the sub-broker.

Every stock broker shall intimate to SEBI the place where the books of accounts, records and documents are maintained. He shall, after the close of each accounting period, furnish to SEBI if so required, as soon as possible but not later than 6 months from the close of the said period, a copy of the audited balance sheet and profit and loss account for the said accounting period.

If this is not possible, the stock broker shall keep SEBI informed of the same together with the reasons for the delay and the period of time by which such documents would be furnished to SEBI. Every stock broker shall preserve the books of accounts and other records for a minimum period of 5 years.

Stock broker shall not deal with any person as sub-broker unless such person has been granted certificate of registration by SEBI.

Compliance Officer

Every stock broker is required to appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc. issued by SEBI or Central Government and for redressal of investors' grievances. Compliance officer shall immediately and independently report to SEBI any non-compliance observed by him.

Procedure for Inspection of Stock Brokers' offices

Regulations 19 to 24 provides for procedure for inspection. It is provided that where it appears necessary to SEBI, it may appoint one or more persons as inspecting authority to undertake inspection of the books of accounts other records and documents of the stock brokers

a. to ensure that the books of account and other books are being maintained in the manner required,
b. that the provisions of the Act, rules and regulations as well as the provisions of the Securities Contracts (Regulation) Act, 1956 and the rules made thereunder are being complied with,
c. to investigate into the complaints received from investors, other stock brokers, sub-brokers or any other person on any other matter having a bearing on the activities of the stock brokers, and
d. to investigate suo motu in the interest of securities business or investors interest into the affairs of the stock broker.

Before undertaking inspection, SEBI shall give a reasonable notice to the stock broker. However, if SEBI is satisfied that in the interest of the

investors or in public interest, no such notice should be given, it may by an order in writing, direct that the inspection be taken up without such notice to the stock broker. On being empowered by SEBI, the inspecting authority shall undertake the inspection and the stock broker concerned shall be bound to discharge his obligations to facilitate and co-operate for the conduct of inspection by the said authority.

It shall be the duty of every director, proprietor, partner, officer and employee of the stock broker 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 the transactions in securities market within such time as the inspecting authority may require.

The stock broker shall allow the inspecting authority to have reasonable access to the premises occupied by such stock broker 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 stock broker or any other person and also provide copies of documents or other materials which in the opinion of the inspecting authority are relevant.

The said authority in the course of inspection shall be entitled to examine or record statements of any member, director, partner, proprietor and employee of the stock broker. It shall be duty of every director, proprietor, partner, officer and employee of stock broker to give the said authority all assistance in connection with the inspection, which the stock broker may be reasonably expected to give.

The inspecting authority shall as soon as possible submit an inspection report to SEBI who shall after consideration of inspection or investigation report take such action as it may deem fits and appropriate including action under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 and SEBI Act.

SEBI is also empowered to appoint a qualified auditor to investigate into the books of accounts or the affairs of the stock broker. The auditor so appointed shall have the same powers of the inspecting authority as enumerated above and the obligations of the stock broker as detailed above shall be applicable to the investigation.

Procedure for Action in Case of Default

A stock broker or a sub-broker who contravenes any of the provisions of the Act, rules or regulations framed thereunder shall be liable for any one or more of the following actions—

i. Monetary penalty under Chapter VIA of the Act.
ii. Penalties as specified under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulation, 2002 including suspension or cancellation of certificate of registration as a stock broker or a sub-broker.
iii. Prosecution under Section 24 of the Act.

Liability for monetary penalty

A stock broker or a sub-broker shall be liable for monetary penalty in respect of the following violations, namely—

i. Failure to file any return or report with the Board.
ii. Failure to furnish any information, books or other documents within 15 days of issue of notice by the Board.
iii. Failure to maintain books of account or record as per the Act, rules or regulations framed thereunder.
iv. Failure to redress the grievances of investors within 30 days of receipts of notice from the Board.
v. Failure to issue contract notes in the form and manner specified by the Stock Exchange of which such broker is a member.
vi. Failure to deliver any security or make payment of the amount due to the investor within 48 hours of the settlement of trade unless the client has agreed in writing otherwise.
vii. Charging of brokerage which is in excess of brokerage specified in the regulations or the bye-laws of the stock exchange.
viii. Dealing in securities of a body corporate listed on any stock exchange on his own behalf or on behalf of any other person on the basis of any unpublished price sensitive information.
ix. Procuring or communicating any unpublished price sensitive information except as required in the ordinary course of business or under any law.
x. Counselling any person to deal in securities of any body corporate on the basis of unpublished price sensitive information.
xi. Indulging in fraudulent and unfair trade practices relating to securities.
xii. Execution of trade without entering into agreement with the client under the Act, rules or regulations framed thereunder or failure to maintain client registration form or commission of any irregularities in maintaining the client agreement.
xiii. Failure to segregate his own funds or securities from the client's funds or securities or using the securities or funds of the client for his own purpose or for purpose of any other client.
xiv. Acting as an unregistered sub-broker or dealing with unregistered sub-brokers.
xv. Failure to comply with directions issued by the Board under the Act or the regulations framed thereunder.
xvi. Failure to exercise due skill, care and diligence.
xvii. Failure to seek prior permission of the Board in case of any change in its status and constitution.
xviii. Failure to satisfy the net worth or capital adequacy norms, if any, specified by the Board.
xix. Extending use of trading terminal or any unauthorized person or place.
xx. Violations for which no separate penalty has been provided under these regulations.

Liability for action under the Enquiry Proceeding

A stock broker or a sub-broker shall be liable for any action as specified in SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 including suspension or cancellation of his certificate of registration as a stock broker or a sub-broker, as the case may be, if he—

i. ceases to be a member of a stock exchange; or
ii. has been declared defaulter by a stock exchange and not readmitted as a member within a period of six months; or
iii. surrender his certificate of registration to the Board; or
iv. has been found to be not a fit and proper person by the Board under these or any other regulations; or
v. has been declared insolvent or order for winding up has been passed in the case of a broker or sub-broker being a company registered under the Companies Act, 1956; or
vi. or any of the partners or any whole-time director in case a broker or sub-broker is a company registered under the Companies Act, 1956 has been convicted by a court of competent jurisdiction for an offence involving moral turpitude; or
vii. fails to pay fee as per Schedule III of these regulations; or
viii. fails to comply with the rules, regulations and bye-laws of the stock exchange of which he is a member; or
ix. fails to co-operate with the inspecting or investigating authority; or
x. fails to abide by any award of the Ombudsman or decision of the Board under the Securities and Exchange Board of India (Ombudsman) Regulations, 2003; or
xi. fails to pay the penalty imposed by the Adjudicating Officer; or
xii. indulges in market manipulation of securities or index; or
xiii. indulges in insider trading in violation of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992; or
xiv. violates Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003; or
xv. commits violation of any of the provisions for which monetary penalty or other penalties could be imposed; or
xvi. fails to comply with the circulars issued by the Board; or
xvii. commits violations specified in Regulation 26 which in the opinion of SEBI are of a grievous nature.

Liability for prosecution

A stock broker or a sub-broker shall be liable for prosecution under Section 24 of the Act for any of the following violations, namely—

i. Dealing in securities without obtaining certificate of registration from the Board as a stock broker or a sub-broker.
ii. Dealing in securities or providing trading floor or assisting in trading outside the recognized stock exchange in violation of provisions of the Securities Contract (Regulation) Act, 1956 or rules made or notifications issued thereunder.
iii. Market manipulation of securities or index.
iv. Indulging in insider trading in violation of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992.
v. Violating the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

vi. Failure without reasonable cause—
   a. to produce to the investigating authority or any person authorized by him in this behalf, any books, registers, records or other documents which are in his custody or power; or
   b. to appear before the investigating authority personally or to answer any question which is put to him by the investigating authority; or
   c. to sign the notes of any examination taken down by the investigating authority.

vii. Failure to pay penalty imposed by the adjudicating officer or failure to comply with any of his directions or orders.

A case study on fraudulent dealings

Bishwanath Murlidhar Jhunjhunwala v. SEBI

SEBI noticed a spurt in the volume in the trading of the scrip of Snowcem India Ltd. (SIL), both at NSE and BSE. Though the scrip was not very liquid, it was observed that during June 1999 to August 1999, price of the scrip ranged between Rs.55 to Rs.127. The Appellant, a stock broker of BSE himself was found to have registered himself as a client with a broker of NSE and placed orders in large quantities in the scrip of SIL to the tune of 2,87,400 shares which amounted to 5.59 per cent of the total volume traded at NSE between June 1999 and August 1999. Orders placed by the Appellant were matched with those orders placed by Kosha Investment Ltd. (KIL). Further, the Appellant had not traded in his own account at BSE. The conduct of the Appellant was in violation of Regulation 4 (a), (b) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 in view of which he was prohibited from accessing capital market for a period of 2 years. Upholding the impugned order in its totality, the Hon'ble SAT noted that, "It is a fact that the persons who operate in the market are required to maintain high standards of integrity, promptitude and fairness in the conduct of business dealings.

SUBMISSION OF ANNUAL RETURNS

As part of the continued compliance, National Stock Exchange of India requires its Members to submit Annual Returns i.e. details in respect of shareholding, directors, etc. in the prescribed format to the Exchange. Members having financial year ending other than March 31, are required to submit the said documents within a period of 6 months from the end of their respective financial year. Accordingly, such members are required to inform the Exchange about the financial year followed by them on or before October 31 every year. In case any member has changed its financial year from the one followed earlier, it shall convey such details to the Exchange on or before October 31. Trading Members are required to file the prescribed information/documents in electronic form over and above the submission in hard form.

Bombay Stock Exchange of India also requires its all active members including Representative members of Cash segment, Limited Trading members & Trading and/or Clearing members of the Derivatives segment of the Bombay Stock Exchange to submit Networth Certificate to the

Exchange.

Certification by Practising Company Secretary

I. NSE vide its Circular No.541, Ref. NSE/MEM/7835 dated September 06, 2006 and Circular NSE/MEM/8004 dated October 12,2006 authorized Practising Company Secretary to issue the following certifications regarding Compliances by Trading Members at par with Chartered Accountants.
   1. Details of directors/proprietor in prescribed format
   2. Details of shareholding pattern/sharing pattern of corporates in prescribed format
   3. Details of shareholding pattern/sharing pattern of firms in prescribed format
   4. Details of Dominant group of corporates in prescribed format
   5. Details of Dominant group of firms in prescribed format
   6. Undertaking from Relative of Persons constituting Dominant Promoter Group in prescribed format
   7. Undertaking from Corporates supporting Dominant Promoter Group in prescribed format

II. BSE vide its Notice no. 20061031-21 dated October 31, 2006 authorized Practising Company Secretary to issue Networth Certificate at par with Chartered Accountants. Accordingly, the Practising Company Secretaries are authorized to issue the Networth Certificate to be submitted by all active members including Representative members of Cash segment, Limited Trading members & Trading and/or Clearing members of the Derivatives segment of the Bombay Stock Exchange.

2. PORTFOLIO MANAGERS

Portfolio manager means any person who pursuant to contract or arrangement with the client, advises or directs or undertakes on behalf of the client (whether as a discretionary portfolio manager or otherwise) the management or administration of a portfolio of securities or the funds of the clients as the case may be. “Discretionary portfolio manager” is defined as one who exercises or may exercise, under a contract relating to portfolio management, any degree of discretion as to the investment or the management of the portfolio of the securities or the funds of the client. “Portfolio” means the total holdings of securities belonging to any person. A portfolio manager thus, with professional experience and expertise in the field, studies the market and adjusts the investment mix for his client on a continuing basis to ensure safety of investment and reasonable returns therefrom.

SEBI (Portfolio Managers) Regulations, 1993

SEBI issued SEBI (Portfolio Managers) Regulations, 1993 in exercise of the powers conferred by Section 30 of SEBI Act, 1992. These regulations took effect from 7th January, 1993.

Regulation 3A lays down that an application by a portfolio manager for grant of the certificate shall be made to SEBI in the prescribed form-A. Incomplete applications shall be rejected after the applicant is given an opportunity to remove within the time specified such objections on the

application as may be indicated by SEBI. Before disposing the application, SEBI may require the applicant to furnish further information or clarification and the applicant or its principal officer who is mainly responsible for the activities as a portfolio manager, shall appear before SEBI to make a personal representation, if required.

Norms for registration as Portfolio Managers

The requirements to be satisfied by the applicant for getting the certificate of registration as mentioned in Regulation 6 are as follows:

a. the applicant is a body corporate;
b. the applicant has the necessary infrastructure like adequate office space, equipments and the manpower to effectively discharge the activities of a portfolio manager;
c. the principal officer of the applicant has the professional qualifications in finance, law, accountancy or business management from an institution recognised by the Government;
d. the applicant has in its employment minimum of two persons who, between them, have at least five years experience as portfolio manager or stock broker or investment manager or in the areas related to fund management;
e. any previous application for grant of certificate made by any person directly or indirectly connected with the applicant has been rejected by the Board;
f. any disciplinary action has been taken by the Board against a person directly or indirectly connected with the applicant under the Act or the Rules or the Regulations made thereunder.
   The expression 'person directly or indirectly connected' means any person being an associate, subsidiary, inter-connected company or a company under the same management within the meaning of Section 370(1B) of the Companies Act, 1956 or in the same group;
g. the applicant fulfils the capital adequacy requirements specified in Regulation 7;
h. the applicant, its director, principal officer or the employee as specified in Clause (d) is involved in any litigation connected with the securities market which has an adverse bearing on the business of the applicant;
i. the applicant, its director, principal officer or the employee as specified in Clause (d) has at any time been convicted for any offence involving moral turpitude or has been found guilty of any economic offence;
j. the applicant is a fit and proper person;
k. grant of certificate to the applicant is in the interests of investors.

Capital adequacy requirement

Portfolio manager must have capital adequacy requirement of not less than networth of fifty lacs rupees. Networth for the purpose means the aggregate value of paid-up equity capital plus free reserves (excluding reserves created out of revaluation) reduced by the aggregate value of accumulated looses and deferred expenditure not written off, including miscellaneous expenses not written off.

SEBI on being satisfied that the applicant fulfils the requirement specified

above shall send an intimation to the applicant. On payment of the requisite fees by the applicant in accordance with Schedule II of the Regulations, he will be granted a certificate of Registration in Form-B.

Renewal of Certificate

A portfolio manager may make an application for renewal of his registration at least three months before the expiry of the validity of his certificate. SEBI, in addition to the information furnished in form A, has prescribed for certain additional information to be submitted by the applicant while seeking registration/ renewal as portfolio managers. The applicant has been required to furnish the additional detailed information in the following areas:

1. Memorandum and Articles of Association of the applicant
2. Details of Directors & shareholding pattern
3. Details of Promoters & shareholding pattern
4. Details of applicant registered with SEBI as any other intermediary
5. Details of the Principal Officer
6. Details of Key personnel
7. Details of infrastructure facilities
8. Details of the proposed Schemes
9. Details of facility for safe custody
10. Details of facility for equity research
11. Financial Accounts of the applicant
12. Report from principal bankers
13. List of brokers
14. Details regarding applicant registered with RBI (if any)
15. Details of associated registered intermediaries
16. Declaration by at least two directors
17. Declaration for fit and proper person
18. Director’s Declaration under regulation 6.

The applicant has been advised to note that furnishing of incomplete information would delay the processing of the application. The applicant has also been advised to keep the Board informed of all the consequent changes in the information provided to the board.

Procedure where registration is not granted

Where the applicant does not satisfy the requirement of registration, SEBI may reject the application after giving an opportunity of being heard. The refusal shall be communicated by SEBI within 30 days of such refusal indicating the grounds for rejection. An applicant if aggrieved by SEBI’s rejection may apply within a period of 30 days from the date of receipt of rejection letter to SEBI for reconsideration. SEBI shall reconsider the matter and communicate its final decision as soon as possible in writing to the applicant. The applicant shall cease to carry on activity as portfolio manager on receipt of rejection of his application. If the portfolio manager fails to pay the fees as provided in Schedule II, SEBI may suspend the certificate and during the period of suspension the portfolio manager shall not carry on activity as such portfolio manager.

Code of Conduct

Regulation 13 lays down that every portfolio manager shall abide by the code of conduct as specified in Schedule III to the Regulations which is as follows:

1. A portfolio manager shall, in the conduct of his business, observe high standards of integrity and fairness in all his dealings with his clients and other portfolio managers.
2. The money received by a portfolio manager from a client for an investment purpose should be deployed by the portfolio manager as soon as possible for that purpose and money due and payable to a client should be paid forthwith.
3. A portfolio manager shall render at all times high standards of service, exercise due diligence, ensure proper care and exercise independent professional judgement. The portfolio manager shall either avoid any conflict of interest in his investment or disinvestment decision, or where any conflict of interest arises, ensure fair treatment to all his customers. He shall disclose to the clients, possible sources of conflict of duties and interests, while providing unbiased services. A portfolio manager shall not place his interest above those of his clients.
4. A portfolio manager shall not make any statement or become privy to any act, practice or unfair competition, which is likely to be harmful to the interests of other portfolio managers or is likely to place such other portfolio managers in a disadvantageous position in relation to the portfolio manager himself, while competing for or executing any assignment.
5. A portfolio manager shall not make any exaggerated statement, whether oral or written, to the client either about the qualification or the capability to render certain services or his achievements in regard to services rendered to other clients.
6. At the time of entering into a contract, the portfolio manager shall obtain in writing from the client, his interest in various corporate bodies which enables him to obtain unpublished price- sensitive information of the body corporate.
7. A portfolio manager shall not disclose to any clients or press any confidential information about his client, which has come to his knowledge.
8. The portfolio manager shall where necessary and in the interest of the client take adequate steps for registration of the transfer of the clients' securities and for claiming and receiving dividends, interest payments and other rights accruing to the client. He shall also take necessary action for conversion of securities and subscription/renunciation of/or rights in accordance with the clients' instruction.
9. A portfolio manager shall endeavour to—
    a. ensure that the investors are provided with true and adequate information without making any misguiding or exaggerated claims and are made aware of attendant risks before any investment decision is taken by them;
    b. render the best possible advice to the client having regard to the

client's needs and the environment, and his own professional skills;

c. ensure that all professional dealings are effected in a prompt, efficient and cost effective manner.

10. (1) A portfolio manager shall not be a party to—
    a. creation of false market in securities;
    b. price rigging or manipulation of securities;
    c. passing of price sensitive information to brokers, members of the stock exchanges and any other intermediaries in the capital market or take any other action which is prejudicial to the interest of the investors.
    2. No portfolio manager or any of its directors, partners or manager shall either on their respective accounts or through their associates or family members and relatives enter into any transaction in securities of companies on the basis of unpublished price sensitive information obtained by them during the course of any professional assignment.
11. (a) A portfolio manager 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 long or short position in the said security has been made, while rendering such advice.
    b. In case an employee of the portfolio manager is rendering such advice, he shal also disclose the interest of his dependent family members and the employer including their long or short position in the said security, while rendering such advice.
12. (a) The portfolio manager shall abide by the Act, and the Rules, Regulations made thereunder and the Guidelines/Schemes issued by the Board.
    b. The portfolio manager shall comply with the model code of conduct specified in SEBI (Prohibition of Insider Trading) Regulations, 1992.
    c. The portfolio manager shall not use his status as any other registered intermediary to unduly influence the investment decision of the clients while rendering portfolio management services.

Contract with clients and disclosures

The portfolio manager, before taking up an assignment of management of funds or portfolio of securities on behalf of a client, enter into an agreement in writing with such client clearly defining the inter se relationship and setting out their mutual rights, liabilities and obligations relating to the management of funds or portfolio of securities containing the details as specified in Schedule IV to the Regulations:

The agreement between the portfolio manager and the client shall, inter alia, contain:

i. the investment objectives and the services to be provided;
ii. areas of investment and restrictions, if any, imposed by the client with regard to the investment in a particular company or industry;
iii. type of instruments and proportion of exposure;
iv. tenure of portfolio investments;

v. terms for early withdrawal of funds or securities by the clients;
vi. attendant risks involved in the management of the portfolio;
vii. period of the contract and provision of early termination, if any;
viii. amount to be invested subject to the restrictions provided under these regulations;
ix. procedure of settling client's account including form of repayment on maturity or early termination of contract;
x. fees payable to the portfolio manager;
xi. the quantum and manner of fees payable by the client for each activity for which service is rendered by the portfolio manager directly or indirectly (where such service is outsourced);
xii. custody of securities;
xiii. in case of a discretionary portfolio manager a condition that the liability of a client shall not exceed his investment with the portfolio manager;
xiv. the terms of accounts and audit and furnishing of the reports to the clients as per the provisions of these regulations; and
xv. other terms of portfolio investment subject to these regulations.

The portfolio manager shall provide to the client, the Disclosure Document as specified in Schedule V, along with a certificate in Form C as specified in Schedule I, at least two days prior to entering into an agreement with the client as referred to in Sub-regulation (1).

The Disclosure Document, shall *inter alia* contain the following—

i. the quantum and manner of payment of fees payable by the client for each activity for which service is rendered by the portfolio manager directly or indirectly (where such service is outsourced);
ii. portfolio risks;
iii. complete disclosures in respect of transactions with related parties as per the accounting standards specified by the Institute of Chartered Accountants of India in this regard;
iv. the performance of the portfolio manager:
Provided that the performance of a discretionary portfolio manager shall be calculated using weighted average method taking each individual category of investments for the immediately preceding three years and in such cases performance indicators shall also be disclosed;
v. the audited financial statements of the portfolio manager for the immediately preceding three years.

The contents of the Disclosure Document would be certified by an independent chartered accountant.

The portfolio manager is required to file with SEBI, a copy of the Disclosure Document before it is circulated or issued to any person and every six months thereafter or whenever any material change is effected therein whichever is earlier, along with the certificate in Form C as specified in Schedule I.

The portfolio manager shall charge an agreed fee from the clients for rendering portfolio management services without guaranteeing or assuring, either directly or indirectly, any return and the fee so charged may be a fixed fee or a return based fee or a combination of both.

The portfolio manager may, subject to the disclosure in terms of the Disclosure Document and specific permission from the client, charge such fees from the client for each activity for which service is rendered by the portfolio manager directly or indirectly (where such service is outsourced).

Responsibilities of a Portfolio Manager

Regulation 15 lays down that the discretionary portfolio manager shall individually and independently manage the funds of each client in accordance with the needs of a client in a manner which does not partake the character of a mutual fund, whereas the non discretionary portfolio manager shall manage the funds in accordance with the directions of the client. The portfolio manager shall act in a fiduciary capacity with regard to the clients funds. He shall transact in securities within the limitation placed by the client for dealing in securities under the provisions of RBI Act, 1934. He shall not derive any direct or indirect benefit out of the clients funds or securities. He shall not also pledge or give on loan securities held on behalf of clients to a third person without obtaining a written permission from his client. He shall ensure proper and timely handling of complaints from his clients and take appropriate action promptly.

Investment of Clients Money

Regulation 16 lays down as follows:

1. The portfolio manager shall not accept money or securities from his client for a period less than one year. In the case of placement of funds for portfolio management by the same client on more than one occasion or on a continual basis, each placement shall be for a minimum period of one year. Any renewal of portfolio fund on maturity of the initial period shall be deemed as a fresh placement and shall be for minimum period of one year.
2. Regardless of the provisions in the agreement between a portfolio manager and his client, the funds can be withdrawn or taken back by the portfolio client at his risk before the maturity date of the contract under the following circumstances:
    a. voluntary or compulsory termination of portfolio management services by the portfolio manager.
    b. suspension or termination of registration of portfolio manager by the Board.
    c. bankruptcy or liquidation in case the portfolio manager is a body corporate.
    d. permanent disability, lunacy or insolvency in case the portfolio manager is an individual.

The portfolio manager shall invest funds of his clients in money market instruments or as specified in the contract.

However, he shall not deploy the clients funds in bill discounting, badla financing or for the purpose of lending or placement with corporate or non corporate bodies. Money market instruments for this purpose includes commercial paper, trade bill, treasury bills, certificate of deposit and usance bills.

The portfolio manager shall not while dealing with clients funds indulge in

speculative transactions, i.e. he shall not enter into any transaction for purchase or sale of any security in which transaction is periodically or ultimately settled otherwise than by actual delivery or transfer of security. He may enter into transaction on behalf of the client for the specific purpose of meeting margin requirements only if the contract so provides, and the client is made aware of the attendant risks of such transactions. The portfolio manager shall ordinarily purchase or sell securities separately for each client. But in the event of aggregation of purchases or sales for economy of scale inter-se allocation shall be done on a prorata basis and at weighted average price of the days transactions. He shall not keep any open position in respect of allocation of sales or purchases effected in a day.

Any transaction of purchase or sale including that between the portfolio manager's own accounts and clients accounts or between two clients accounts shall be at the prevailing market price. The portfolio manager shall aggregate each clients' funds and portfolio of securities and keep them separately from his own funds and securities and be responsible for safe keeping of clients funds and securities.

The portfolio manager may hold the securities belonging to a portfolio account in his own name on behalf of his clients only if the contract so provides and in such an event, the records of the portfolio manager and his report to the client should clearly indicate that the securities are held by him on behalf of the portfolio account. He may manage funds raised or collected or brought from outside India in accordance with SEBI (Foreign Institutional Investors) Regulations, 1995.

Accounting by Portfolio Managers

Regulations 17 to 20 deal with books of accounts, records, accounts and audit.

Regulation 17 lays down that every portfolio manager shall keep and maintain the following books of accounts, records and documents, namely - a) a copy each of balance sheet, profit and loss account and the auditor's account in respect of each accounting period b) a statement of financial position and c) records in support of every investment transaction or recommendation which will indicate the data, facts and opinions leading to that investment decision. Every portfolio manager shall intimate to SEBI where the books of accounts, records or documents are maintained. Every portfolio manager shall after the end of each accounting period furnish to SEBI copies of the balance sheet, profit and loss account and such other documents as are required by the regulations. Regulation 18 provides that portfolio manager shall furnish to SEBI half-yearly unaudited financial results when required by SEBI with a view to assist in monitoring the capital adequacy of the portfolio manager.

Regulation 20 lays down that the portfolio manager shall maintain separate client-wise accounts. The funds received from the clients, investments or disinvestments and all the credits to the account of the client like interest, dividend, bonus or any other beneficial interest received on the investment and debits for expenses if any shall be properly accounted for and details

thereof shall be reflected correctly in the clients accounts. The tax deducted at source as required under the Income Tax Act, 1961 shall be recorded in the portfolio account. The books of account will be audited by a qualified auditor to ensure that portfolio manager has followed proper accounting methods and procedures and that he has performed the duties in accordance with the law. A certificate to this effect shall, if so specified be submitted to SEBI within 6 months of the close of the portfolio managers accounting period.

The portfolio accounts of the portfolio manager shall be audited annually by an independent chartered accountant and a copy of the certificate issued by the chartered accountant shall be given to the client.

The client may appoint a chartered accountant to audit the books and accounts of the portfolio manager relating to his transactions and the portfolio manager shall co-operate with such chartered accountant in course of the audit.

Reports by Portfolio Manager to the Client

Regulation 21 lays down that the portfolio manager shall furnish periodically a report to the client as agreed to in the contract but not exceeding a period of 6 months and such report shall contain the following details, namely -

a. the composition and the value of the portfolio, description of security, number of securities, value of each security held in a portfolio, cash balance and aggregate value of the portfolio as on the date of report.
b. transactions undertaken during the period of report including dates of transaction and details of purchases and sales.
c. beneficial interest received during that period in respect of interest, dividend, bonus shares, rights shares and debentures.
d. expenses incurred in managing the portfolio of the client.
e. details of risk foreseen by the portfolio manager and the risk relating to the securities recommended by the portfolio manager for investment or disinvestment.

Regulation 21(1A) provides that the report may be made available on the website of the portfolio manager with restricted access to each client.

The portfolio manager shall also furnish to the client documents and information relating only to the management of a portfolio. On termination of the contract, the portfolio manager shall give a detailed statement of accounts to the client and settle the account with the client as agreed in the contract. The client has the right to obtain details of his portfolio from the portfolio manager.

Action on auditor’s report and disclosure to SEBI

Every portfolio manager shall within two months from the date of the auditor’s report take steps to rectify the deficiencies made out in such report. A portfolio manager shall disclose to SEBI as and when required the information, namely - Particulars regarding the management of a portfolio; any change in the information or particulars previously furnished; which have a bearing on the certificate granted to him; the names of the clients whose portfolio he has managed; and particulars relating to the capital

adequacy requirement.

Compliance officer

Every portfolio manager is required to appoint a compliance officer 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. The compliance officer should independently and immediately report to SEBI for any non-compliance observed by him.

Inspection and disciplinary proceedings

Regulations 24 to 29 contain provisions on this subject.

Regulation 24 empowers SEBI to appoint one or more persons as inspecting authority to under take the inspection of the books of accounts, records and documents of the portfolio manager to ensure that they are being maintained in the manner required, that the provisions of the Act, Rules and Regulations are being complied with. The inspecting authority shall investigate into the complaints received from the investors, other portfolio managers or any other person on any matter having a bearing on the activities of the portfolio manager and investigate suo motu in the interest of securities business or investors interest into the affairs of the portfolio manager.

SEBI shall give a reasonable notice to the portfolio manager before undertaking an inspection. However, where SEBI 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 portfolio manager be taken up without such notice. During the course of the inspection the portfolio manager against whom an inspection is being carried out shall be bound to discharge his obligations as stated below:

Obligations of portfolio manager

It shall be the duty of every director, proprietor, partner, officer and employee of the portfolio manager who is being inspected, to produce to the inspecting authority such books of accounts and documents in his custody or control and furnish him with the statements and information relating to these activities within such time as the inspecting authority may require. The portfolio manager shall allow the inspecting authority to have reasonable access to the premises occupied by the former or by any other person on his behalf and also extend reasonable facility for examining any books, records, documents and computer data in his possession or in the possession of any other person and also provide copies of documents or other material which in the opinion of the inspecting authority are relevant for the purposes of the inspection. In the course of inspection, the inspecting authority shall be entitled to examine or record statements of any principal officer, director, partner, proprietor and employee of the portfolio manager. It shall be the duty of each such person to give to the inspecting authority all assistance in connection with the inspection which the portfolio manager may reasonably be expected to give.

The inspecting authority shall submit an inspection report to SEBI as soon as it is possible. SEBI or chairman shall after consideration of the

inspection or investigation report take such action as SEBI or its chairman may deem fit and appropriate including action under SEBI (Procedure for Holding Enquiry for Enquiry Officer and Imposing Penalty) Regulations, 2002.

Appointment of auditor

SEBI may appoint a qualified auditor to investigate into the books of accounts or the affairs of the portfolio manager. The auditor so appointed shall have the same powers of the inspecting authority outlined above and the obligation of the portfolio manager and his employees in connection therewith shall be applicable also to the investigation under this Regulation.

Procedure for action and punishment in case of default

A portfolio manager who fails to comply with any conditions subject to which a certificate has been granted to him or contravenes any of the provisions of SEBI Act, Rules or Regulations shall be dealt with the manner provided under SEBI (Procedure for Holding Enquiry for Enquiry Officer and Imposing Penalty) Regulations, 2002.

Internal Audit of Portfolio Manager

Every Portfolio manager is required to appoint a Practising Company Secretary or a Practising Chartered Accountant for conducting the internal audit. The Portfolio manager is required to report the compliance of the aforesaid requirement to SEBI while submitting the half yearly report.

The report is to be submitted twice a year, as on 31st of March and 30th of September. The report should reach SEBI within thirty days of the period to which it relates.

No precise period has been prescribed for the PCS to submit his report to the Board of the company. However, it would be advisable for the PCS to give the audit report to the Portfolio Manager sufficiently well in advance to enable the Company to report the compliance of the same to the Securities and Exchange Board of India.

The scope of the internal audit would comprise the checking of compliance of SEBI (Portfolio Managers) Rules, 1993 and SEBI (Portfolio Managers) Regulations 1993 and circulars notifications or guidelines issued by the Securities and Exchange Board of India and internal procedures followed by the Portfolio Manager.

3. CUSTODIAN OF SECURITIES

Custodian of securities means any person who carries on or proposes to carry on the business of providing custodial services. The term "custodial services" in relation to securities of a client or gold or gold related instruments held by a mutual fund in accordance with the SEBI (Mutual Funds) Regulations, 1996 means safekeeping of 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 points (i) to (iii).

SEBI (Custodian of Securities) Regulations

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) the Securities and Exchange Board of India issued the Securities and Exchange Board of India (Custodian of Securities) Regulations, 1996 on May 16, 1996.

The regulations define "custody account" as an account of a client maintained by a custodian of securities in respect of securities;

Application for grant of certificate

Regulation 3(1) provides that any person proposing to carry on business as custodian of securities on or after the commencement of these regulations shall make an application to SEBI for grant of a certificate. SEBI may, however 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 the period upto a maximum of six months from the date of such commencement.

Any person 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.

Application to conform to requirements

An application which is not complete in all respects or which does not conform to the instructions specified therein will be rejected. However before rejecting any such application, SEBI would give the applicant an opportunity to remove the objection, within such time as may be specified.

Furnishing of information

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

Consideration of application for grant of certificate

SEBI, while granting the Certificate shall take into account following matters which are relevant to the activities of a custodian of securities:

a. the applicant fulfils the capital requirement;
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;
c. 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;
d. 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;

e. 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;
f. the applicant is a person who has been refused a certificate by the Board or whose certificate has been cancelled by the Board;
g. the applicant, his director, his principal officer or any of his employees is involved in any litigation connected with the securities market;
h. 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;
i. the applicant is a fit and proper person; and
j. the grant of certificate is in the interest of investors.

Also SEBI shall not consider an application unless the applicant is a body corporate.

Capital requirement

Regulation 7(1) provides for the capital requirement. It provides that the applicant must have a net worth of a minimum of rupees fifty crores. The term "net worth" means the paid up capital and the free reserves as on the date of the application. However any custodian of securities which has been approved by the Board under the provisions of SEBI (Mutual Fund) Regulations or SEBI (Foreign Institutional Investors) Regulations, 1995, or the Government of India Guidelines for Foreign Institutional Investors dated September 14, 1992, even if it does not have the networth specified in above 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 networth as specified.

The period specified above may be extended by SEBI upto a maximum of 5 years.

Any applicant is permitted to fulfil his capital adequacy requirements within one month of the receipt of certificate.

Procedure and grant of certificate

Regulation 8(1) of the Regulations provide that after considering the application, if SEBI is satisfied that all particulars sought have been furnished and the applicant is eligible for the grant of a certificate, it will send an intimation of the same to the applicant.

On receipt of an intimation the applicant shall pay to SEBI specified registeration fee. SEBI shall thereafter grant a certificate to the applicant on receipt of the registration fee. It has been 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.

A custodial of securities holding a certificate of registration as on the date of commencement of SEBI (Custodial of Securities) (Amendment) Regulations, 2006 may provide custodial services in respect of gold or gold

related instruments of a mutual fund only after taking prior approval of the SEBI.

Conditions of certificate

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

a. it shall not commence any activities as custodian of securities unless it fulfils the capital requirement;
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 in the manner specified;
e. if any information previously submitted by it to SEBI 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 SEBI in writing; and
f. besides providing custodial services, it shall not carry on any activity other than activities relating to rendering of financial services.

Period of validity

Regulation 9A of the Regulations provide that every certificate granted under sub-regulation (3) of regulation 8 on and after the commencement of the SEBI (Custodian of Securities) (Second Amendment) Regulations, 2006 shall be valid for a period of three years from the date of grant. Every certificate granted under sub-regulation (3) of regulation 8 before the commencement of the Securities and Exchange Board of India (Custodian of Securities) (Second Amendment) Regulations, 2006 shall be valid for a period of three years from such commencement.

Renewal of certificate

Regulation 9B of the Regulations provide that a custodian of securities, desirous of having its certificate renewed shall make an application to the Board for renewal of the certificate in Form A, not less than three months before the expiry of its period of validity under Regulation 9A. The application for renewal of certificate shall be dealt with, as far as may be, as if it were an application for the grant of a fresh certificate under Regulation 3 and shall be accompanied with the application fee as specified in Schedule II. However, no registration fee is payable by a custodian in case of a renewal of certificate.

Procedure where certificate is not granted

Regulation 10(1) of the Regulations provide that after considering an application for grant of certificate, if SEBI is satisfied that a certificate should not be granted, SEBI may reject the application after giving the applicant a reasonable opportunity of being heard.

The decision of SEBI rejecting the application shall be communicated within thirty days of such decision to the applicant in writing, stating therein the grounds on which the application has been rejected. An applicant, aggrieved by the decision of SEBI may within a period of thirty days from the date of receipt of communication apply to SEBI for re-consideration of its decision.

SEBI shall, as soon as possible, in the light of the submissions made in the application for re-consideration and after giving the applicant a reasonable opportunity of being heard, convey its decision in writing to the applicant.

Effect of refusal to grant certificate

Any custodian of securities whose application for grant of certificate has been rejected by SEBI shall, on and from the date of the receipt of the communication ceases to carry on any activity as custodian of securities and shall be subject to the directions of SEBI 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 III of the Regulations provide for “General Obligations And Responsibilities of Custodians”.

Code of conduct

Every custodian of securities shall abide by the Code of Conduct as specified in the Third Schedule to the Regulations.

Segregation of activities

Regulation 13 provides that where a custodian of securities is carrying on any activity besides that of acting as custodian of securities, then the activities relating to his business as custodian of securities shall be separate and segregated from all other activities and its officers and employees engaged in providing custodial services shall not be engaged in any other activity carried on by him.

Mechanism for monitoring review

Regulation 14(1) provides that every custodian of securities shall have adequate mechanisms for the purposes of reviewing, monitoring and evaluating the custodian's controls, systems, procedures and safeguards. The custodian of securities shall cause to be inspected annually the mechanism by an expert and forward the inspection report to SEBI within three months from the date of inspection.

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.

Proviso to Regulation 15 provides that a custodian of securities may engage the services of a person not being a custodian, for the purpose of physical safekeeping of gold belonging to its client being a mutual fund having a gold exchange traded fund scheme, subject to the following conditions:

a. the custodian shall remain responsible in all respects to its client for safekeeping of the gold kept with such other person, including any associated risks;
b. all books, documents and other records relating to the gold so kept with the other person shall be maintained in the premises of the custodian or if they are not so maintained, they shall be made available therein, if so required by the Board;
c. the custodian of securities shall continue to fulfill all duties to the clients relating to the gold so kept with the other person, except for its physical

safekeeping."

Separate custody account

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

Agreement with the client

Every custodian of securities is required to 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;
e. details of the insurance, if any, to be provided for by the custodian of securities.

Internal Controls

Every custodian of securities is required to 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. Every custodian of securities would take appropriate safekeeping measures to ensure that such securities are protected from theft and natural hazard.

Maintenance of records and documents

Regulation 19(1) provides that every custodian of securities is required to 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 records of all reports submitted to SEBI.

Custodian of securities would intimate to SEBI the place where the records and documents are maintained and custodian of securities shall preserve the records and documents maintained for a minimum period of five years.

Appointment of Compliance Officer

Regulation 19A(1) provides that every custodian of securities would appoint a compliance officer responsible for monitoring the compliance of

the Act, rules and regulations, notifications, guidelines, instructions etc. issued by SEBI or the Central Government. He is under an obligation for redressal of investors' grievances.
The compliance officer is required to immediately and independently report to SEBI any non-compliance observed by him.

Information to SEBI

SEBI may, 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. Where any information is called for by SEBI, it shall be the duty of the custodian of securities to furnish such information, within such reasonable period as SEBI may specify.

Inspection and Audit

SEBI may appoint one or more persons as inspecting officer to undertake inspection of the books of accounts, 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.

Notice before inspection

SEBI, before ordering inspection shall give not less than ten days notice to the custodian of securities. 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.
The custodian of securities against whom the inspection is being carried out is under an obligation to discharge his obligations.

Obligations of custodian

It is 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.
The custodian of securities is required to 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.
The inspecting officer, in the course of inspection, is entitled to examine or to record the statements of any director, officer or employee of the custodian of securities. It is 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.

Submission of Report to SEBI

The inspecting officer shall, as soon as possible, on completion of the inspection submit an inspection report to SEBI and that if directed by SEBI, he may submit an interim report.
SEBI shall, after consideration of the inspection report or the interim report communicate the findings of the inspection officer to the custodian of securities and give him an opportunity of being heard. On receipt of the reply if any, from the custodian of securities, SEBI 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.

Appointment of Auditor

SEBI has 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 custordian as the case may be.The auditors so appointed shall have the same powers as vested in the investing officer 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 to the inspecting authority.

Recovery of expenses

SEBI is 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.

Suspension and cancellation of certificate

SEBI 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 SEBI;
c. furnishes to SEBI information which is false and misleading in any material particular;
d. does not submit periodic returns or reports as required by SEBI;
e. does not co-operate in any enquiry or inspection conducted by SEBI;
f. fails to update its systems and procedures as recommended by SEBI;
g. fails to resolve the complaints of clients or fails to give a satisfactory reply to SEBI in this behalf;
h. is guilty of misconduct or makes a breach of the Code of Conduct specified in the;

i. fails to pay annual fees.

SEBI 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 of the Regulations.

Manner of holding enquiry before suspension or cancellation

For the purpose of holding an enquiry, SEBI may appoint one or more enquiry officer.

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. 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 SEBI from the custodian of securities.

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 the Regulations. Before the enquiry officer, the custodian of securities may either appear in person or through any person duly authorised by the custodian of securities.

It has been provided that no lawyer or advocate shall be permitted to represent the custodian of securities at the enquiry. However where a lawyer or an advocate has been appointed by SEBI as a presenting officer, the custodian of securities may present its case through a lawyer or advocate. The enquiry officer may, if he considers it necessary, request SEBI to appoint a presenting officer to present its case.

The enquiry officer shall, after taking into account all relevant facts and submissions made by the custodian of securities, submit a report to SEBI 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.

Show-cause notice and order

On receipt of the report from the enquiry officer, SEBI 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. The custodian of securities shall, within fourteen days of the date of the receipt of the show-cause notice, send a reply to SEBI.

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

The Regulations provide that every order made 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.

Effect of suspension and cancellation of certificate

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 SEBI with regard to any records, documents or securities that may be in its custody or control, relating to its activities as custodian of securities.
Further in case of cancellation of the Certificate, 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 SEBI 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.

Publication of order of suspension or cancellation

The order of suspension or cancellation of certificate passed shall be published by SEBI in at least two daily newspapers.

4. FOREIGN INSTITUTIONAL INVESTORS

"Foreign Institutional Investor" means an institution established or incorporated outside India which proposes to make investment in India in securities. No person can buy, sell or otherwise deal in securities as a Foreign Institutional Investor unless he holds a certificate granted by SEBI under these regulations. An application for the grant of certificate should be made to SEBI in the prescribed form.
SEBI may require the applicant to furnish such further information or clarification as SEBI considers necessary regarding matters relevant to the activities of the applicant for grant of certificate. The applicant or his authorised representative, if so required by SEBI, appear before SEBI for personal representation in connection with the grant of a certificate. An application, which is not complete in all respects and does not conform to the instructions specified in the form or is false or misleading in any material particular, should be rejected by SEBI. However before rejecting any such application, the applicant should be given a reasonable opportunity to remove, within the time specified by SEBI, such objections as may be indicated by SEBI.

Consideration of application

While granting certificate of Registration, SEBI should take into account the following matters:

i. the applicant's track record, professional competence, financial soundness, experience, general reputation of fairness and integrity;
ii. whether the applicant is regulated by an appropriate foreign regulatory authority;
iii. whether the applicant has been granted permission under the provisions of the Foreign Exchange Regulation by the Reserve Bank of India for making investments in India as a Foreign Institutional Investor;
iv. whether the applicant is—
    a. an institution established or incorporated outside India as Pension Fund, Mutual Fund or Investment Trust, Insurance Company or reinsurance company;
    (aa) a international or multilateral organisation or an agency thereof

or a Foreign Governmental Agency or a Foreign Central Bank;

b. an Asset Management Company, investment manager or advisor, Nominee Company, Bank or Institutional Portfolio Manager, established or incorporated outside India and proposing to make investments in India on behalf of broad based funds and its proprietary funds, if any; or
c. a Trustee or a Power of Attorney holder, incorporated or established outside India, and proposing to make investments in India on behalf of broad based funds and its proprietary funds, if any;
d. university fund, endowments, foundations or charitable trusts or charitable societies. However while considering the application from SEBI may take into account the following namely:-
    1. whether the applicant has been in existence for a period of atleast 5 years.
    2. whether it is legally permissible for the applicant to invest in securities outside the country of its incorporation or establishment;
    3. whether the applicant has been registered with any statutory authority in the country of their incorporation or establishment;
    4. whether any legal proceeding has been initiated by any statutory authority against the applicant.
    5. whether the grant of certificate to the applicant is in the interest of the development of the securities market.
e. whether the applicant is a fit and proper person.

A domestic portfolio manager or domestic asset management company should be eligible to be registered as a foreign institutional investor to manage the funds of sub-accounts. The domestic portfolio manager or domestic asset management company should make an application in terms of regulations. For the grant of certificate to a domestic asset management company or to a domestic portfolio manager SEBI may consider whether the applicant is an approved asset management company or a registered portfolio manager and that the approval or registration is valid and also whether any disciplinary proceeding is pending before SEBI against such applicant.

Procedure for grant of certificate

SEBI, if satisfied that the application is complete in all respects, all particulars sought have been furnished and the applicant is found to be eligible for the grant of certificate, grant a certificate subject to payment of fees with in three months from the documents furnished. However SEBI may exempt from the payment of fees, an applicant such as the World Bank and other institutions established outside India for providing aid, and which have been granted privileges and immunities from the payment of tax and duties by the Central Government. It has been provided further that SEBI should refund the fees already collected from the institutions which are exempted from the payment of fees.

Validity of certificate

The certificate and each renewal thereof should be valid for a period of three years from the date of its grant or renewal. However in case of

domestic portfolio manager or domestic asset management company the certificate and each renewal thereof is valid for a period not exceeding the validity or registration or approval granted under SEBI (Portfolio Managers) Regulations, 1993 or SEBI (Mutual Funds) Regulations, 1996. It has been provided further that the certificate of registration granted or approved under SEBI (Portfolio Managers) Regulations, 1993 or SEBI (Mutual Funds) Regulations, 1996, expires before the expiry of registration under these Regulations, or the certificate of such entity is suspended, the domestic portfolio manager or domestic asset management company should cease to carry on any activity as foreign institutional investor and should be subject to the directions of SEBI with regard to the fund, securities or records that may be in its custody or control as a foreign institutional investor.

Application for renewal of certificate

The Foreign Institutional Investor, if desires, may make an application for renewal three months before the expiry of the period of certificate. However Foreign Institutional Investor who does not desire to renew its registration or has failed to make an application for renewal should, at the time of expiry of registration, obtain a specific permission from SEBI, for disinvesting the securities held by it on its own account or on behalf of its sub-account(s), within a stipulated time period, subject to such terms and conditions as may be specified by SEBI. It has been further provided that where a Foreign Institutional Investor does not desire to renew registration of any of its sub-account(s) or has failed to make an application for renewal of registration of sub-account(s), the Foreign Institutional Investor should at the time of expiry of registration,obtain, a specific permission from SEBI, for disinvesting the securities held by it on behalf of sub-account(s) within a stipulated time period, subject to such terms and conditions as specified by SEBI. The application for renewal should be dealt with in the same manner as an application for grant of a certificate. SEBI should, if satisfied that the applicant fulfils the requirements as specified grant a certificate subject to payment of fees.

Grant or renewal of certificate

The grant or renewal of certificate to the Foreign Institutional Investor may be subject to the following conditions:

i. he shall abide by the provisions of these regulations;
ii. if any information or particulars previously submitted to the Board are found to be false or misleading, in any material respect, he shall forthwith inform SEBI in writing;
iii. if there is any material change in the information previously furnished by him to SEBI, which has a bearing on the certificate granted by SEBI, he shall forthwith inform the Board;
iv. he shall appoint a domestic custodian and before making any investments in India, enter into an agreement with the domestic custodian providing for custodial services in respect of securities;
v. he shall, before making any investments in India, enter into an arrangement with a designated bank for the purpose of operating a

special non-resident rupee or foreign currency account;

vi. before making any investments in India on behalf of a sub-account, if any, he shall obtain registration of such sub-account, under these regulations.

Procedure where certificate is not granted

SEBI may reject the application where an application for grant or renewal of a certificate does not satisfy the requirements after giving the applicant a reasonable opportunity of being heard. The decision to reject the application should be communicated by SEBI to the applicant in writing stating therein the grounds on which the application has been rejected. The applicant, who is aggrieved by the decision of SEBI may, within a period of thirty days from the date of receipt of communication apply to SEBI for reconsideration of its decision. SEBI may, in the light of the submissions made in the application for reconsideration and after giving a reasonable opportunity of being heard, convey its decision in writing to the applicant.

Application for registration of sub-accounts

A Foreign Institutional Investor should seek from SEBI registration of each sub-account on whose behalf he proposes to make investments in India. Any sub-account that has been granted approval prior to the commencement of these regulations by SEBI should be deemed to have been granted registration as a sub-account by SEBI under these regulation. An application for registration as sub-account shall be made in Form AA.

Procedure and grant of registration of sub-accounts

SEBI may take into account the following matters which are relevant to the grant of such registration to the sub-account:

a. the applicant is an institution established or incorporated outside India;
b. the applicant is a broad based fund or proprietary fund or a foreign corporate or individual. However, it has been provided that a non-resident Indian or an overseas corporate body registered with Reserve Bank of India shall not be eligible to invest as sub-account or as foreign institutional investor;
c. the Foreign Institutional Investor through whom the application for registration is made to SEBI holds a certificate of registration as Foreign Institutional Investor;
d. the Foreign Institutional Investor through whom an application for registration of sub-account is made, is authorised to invest on behalf of the sub-account;
e. the applicant and the foreign institutional investor through whom the application for registration is made, have submitted joint undertakings as required by Form AA of First Schedule of the Regulations;
f. the sub-account has paid registration fees as specified.

SEBI on receipt of the undertakings and the registration fees as may grant registration to the sub-account. A sub-account granted registration in accordance with the regulation should be deemed to be registered as a Foreign Institutional Investor with SEBI for the limited purpose of availing of the benefits available to FIIs.

Investment Conditions and Restrictions

Regulation 15(1) provides that a Foreign Institutional Investor can not make any investments in securities in India without complying with the provisions. A Foreign Institutional Investor can invest only in the following:

a. securities in the primary and secondary markets including shares, debentures and warrants of companies unlisted listed or to be listed on a recognised stock exchange in India; and
b. units of schemes floated by domestic mutual funds including Unit Trust of India, whether listed on a recognised stock exchange or not
c. dated Government Securities.
d. derivatives traded on a recognised stock exchange.
e. commercial paper.
f. security receipts.

Sub-regualtion (2) of Regulation 15 the total investments in equity and equity related instruments (including fully convertible debentures, convertible portion of partially convertible debentures and tradable warrants) made by a Foreign Institutional Investor in India, whether on his own account or on account of his sub-accounts, should not be less than seventy per cent of the aggregate of all the investments of the Foreign Institutional Investor in India, made on his own account and on account of his sub-accounts. However it may apply to any investment of the foreign institutional investor either on its own account or on behalf of its sub-accounts in debt securities which are unlisted or listed or to be listed on any stock exchange if the prior approval of SEBI has been obtained for such investments. Regulations further provide that SEBI may while granting approval for the investments impose conditions as are necessary with respect to the maximum amount which can be invested in debt securities by the foreign institutional investor on its own account or through its sub accounts.The conditions mentioned in sub-regulation (2) shall not apply to investments made by foreign institutional investors in security receipts issued by securitisation companies or asset reconstruction companies under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the rules made thereunder.

Further, no FII shall invest in Security Receipts on behalf of its sub-account. A foreign corporate or individual is not be eligible to invest through the hundred percent debt route. In respect of investments in the secondary market, the Regulations provide for additional conditions also apply.

The Regulations clarify that unless otherwise approved by SEBI, securities shall be registered in the name of the Foreign Institutional Investor, provided the Foreign Institutional Investor is making investments on his own behalf; or in his name on account of his sub-account, or in the name of the sub-account, in case he is investing on behalf of the sub-account. However the names of the sub-accounts on whose behalf the Foreign Institutional Investor is investing are required to be disclosed to the Board by the Foreign Institutional Investor.

The purchase of equity shares of each company by a Foreign Institutional

Investor investing on his own account should not exceed ten percent of the total issued capital of that company. In respect of a Foreign Institutional Investor investing in equity shares of a company on behalf of his sub-accounts, the investment on behalf of each such sub-account shall not exceed ten percent of the total issued capital of that company. However in case of foreign corporates or individuals, each of such sub-account shall not invest more than 5% of the total issued capital of the company in which such investment is made. The investment by the Foreign Institutional Investor is also subject to Government of India Guidelines. A Foreign Institutional Investor or sub-account may lend securities through an approved intermediary in accordance with stock lending scheme of the Board. The regulations provide that for the purpose of this regulation, the words security receipt, asset reconstruction, securitisation company and reconstruction company shall have the meanings respectively assigned to them under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. A Foreign Institutional Investor or sub account may issue, deal in or hold, off-shore derivative instruments such as Participatory Notes, Equity Linked Notes or any other similar instruments against underlying securities, listed or proposed to be listed on any stock exchange in India, only in favour of those entities which are regulated by any relevant regulatory authority in the countries of their incorporation or establishment, subject to compliance of "know your client" requirement. However if any such instrument has already been issued, prior to 3rd February 2004, to a person other than a regulated entity, contract for such transaction shall expire on maturity of the instrument or within a period of five years from 3rd February, 2004, whichever is earlier. A Foreign Institutional Investor or sub account should ensure that no further down stream issue or transfer of any instrument is made to any person other than a regulated entity."

General Obligations and Responsibilities

A Foreign Institutional Investor or a global custodian acting on behalf of the Foreign Institutional Investor, should enter into an agreement with a domestic custodian to act as custodian of securities for the Foreign Institutional Investor. The Foreign Institutional Investor should ensure that the domestic custodian takes steps for:

a. monitoring of investments of the Foreign Institutional Investor in India;
b. reporting to the Board on a daily basis the transactions entered into by the Foreign Institutional Investor;
c. preservation for five years of records relating to his activities as a Foreign Institutional Investor; and
d. furnishing such information to the Board as may be called for by the Board with regard to the activities of the Foreign Institutional Investor and as may be relevant for the purpose of this regulation.

A Foreign Institutional Investor may appoint more than one domestic custodian with prior approval of SEBI, but only one custodian may be appointed for a single sub-account of a Foreign Institutional Investor. A Foreign Institutional Investor should appoint a branch of a bank approved

by the Reserve Bank of India for opening of foreign currency denominated accounts and special non-resident rupee accounts. A Foreign Institutional Investor or any of his employees should 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 long or short position in the said security has been made, while rendering such advice. In case, an employee of the Foreign Institutional Investor is rendering such advice, he should also disclose the interest of his dependent family members and the employer including their long or short position in the said security, while rendering such advice.

Maintenance of proper books of accounts, records, etc.

Every Foreign Institutional Investor should keep or maintain the following books of accounts, records and documents:

a. true and fair accounts relating to remittance of initial corpus for buying, selling and realising capital gains of investment made from the corpus;
b. accounts of remittances to India for investments in India and realising capital gains on investments made from such remittances;
c. bank statement of accounts;
d. contract notes relating to purchase and sale of securities; and
e. communication from and to the domestic custodian regarding investments in securities.

The Foreign Institutional Investor should intimate to SEBI in writing the place where such books, records and documents will be kept or maintained. Every Foreign Institutional Investor should preserve the books of accounts, records and documents as specified for a minimum period of five years.

Appointment of Compliance Officer

Every Foreign Institutional Investor should appoint a compliance officer who is responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc. issued by SEBI or the Central Government. The compliance officer should immediately and independently report to SEBI any non-compliance observed by him.

Information to SEBI

Every Foreign Institutional Investor as and when required by SEBI or the Reserve Bank of India, would submit any information, record or documents in relation to his activities.

Foreign Institutional Investors are required to fully disclose information concerning the terms of and parties to off-shore derivative instruments such as Participatory Notes, Equity Linked Notes or any other such instruments, by whatever names they are called, entered into by it or its sub-accounts or affiliates relating to any securities listed or proposed to be listed in any stock exchange in India, as and when and in such form as SEBI may require.

Procedure for action in case of default

A Foreign Institutional Investor who fails to comply with any condition subject to which certificate has been granted, or contravenes any of the provisions of the Act or these regulations, shall be liable to the penalty of

suspension of certificate for a specified period or cancellation of certificate, after an enquiry as provided for in these regulations has been held.

Suspension/Cancellation of certificate

A penalty of suspension of certificate of a Foreign Institutional Investor should be imposed if he—

a. indulges in fraudulent transactions in securities;
b. fails to furnish any information related to his transaction in securities as required by the Board or the Reserve Bank of India;
c. furnishes false information to the Board; or
d. does not co-operate in any enquiry conducted by the Board.

A penalty of cancellation of certificate of a Foreign Institutional Investor may be imposed if he—

a. indulges in deliberate manipulation or price rigging or cornering activities prejudicially affecting the securities market or the investors' interest;
b. is guilty of fraud or a criminal offence, involving moral turpitude;
c. does not meet the eligibility criteria laid down in these regulations;
d. violates the provisions of SEBI (Insider Trading) Regulations, 1992 or of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 1995; or
e. is guilty of repeated defaults of the nature mentioned in regulations.

No order of penalty of suspension or cancellation of certificate shall be imposed on the Foreign Institutional Investor except after holding an enquiry in accordance with the procedure as specified in SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

Effect of suspension and cancellation of certificate

The Foreign Institutional Investor ceases to buy, sell or otherwise deal in securities in India on and from the date of the suspension of certificate except for the purpose of liquidating the existing investments. The order of suspension or cancellation of certificate should be published by SEBI in at least two daily newspapers.

Code of Conduct

A Foreign Institutional Investor and its key personnel should observe high standards of integrity, fairness and professionalism in all dealings in the Indian securities market with intermediaries, regulatory and other government authorities. A Foreign Institutional Investor is required at all times to render high standards of service, exercise due diligence and independent professional judgement. A Foreign Institutional Investor should ensure and maintain confidentiality in respect of trades done on its own behalf and/or on behalf of its sub-accounts/clients. A Foreign Institutional Investor is required to ensure clear segregation of its own money/ securities and sub-accounts’ money/securities and arms length relationship between its business of fund management/ investment and its other business. A Foreign Institutional Investor has to maintain an appropriate level of knowledge and competency and abide by the provisions of the Act, regulations made there under and the circulars and guidelines, which may be applicable and relevant to the activities carried on

by it. Every Foreign Institutional Investor has to comply with award of the Ombudsman and decision of the Board under SEBI (Ombudsman) Regulations. A Foreign Institutional Investor should not make any untrue statement or suppress any material fact in any documents, reports or information furnished to the Board. A Foreign Institutional Investor is required to ensures good corporate policies and corporate governance. A Foreign Institutional Investor should ensure that it does not engage in fraudulent and manipulative transactions in the securities listed in any stock exchange in India. A Foreign Institutional Investor should not, either through its/his own account or through any associate or family members, relatives or friends indulge in any insider trading. A Foreign Institutional Investor shall not be a party to or instrumental for creation of false market in securities listed or proposed to be listed in any stock exchange in India, price rigging or manipulation of prices of securities listed or proposed to be listed in any stock exchange in India and for passing of price sensitive information to any person or intermediary in the securities market.

III. SEBI (SELF REGULATORY ORGANISATIONS) REGULATIONS, 2004

The Securities and Exchange Board of India (Self Regulatory Organizations) Regulations, 2004 came into effect on 19th February, 2004. According to Regulation 2(1)(k) "Self Regulatory Organization" means an organization of intermediaries which is representing a particular segment of the securities market and which is duly recognised by the Board under these regulations, but excludes a stock exchange. The other important definitions under Regulation 2(1) of these regulations are as under:

“Agent" means any person who is associated with securities market and who conducts the business of distribution of securities products (Regulation 2(1)(c))

"Certificate" means a certificate of recognition granted to a Self Regulatory Organization by the Board under sub-regulation (1) of regulation 5 and includes a certificate renewed under regulation 9. (Regulation 2(1)(d))

"Company" means a company which has been granted license under section 25 of the Companies Act, 1956. (Regulation 2(1)(e))

"Economic offence" means an offence to which the Economic Offences (Inapplicability of Limitation) Act, 1974, is applicable for the time being and includes an offence under the Securities and Exchange Board of India Act, 1992, Securities Contracts (Regulation) Act, 1956 and Depositories Act, 1996. (Regulation 2(1)(f))

"Governing norms" mean the governing norms of a Self Regulatory Organization made in accordance with sub-regulation (1) of regulation 15. (Regulation 2(1)(g))

"Intermediary" means any person who is registered with the Board under section 12 of the Act. (Regulation 2(1)(h))

"Member" means an intermediary who has been admitted as a member of a Self Regulatory Organization and includes an agent who has been so admitted. (Regulation 2(1)(i))

"Office bearer" in relation to a Self Regulatory Organization means its Chairman, Managing Director, any whole time director or Chief Executive

Officer, by whatever name called, and includes any person named as such by the Self Regulatory Organization in its application for grant or renewal of recognition made under these regulations. (Regulation 2(1)(j))

Recognition of Self Regulatory Organization

Regulation 3 provides that any group or association of intermediaries, which is desirous of being recognized as a Self Regulatory Organization, may form a company under section 25 of the Companies Act, 1956 and such company may make an application to the SEBI for grant of certificate of recognition as a Self Regulatory Organization.

Every application made by such company must contain such particulars as may be specified and is to be accompanied by a copy of the governing norms of Self Regulatory Organization and also a copy of the memorandum and articles of association relating in general to the constitution of the Self Regulatory Organization and in particular, to –

a. Board of Directors of Self Regulatory Organization, its constitution and powers of management and the manner in which its business would be transacted;
b. the powers and duties of the office bearers of Self Regulatory Organization;
c. the admission into the Self Regulatory Organization of members, agents, their qualifications for membership, and the exclusion, suspension, expulsion and readmission of members therefrom or there into;

The application is to be signed on behalf of the applicant under authority of its Board of Directors by its Chairman, Managing Director, Chief Executive Officer or whole time director. The application is to be made in Form A of the first schedule and is to be accompanied by a non-refundable application fee, as specified in Part A of the second schedule, to be paid in the manner specified in Part B thereof.

Eligibility criteria

Regulation 4 provides the following criteria to be fulfilled by an association seeking registration under these regulations:-

a. the applicant should have been granted license under section 25 of Companies Act, 1956;
b. the memorandum of association, should specify admission of members and discharging the functions of Self Regulatory Organization as one of its main objects;
c. the applicant should have a minimum networth of one crore rupees;
d. the applicant is to have adequate infrastructure, to enable it to discharge its functions as a Self Regulatory Organization in accordance with the provisions of the Act and these regulations;
e. the directors have the professional competence, financial soundness and general reputation of fairness and integrity to the satisfaction of the Board;
f. neither the applicant, nor any director of the applicant is involved in any legal proceeding connected with the securities market, which may have an adverse impact on the interests of the investors;
g. neither the applicant, nor any director has at any time in the past been convicted of any offence involving moral turpitude or any economic offence;
h. the applicant has, in its employment, persons having adequate professional

and other relevant experience to the satisfaction of the Board;

i. the applicant, in all other respects, is a fit and proper person for the grant of a certificate;
j. grant of certificate to the applicant is in the interest of investors and the securities market.

Grant of recognition as a Self Regulatory Organization

If SEBI is satisfied under Regulation 5, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require,—

a. that the articles and governing norms of the applicant applying for recognition are in conformity with such conditions as may be specified by the Board;
b. that the applicant is willing to comply with any other conditions which the Board may impose for the purpose of carrying out the objects of these Regulations; and,
c. that it would be in the interest of the trade and also in the public interest to grant recognition to the applicant as a Self Regulatory Organization;

the Board may grant certificate of recognition to the applicant as a Self Regulatory Organization in Form B1 of the First Schedule subject to such terms and conditions as the Board may deem fit and appropriate.

Regulation 5(2) empowers the Board to specify any conditions for the grant of recognition to the applicant as a Self Regulatory Organization. Such conditions may relate to—

i. the qualification for membership of the Self Regulatory Organization;
ii. the representation of the Board in the Board of Directors of the Self Regulatory Organization by such number of directors not exceeding four as the Board may nominate in this behalf; and
iii. the maintenance of accounts of members and their audit by chartered accountants whenever such audit is required by the Board.

The Self Regulatory Organization cannot amend its articles without the prior written approval of the Board.

Application to conform to the requirements

Regulation 6 provides that any application for a certificate, which is not complete in all respects or does not conform to the requirements of these regulations and particularly regulations 3, 4 and 5 or instructions specified in Form A shall be rejected by the Board. However, before rejecting any such application, the Board shall give an opportunity to the applicant to remove such objections as may be indicated by the Board, within 30 days of the date of receipt of relevant communication, from the Board. On sufficient cause being shown, the Board may extend the time for removal of objections by such further time, not exceeding 30 days as it may consider fit, to enable the applicant to remove such objections.

Furnishing of information, clarification and personal representation

SEBI may under Regulation 7 require the applicant to furnish such further information or clarification as it may consider necessary for the purpose of processing of the application. It may also require the applicant to appear before it through an authorized representative for personal representation in

connection with the grant of a certificate of recognition.

Conditions of certificate and validity period

As provided under Regulation 8 the certificate granted under regulation 5 is valid for a period of five years, and subject to the following conditions, namely: -

a. the applicant shall comply with the provisions of the Act, applicable regulations and guidelines, directions or circulars issued by the Board from time to time;
b. any information or particulars furnished to the Board by the applicant shall not be false or misleading in any material respect;
c. where any material information or particulars furnished to the Board by the applicant, in or in connection with the application for recognition, has undergone change subsequent to its furnishing, the applicant shall forthwith inform the fact to the Board in writing.

Renewal of certificate

Regulation 9 provides that an application for renewal of Certificate of Recognition shall make an application to the Board in Form A of the First Schedule. Such application shall be made not less than three months before expiry of the period of validity of the certificate. The application shall be accompanied by a renewal fee as specified in the second schedule and, as far as may be, shall be dealt with in the same manner as if it were an application for the grant of a fresh certificate under regulation 3.

SEBI, if satisfied may renew the certificate in Form B2 of the First Schedule subject to such terms and conditions as it may deem fit and appropriate.

Procedure where certificate is not granted

Regulation 10 provides that if, after considering an application made under regulation 3 or regulation 9, as the case may be, the Board is of the opinion that a certificate should not be granted or renewed, it may, after giving the applicant a reasonable opportunity of being heard, reject the application within a period of thirty days of receipt of such application complete in all respects or within thirty days of receipt of further information or clarification sought under regulation 7. The fact of the rejection of the application shall be communicated to the applicant forthwith stating the grounds for such rejection.

Effect of refusal to grant certificate

Regulation 11 provides that an applicant whose application for the grant of a certificate has been rejected shall not undertake any activity as Self Regulatory Organization. Similarly, a Self Regulatory Organization whose application for the renewal of certificate has been rejected by the Board shall on and from the date of the receipt of the communication of rejection from the Board cease to carry on any activity as Self Regulatory Organization.

If SEBI is satisfied that it is in the interests of investors to do so, it may permit Self Regulatory Organization to complete the functions or obligations already initiated or undertaken by it during the pendency of the application or during the period of validity of the certificate. In order to protect the interests of investors, the Board may issue directions with regard to the transfer of records, documents or reports relating to the functions of the Self Regulatory Organization, whose application for the grant or renewal of a certificate has

been rejected. Further, the Board may, appoint any person to take charge of the records, documents or reports relating to the organization and also determine the terms and conditions of such appointment.

Composition of Board of Directors

Regulation 12 of Chapter III of the Regulations provides that the Articles of Association of a Self Regulatory Organization shall provide for the following: -

a. There shall be a Board of Directors of the Self Regulatory Organization and majority of directors shall be independent directors.
b. The independent directors shall not be required to hold any qualification shares.
c. The Board of Directors shall consist of nine directors out of which five directors shall be nominated by the Board and the remaining four shall be elected by the members of the Self Regulatory Organization.
d. The General Superintendence, direction and management of the affairs of the Self Regulatory Organization shall vest in its Board of Directors, which may exercise all powers and do all acts and things which may be exercised or done by the Self Regulatory Organization.
e. There shall be a Chairman, who shall be an independent professional, appointed by Board of Directors, with the prior approval of the Board.
f. The Chairman shall be responsible for day-to-day administration of Self Regulatory Organization and implementing the decisions of Board of Directors.
g. The Board of Directors may establish committees including disciplinary committee, screening committee, arbitration committee or remuneration committee in order to carry out the purposes of these regulations. It has been provided that the committees constituted under this regulation may consist wholly of other persons or partly of directors and partly of other persons. The majority of members of each such committee shall be independent.
h. The office bearers of Board of Directors shall relinquish their office, when the Board passes an order under clause (c) of sub-section (4) of section 11 of the Act.
i. The Board of Directors of the Self Regulatory Organization shall be reconstituted as and when required by the Board.

Membership of Self Regulatory Organization

As per Regulation 13 any application for registration or renewal of registration as an intermediary with the Board under the respective regulations applicable to such intermediaries, shall in case of any applicant who is a member of a Self Regulatory Organization or who ought to be a member of a Self Regulatory Organization, be made only through the Self Regulatory Organization of which he is a member, in the specified manner. The application is to be forwarded by the Self Regulatory Organization to the Board along with its recommendation for grant or refusal of certificate of registration not later than 30 days from the date of its receipt. The Self Regulatory Organization is also required to give the reasons for its recommendation either for granting certificate of recognition or for refusal of certificate of registration by the Board.

Functions and Obligations of Self Regulatory Organization

As per Regulation 14, a Self Regulatory Organization shall always abide by the directions of the Board. It shall be responsible for investor protection and education of investors or its members and shall ensure observance of Securities Laws by its members. It is required to specify standard of conduct for its members and also shall be responsible for the implementation of the same by its members. The SRO is required to conduct inspection and audit of its members, on regular basis, through independent auditors. The Annual Report of the SRO is to be submitted to the Board. The SRO shall treat all its members and the applications for membership in a fair and transparent manner. The SRO may collect admission and membership fees from its members for carrying out the purposes of these regulations. The Board is to be promptly informed of violations of the provisions of the Act, the rules, the regulations, the directions, the circulars or the guidelines by any of its members. The SRO is required to conduct screening and certification tests for its members, agents and such other persons as it may determine. The SRO is to conduct training programmes for its members or agents and also conduct awareness programmes for securities market investors. The SRO is required to make endeavors for introduction of best business practices amongst its members. If must act in utmost good faith and must avoid conflict of interest in the conduct of its functions. The SRO must comply with the norms of corporate governance as applicable to listed companies. It may discharge such other functions and obligations as may be specified by the Board, from time to time.

Governing norms of Self Regulatory Organization

Regulation 15 provides that a Self Regulatory Organization may, subject to the previous approval of the Board, make governing norms and articles consistent with the provisions of the Act and these regulations. In particular, and without prejudice to the generality of the foregoing power, the governing norms or articles may provide for:

i. eligibility criteria for admission and removal of members from Self Regulatory Organization;
ii. manner and the periodicity of furnishing information to the Board and to its members;
iii. arbitration mechanism for resolving disputes between members and / or between members and their constituents;
iv. procedure for proceeding against the member committing breach of the governing norms or articles including provisions for suspension or expulsion of members from the Self Regulatory Organization;
v. internal control standards including procedure for inspection, auditing, reviewing, monitoring and surveillance of its members by Self Regulatory Organization;
vi. code of conduct specifying standards for its members in the conduct of business;
vii. procedure for conduct of election of the office bearers and members of the committees;
viii. obligation of members to supply such information or explanation and to

produce such documents relating to the business as Board of Directors may require;

ix. manner of disciplinary action against its members by Self Regulatory Organization;
x. contents and format of the annual report;
xi. procedure for conduct of the meetings, quorum etc. of Board of Directors;
xii. manner of maintaining accounts or records of the Self Regulatory Organization; and,
xiii. reporting requirements to the Board on monthly basis about various aspects of its functioning including policy initiatives, progress in certification, number of members admitted and disciplinary action taken against members, if any.

The governing norms or articles must provide that the contravention of any of the governing norms shall render the member of Self Regulatory Organization concerned liable to one or more of the following punishments, namely:-

i. forfeiture of shares;
ii. expulsion from membership;
iii. suspension from membership for a specified period;
iv. any other penalty of a like nature not involving the payment of money.

Where the Board considers it expedient so to do, it may, by order in writing, direct a Self Regulatory Organization to make any governing norms or to amend or revoke any of them within such period as it may specify in this behalf. If a Self Regulatory Organization fails or neglects to comply with such order within the specified period, the Board may make, amend or revoke the governing norms either in the form specified in the order or with such modifications as the Board may think fit.

SEBI's right to inspect

Regulation 16 of Chapter IV provides that where it appears to the Board so to do, it may appoint one or more persons as inspecting authority to undertake inspection of the books of accounts, other records and documents of the Self Regulatory Organization for any of the following purposes:

a. to ensure that the provisions of the Act, the regulations, the directions and the circulars issued by the Board are being complied with;
b. to inquire into the complaints received from members, investors, or any other person on any matter having a bearing on the activities of the Self Regulatory Organization; or,
c. to inquire suo motu, in the interest of securities business or investors' interest, into the affairs of the Self Regulatory Organization.

Procedure for inspection

Regulation 17 provides that before undertaking any inspection under regulation 16, the Board shall give a reasonable notice to the Self Regulatory Organization for that purpose. Where the Board is satisfied that in the interest of the investors or in public interest, no such notice should be given, it may by an order in writing, direct that the inspection of the affairs of the Self Regulatory Organization be taken up without such notice. The inspecting authority shall undertake the inspection and the Self Regulatory Organization against whom an inspection is being carried out and shall be bound to

discharge its obligations as provided under regulation 18.

Obligations of Self Regulatory Organization on inspection by the Board

As provided under Regulation 18, it shall be the duty of the Chairman, every Director, officer and employee of the Self Regulatory Organization, who is being inspected to produce to the inspecting authority or to any person authorized by him, such books, accounts and other documents in their custody or control and furnish to the Board the statements and information relating to the activities of Self Regulatory Organization in securities market within such time as the Board may require. The SRO shall allow the inspecting authority or any person authorized by him to have reasonable access to the premises occupied by the SRO or by any other person on its behalf and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the SRO or any other person and also provide copies of documents or other materials which, in the opinion of the inspecting authority are relevant.

The inspecting authority in the course of inspection shall be entitled to examine or record statements of the Chairman, Director, any member and employee of the Self Regulatory Organization. It is the duty of the Chairman, every Director, officer and employee of the SRO to give to the inspecting authority all assistance in connection with the inspection, which the SRO may reasonably be expected to give.

Submission of report to the Board

Regulation 19 provides for the submission of the report to the Board by the inspecting authority shall, as soon as possible, submit an inspection report to the Board.

Appointment of auditor

Under Regulation 20 the Board may appoint a qualified auditor to inspect the books of account or the affairs of the Self Regulatory Organization. The auditor so appointed shall have the same powers of the inspecting authority as mentioned in regulation 16 and the obligations of Self Regulatory Organization mentioned in regulation 18 shall be applicable to an inspection under this regulation. The Board is entitled to recover the expenses of such audit or inspection as may be incurred by it, including fees paid to the auditors, from the concerned Self Regulatory Organization.

Periodical returns or direct inquiries

Regulation 21 provides that every Self Regulatory Organization is required to furnish to the Board such periodical returns relating to its affairs as may be specified. The SRO and every member thereof shall maintain and preserve for such periods such books of account and other documents as the Board after consultation with Board of Directors of SRO concerned, may specify in the interests of the trade or in the public interest and such books of account and other documents shall be subject to inspection at all reasonable times by the Board. If the Board is satisfied that it is in the interests of the trade or in the public interest so to do, it may, by order, in writing,—

a. call upon Board of Directors of a Self Regulatory Organization or any member thereof to furnish in writing such information or explanation relating to the affairs of the Self Regulatory Organization or of the member

in relation to the Self Regulatory Organization as the Board may require; or

b. appoint one or more persons to make an inquiry in the prescribed manner in relation to the affairs of a Self Regulatory Organization or the affairs of any members of the Self Regulatory Organization in relation to the Self Regulatory Organization and submit a report of the result of such inquiry to the Board within such time as may be specified in the order or, in the case of inquiry in relation to the affairs of any of the members of a Self Regulatory Organization direct Board of Directors to make the inquiry and submit its report to the Board.

Where an inquiry in relation to the affairs of a Self Regulatory Organization or the affairs of any of its members in relation to the SRO has been undertaken the Chairman, every director, manager, secretary, or other officer, every member of the Self Regulatory Organization (if the member of the Self Regulatory Organization is a firm, every partner, manager, secretary or other officer of the firm) and, every other person or body of persons who has had dealings in the course of business with any of the members or officers of the SRO whether directly or indirectly; shall be bound to produce before the authority making the inquiry all such books of account, and other documents in his custody or power relating to or having a bearing on the subject matter of such inquiry and also furnish to the authority such statement or information as he may require within such time as may be specified by him.

Obligation of Board of Directors to take disciplinary action against a member if so directed by the Board

Regulation 22 of Chapter V provides that after receiving the report of an enquiry made under regulation 21, the Board may take such action as it deems proper and, in particular, may direct Board of Directors of the Self Regulatory Organization to take such disciplinary action against the delinquent member, including expulsion, suspension or any other penalty of a like nature not involving the levy of monetary penalty, as may be specified by it and thereupon, notwithstanding anything to the contrary contained in the articles or governing norms of the Self Regulatory Organization concerned, the Board of Directors of the Self Regulatory Organization shall give effect to the directions of the Board and shall not in any manner commute, revoke or modify the action taken in pursuance of such directions, without the prior written approval of the Board.

The Board may either on its own motion or on representation of the member concerned, modify or withdraw any of its directions issued under sub-regulation (1), if it is satisfied that there are sufficient grounds for doing so.

Withdrawal of recognition

Regulation 23 provides that if the Board is of the opinion that the recognition granted to a Self Regulatory Organization under the provisions of these Regulations should, in the interest of the trade or in the public interest, be withdrawn, it may serve a written notice in Form "C" on Board of Directors of the Self Regulatory Organization calling upon it to show cause as to why the recognition should not be withdrawn for the reasons stated in the notice. Where such notice is issued, the Board may, after giving an opportunity to Board of Directors of the Self Regulatory Organization to be heard in the

matter, withdraw, by passing an order, the recognition granted to the Self Regulatory Organization and thereupon the provisions of regulation 11 would apply as if the application of the Self Regulatory Organization for renewal of recognition has been rejected under regulation 10.

The Board shall promptly communicate such order to the concerned Self Regulatory Organization. On receipt of the order, the Self Regulatory Organization shall cease to carry on any activity as a Self Regulatory Organization and shall comply with such directions as may be issued by the Board.

Action in case of violation

It has been provided under Regulation 24 that if any Self Regulatory Organization, any office bearer or member thereof violates any provisions of the Act or these regulations, it may be liable for –

a. action under Chapter VIA of the Act;
b. action under subsection (3) of section 12 of the Act;
c. action under subsection (4) of section 11 and section 11B of the Act;
d. action under section 24 of the Act;
e. such other action permissible under the Act which may be deemed appropriate in the facts and circumstances of the case.

IV. GUIDELINES ON ANTI MONEY LAUNDERING MEASURES

The Prevention of Money Laundering Act, 2002 (PMLA) has been brought into force with effect from 1st July 2005. Necessary Notifications / Rules under the said Act have been published in the Gazette of India on 1st July 2005 by the Department of Revenue, Ministry of Finance, Government of India.

As per the provisions of the Act, every banking company, financial institution (which includes chit fund company, a co-operative bank, a housing finance institution and a non-banking financial company) and intermediary (which includes a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992) shall have to maintain a record of all the transactions; the nature and value of which has been prescribed in the Rules notified under the PMLA. Such transactions include:

— All cash transactions of the value of more than Rs 10 lakhs or its equivalent in foreign currency.

— All series of cash transactions integrally connected to each other which have been valued below Rs 10 lakhs or its equivalent in foreign currency where such series of transactions take place within one calendar month.

— All suspicious transactions whether or not made in cash.

SEBI has laid down the minimum requirements / disclosures to be made in respect of clients. The intermediaries are required to specify additional disclosures to be made by clients to address concerns of Money Laundering and suspicious transactions undertaken by clients, according to their requirements.

All intermediaries are advised to ensure that a proper policy framework as per the Guidelines on anti-money laundering measures is put into place within one

month from the date of the circular. The intermediaries are also reqired to designate an officer as ‘Principal Officer’ who would be responsible for ensuring compliance of the provisions of the PMLA. .

Obligations of Intermediaries under Prevention of Money Laundering Act, 2002

Section 12 of the Prevention of Money Laundering Act, 2002 lays down following obligations on an intermediary:

1. Every banking company, financial institution and intermediary shall—
   A. maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month;
   B. furnish information of transactions referred to in clause (a) to the Director within such time as may be prescribed;
   C. verify and maintain the records of the identity of all its clients, in such a manner as may be prescribed.

Provided that where the principal officer of an Intermediary or financial institution or intermediary, as the case may has reason to believe that a single transaction or series of transactions integrally connected to each other have been valued below the prescribed limit so as to defeat the provisions of this section, such officer shall furnish information in respect of such transactions to the Director within the prescribed time

Cash Transaction Report

The Prevention of Money Laundering Act, 2002 and the Rules thereunder require every intermediary to furnish details of the following cash transactions:

A. All cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency.
B. All series of cash transactions integrally connected to each other which have been valued below rupees ten lakhs or its equivalent in foreign currency where such series of transactions have taken place within a month.

Cash Transaction Reports can be filed either in manual or electronic format. However, a reporting agency must submit all reports to FIU-IND in electronic format if it has the technical capability to do so. The required technical capability is defined as follows:

i. A personal computer with 32 MB memory RAM, 800 x 600 VGA video display, Windows® 98/Me/NT/2000/XP; and
ii. An Internet connection.

It must be noted that every intermediary has to ensure reporting by all its branches/franchisees either in manual or electronic format. Thus, an Intermediary has to adopt only one format for all its branches/franchisees.

Suspicious Transaction Report

The Prevention of Money Laundering Act, 2002 and the Rules notified thereunder require every intermediary to furnish details of suspicious transactions whether or not made in cash. Suspicious transaction means a transaction whether or not made in cash which, to a person acting in good faith –

a. gives rise to a reasonable ground of suspicion that it may involve the proceeds of crime; or
b. appears to be made in circumstances of unusual or unjustified complexity; or
c. appears to have no economic rationale or bonafide purpose.

Broad categories of reason for suspicion and examples of suspicious transactions for an intermediary are indicated as under:

Identity of Client

— False identification documents
— Identification documents which could not be verified within reasonable time
— Non-face to face client
— Doubt over the real beneficiary of the account
— Accounts opened with names very close to other established business entities

Suspicious Background

— Suspicious background or links with known criminals

Multiple Accounts

— Large number of accounts having a common account holder, introducer or authorized signatory with no rationale
— Unexplained transfers between multiple accounts with no rationale

Activity in Accounts

— Unusual activity compared to past transactions
— Use of different accounts by client alternatively
— Sudden activity in dormant accounts
— Activity inconsistent with what would be expected from declared business
— Account used for circular trading

Nature of Transactions

— Unusual or unjustified complexity
— No economic rationale or bonafide purpose
— Source of funds are doubtful
— Appears to be case of insider trading
— Investment proceeds transferred to a third party
— Transactions reflect likely market manipulations
— Suspicious off market transactions

Value of Transactions

— Value just under the reporting threshold amount in an apparent attempt to avoid reporting
— Large sums being transferred from overseas for making payments
— Inconsistent with the clients apparent financial standing
— Inconsistency in the payment pattern by client
— Block deal which is not at market price or prices appear to be artificially inflated/deflated

Suspicious Transaction Reports can be filed either in manual or electronic format. However, a reporting agency must submit all reports to FIU-IND in electronic format if it has the technical capability to do so. The required

technical capability is defined as follows:

iii. A personal computer with 32 MB memory RAM, 800 x 600 VGA video display, Windows® 98/Me/NT/2000; and
iv. An Internet connection.

SEBI vide its Circular No. ISD/CIR/RR/AML/1/06 dated January 18, 2006 requires every intermediary registered under section 12 of the Securities and Exchange Board of India Act, 1992) to maintain a record of all the transactions; the nature and value of which has been prescribed in the Rules notified under the Prevention of Money Laundering Act. Such transactions include:

— All cash transactions of the value of more than Rs. 10 lakhs or its equivalent in foreign currency.

— All series of cash transactions integrally connected to each other which have been valued below Rs. 10 lakhs or its equivalent in foreign currency where such series of transactions take place within one calendar month.

— All suspicious transactions whether or not made in cash.

Further, all intermediaries are advised to ensure that a proper policy framework as per the Guidelines on anti-money laundering measures is put into place within one month from the date of the circular. The intermediaries are also advised to designate an officer as 'Principal Officer' who would be responsible for ensuring compliance of the provisions of the PMLA. Names, designation and addresses (including e-mail addresses) of 'Principal Officer' shall also be intimated to the Office of the Director-FIU, 6th Floor, Hotel Samrat, Chanakyapuri, New Delhi-110021, India on an immediate basis. Each registered intermediary should adopt written procedures to implement the anti money laundering provisions as envisaged under the Anti Money Laundering Act, 2002. Such procedures should include *inter alia*, the following three specific parameters which are related to the overall 'Client Due Diligence Process':

a. Policy for acceptance of clients
b. Procedure for identifying the clients
c. Transaction monitoring and reporting especially Suspicious Transactions Reporting (STR)

Client identification procedure

The 'Know your Client' (KYC) policy should clearly spell out the client identification procedure to be carried out at different stages i.e. while establishing the intermediary – client relationship, while carrying out transactions for the client or when the intermediary has doubts regarding the veracity or the adequacy of previously obtained client identification data. SEBI has prescribed the minimum requirements relating to KYC for certain class of the registered intermediaries from time to time. Taking into account the basic principles enshrined in the KYC norms which have already been prescribed or which may be prescribed by SEBI from time to time, all registered intermediaries should frame their own internal guidelines based on their experience in dealing with their clients and legal requirements as per the established practices. Further, the intermediary should also maintain continuous familiarity and follow-up where it notices inconsistencies in the

information provided. The underlying principle should be to follow the principles enshrined in the PML Act, 2002 as well as the SEBI Act, 1992 so that the intermediary is aware of the clients on whose behalf it is dealing.

Information to be maintained

Trading Members are required to maintain and preserve the following information in respect of transactions mentioned above.

i. the nature of the transactions;
ii. the amount of the transaction and the currency in which it was denominated;
iii. the date on which the transaction was conducted; and
iv. the parties to the transaction.

Maintenance and Preservation of records

The Trading Members are required to take appropriate steps to evolve an internal mechanism for proper maintenance and preservation of such records and information in a manner that allows easy and quick retrieval of data as and when requested by the competent authorities. Further, the records have to be maintained and preserved for a period of ten years from the date of cessation of the transactions between the client and trading member.

Trading Members are required to formulate and implement the client identification program containing the requirements as laid down in Rule 9 and such other additional requirements that it considers appropriate. The records of the identity of clients have to be maintained and preserved for a period of ten years from the date of cessation of the transactions between the client and trading member.

Reporting to Financial Intelligence Unit-India

In terms of the PMLA rules, trading members are required to report information relating to cash and suspicious transactions to the Director, Financial Intelligence Unit-India (FIU-IND) at the following address:

Director, FIU-IND,
Financial Intelligence Unit-India,
6th Floor, Hotel Samrat,
Chanakyapuri,
New Delhi-110021.

The Trading Members are required to adhere to the following:

a. The cash transaction report (CTR) (wherever applicable) for each month should be submitted to FIU-IND by 15th of the succeeding month.
b. The Suspicious Transaction Report (STR) should be submitted within 7 days of arriving at a conclusion that any transaction, whether cash or non-cash, or a series of transactions integrally connected are of suspicious nature. The Principal Officer should record his reasons for treating any transaction or a series of transactions as suspicious. It should be ensured that there is no undue delay in arriving at such a conclusion.
c. The Principal Officer is responsible for timely submission of CTR and STR to FIU-IND;
d. Utmost confidentiality is to be maintained in filing of CTR and STR to FIU-IND. The reports may be transmitted by speed/registered post/fax at the notified address.

The Trading Member should not put any restrictions on operations in the accounts where an STR has been made. Further, it should be ensured that there is no tipping off to the client at any level.

V. SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 – AN OVERVIEW

The term "enquiry" under the Regulations means an enquiry held under these regulations; and"enquiry officer" means an officer of the Board, not below the rank of Assistant General Manager or Assistant Legal Advisor, appointed by the Chairman or a member designated in this behalf to conduct enquiry and pass an order under these regulations.

The expression "intermediary" as defined in the Regulations 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.

"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.

Procedure for holding enquiry

Regulation 3 of the Regulations provide that no order under these regulations can be passed except after holding an enquiry by the enquiry officer. As per Regulation 4 an enquiry for the purpose of passing an order under these regulations may be held for contravention of any of the provisions of the following regulations, as amended from time to time—

a. SEBI (Stock-brokers and Sub-brokers) Regulations, 1992;
b. SEBI (Insider Trading) Regulations, 1992;
c. SEBI (Merchant Bankers) Regulations, 1992;
d. SEBI (Portfolio Managers) Regulations, 1993;
e. SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993;
f. SEBI (Underwriters) Regulations, 1993;
g. SEBI (Debenture Trustees) Regulations, 1993;
h. SEBI (Bankers to an Issue) Regulations, 1994;
i. SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995;
j. SEBI (Foreign Institutional Investors) Regulations, 1995;
k. SEBI (Custodian of Securities) Regulations, 1996;
l. SEBI (Depositories and Participants) Regulations, 1996;
m. SEBI (Venture Capital Funds) Regulations, 1996;
n. SEBI (Mutual Funds) Regulations, 1996;
o. SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997;
p. SEBI (Buy-Back of Securities) Regulations, 1998;
q. SEBI (Credit Rating Agencies) Regulations, 1999;
r. SEBI (Collective Investment Schemes) Regulations, 1999;
s. SEBI (Foreign Venture Capital Investors) Regulations, 2000.

Appointment of enquiry officer

Regulation 5 provides that 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.
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.
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 can be appointed as an enquiry officer.

Issuance of notice

Regulation 6(1) of the Regulations provide that 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.
Sub-regulation (2) to the Regulation 6 provides that there shall be annexed to the notice issued under sub-regulation (1) copies of documents relied on by SEBI and extracts of relevant portions of documents containing the findings arrived at in any investigation or inspection held by SEBI in respect of the alleged contravention.
The notice under sub-regulation (1) requires the intermediary to submit within a period to be specified in the notice, not exceeding twenty-one days, a written statement, if any, and to specify whether he desires to be heard in person.
The enquiry officer may extend the time for sufficient reasons to be recorded in writing.

Manner of service of notice

Regulation 7 provides that the notice referred to in regulation 6 is required to be served in the manner specified in regulation 22.
Regulation 22 proivides that 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 SEBI by registered post acknowledgement due or by speed post or by such courier service as may be approved by SEBI. If a notice cannot be served in the manner referred to in sub-regulation (1), the same can 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. In case of a stock broker, the notice is required to be served through the concerned stock exchange.

Reply by intermediary

The intermediary to whom the notice under regulation 6 has been issued may submit 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.The enquiry officer may, for sufficient reasons to be recorded in writing, extend the period to submit written statement.

Notice of hearing

Regulation 9 provides that 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.

***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 parte with the enquiry after recording the reasons and pass appropriate order on merits based on the material facts before him.

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.

No legal practitioner is 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.

Presenting officer

Regulation 12 (1) provides that the Chairman or a member designated in this behalf may appoint a presenting officer in an enquiry. The enquiry officer, if he considers it necessary, may advise SEBI 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.

Penalty

The enquiry officer, after considering the written statement and the oral submissions, if any, of the intermediary and the provisions of the relevant Regulations, would 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. censure;
    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;
    v. debarring a branch or an office of the intermediary from carrying out the activities for a period upto six months.
b. Major penalties—
    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.

On receipt of the report from the enquiry officer, the Chairman or the member, as the case may be, may consider the same and issue a show-cause notice to the intermediary enclosing therewith a copy of the report of the enquiry officer as to why the action as it considers appropriate should not be taken. The intermediary may within fifteen days of the date of the receipt of the show-cause notice send a reply to the Chairman or the member, as the case may be.

The Chairman or the member, as the case may be, shall after considering the reply to the show-cause notice, if received, pass such order as he may deems 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. The date of the receipt of reply of the intermediary includes the date on which the intermediary makes oral submissions in a hearing before the Chairman or Members, if granted by him.

SEBI or the member may 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 15I 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 regulation 13(1).

Regulation 13(7) provides that every order passed under sub-regulation (4) shall be dated and signed by the Chairman or the member, as the case may be.

Intimation of the order

Regulation 14(1) provides that a copy of the order passed under sub-regulation (4) of regulation 13 shall be sent to the intermediary and 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

Regulation 15 of the Regulations provides that 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, being a sub-broker ceases to be a sub-broker consequent upon the stock broker with whom it is affiliated ceasing to be a stock broker due to declaration as defaulter or suspension or cancellation of certificate of registration of the stock broker.
e. such intermediary fails to obey an order of any adjudication officer imposing a penalty under section 15I of the Act;
f. such intermediary fails to submit documents or records to the Board within the time stipulated by the Board;
g. such intermediary fails to issue contract notes or to enter into agreement as required under the provisions of the relevant Regulations;
h. such intermediary does not satisfy the capital adequacy norms as specified in the relevant Regulations;
i. 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;
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:

It has also been provided in the Regulations that no action shall be taken against an intermediary without giving an opportunity of making representation to such intermediary.

Procedure

As per Regulation 16(1), the Chairman or a member may appoint an officer of the Board, not below the rank of Assistant General Manager or Assistant Legal Advisor for giving his recommendation after following the summary procedure in respect of any matter specified in regulation 15.

In respect of any matter specified under Regulation 15, if a representation is received from an intermediary to dispense with the procedure laid down in Regulation 16, the chairman or the member may not appoint an officer of the Board under this sub-regulation and pass an appropriate order after considering the representation of the intermediary.

The officer may 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, not exceeding fifteen days after the receipt of the notice, as may be specified in the notice. It has been provided that the enquiry officer may extend the time for sufficient reasons to be recorded in writing. 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.

However 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.

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

The Chairman or the member may pass a common order in respect of a member of intermediaries where the subject matter in question is substantially the same or similar in nature.

Publication of order

Regulation 17 provides that SEBI would 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 also put the order on the website of the Board.

Effect of debarment, suspension and cancellation order

Regulation 19(1) further provides that on and from the date of debarment or 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 SEBI 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. Sub Regulation (2) further provides that 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 SEBI 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.

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 SEBI Act.

LESSON ROUND-UP

- Capital market intermediaries are a vital link between the regulators, issuers and investor.
- The market intermediaries are involved in the primary market include Merchant Bankers/Lead Managers, Registrars and Transfer Agents, Underwriters, Bankers to issue, Debenture Trustees.
- Merchant Banker’ means any person engaged in the business of issue management by making arrangements regarding selling buying or subscribing to securities or acting as manager/consultant/advisor or rendering corporate advisory services in relation to such issue management.
- The Registrars to an Issue and Share Transfer Agents constitute an important category of intermediaries in the primary market. They render very useful services in mobilising new capital and facilitating proper records of the details of the investors, so that the basis for allotment could be decided and allotment ensured as per SEBI Guidelines.

- Underwriter means a person who engages in the business of underwriting of an issue of securities of a body corporate.
- Banker to an Issue means a scheduled bank carrying on all or any of the following activities:
  - Acceptance of application and application monies;
  - Acceptance of allotment or call monies;
  - Refund of application monies;
  - Payment of dividend or interest warrants.
- Debenture Trustee means a trustee of a trust deed for securing any issue of debentures of a body corporate.
- Stock brokers, sub-brokers, portfolio managers, custodians, share transfer agents constitute the important intermediaries in the Secondary market.
- A stock broker plays a very important role in the secondary market helping both the seller and the buyer of the securities to enter into a transaction.
- A sub-broker is one who works along with the main broker and is not directly registered with the stock exchange as a member. He acts on behalf of the stock broker as an agent or otherwise for assisting the investors in buying, selling or dealing in securities through such stock brokers.
- Portfolio manager means any person who pursuant to contract or arrangement with the client, advises or directs or undertakes on behalf of the client (whether as a discretionary portfolio manager or otherwise) the management or administration of a portfolio of securities or the funds of the clients as the case may be.
- “Discretionary portfolio manager” is defined as one who exercises or may exercise, under a contract relating to portfolio management, any degree of discretion as to the investment or the management of the portfolio of the securities or the funds of the client. “Portfolio” means the total holdings of securities belonging to a person.
- Every Portfolio manager is required to appoint a Practising Company Secretary or a Practising Chartered Accountant for conducting the internal audit.
- Custodian of securities means any person who carries on or proposes to carry on the business of providing custodial services.
- "Foreign Institutional Investor" means an institution established or incorporated outside India which proposes to make investment in India in securities.
- A listed company is required to appoint a compliance officer to directly liaise with SEBI in regard to implementation/ compliance of the various laws, rules and regulations and directives and for settlement of investors complaints. The name of the compliance officer should be intimated to SEBI and also mentioned in the offer document relating to the capital issue with details, telephone number, fax number and address of the said compliance officer.
- All intermediaries are required to appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications guidelines, instructions etc. issued by SEBI or Central Government and for redressal of investor grievances. Compliance officer is

required to immediately and independently report to SEBI, any non-compliance observed by him .

- The term "enquiry" under the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 means an enquiry held under these regulations; and "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.