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SECURITIES AND EXCHANGE BOARD OF INDIA

NOTIFICATION

Mumbai, the 30th March, 2021

SECURITIES AND EXCHANGE BOARD OF INDIA

(MERCHANT BANKERS) (AMENDMENT) REGULATIONS, 2021

No. SEBI/LAD-NRO/GN/2021/13. — In exercise of the powers conferred under Section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to amend the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992, namely: –

1. These regulations may be called the Securities and Exchange Board of India (Merchant Bankers) (Amendment) Regulations, 2021.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992,
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 - I. In regulation 2,
 - i. in clause (aa), the words and symbols “clause (7) of section 2 of the Companies Act, 1956 (1 of 1956)” shall be replaced with the words and symbols “clause (11) of section 2 of the Companies Act, 2013 (18 of 2013)”.

- ii. in clause (ad), in sub-clause (i), the words and symbols “regulation 12 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997” shall be replaced with the words and symbols “regulations framed under clause (h) of sub-section (2) of section 11 of the Act”;
 - iii. clause (f) shall be omitted;
 - iv. after clause (f), the following new clauses shall be inserted, namely—
 - “(g) “underwriter” means a person who engages in the business of underwriting of an issue of securities of a body corporate;
 - (h) “underwriting” means an agreement to subscribe to or procure subscription for securities, issued or offered for sale, remaining unsubscribed.”
- II. The regulation 2 shall be re-numbered as sub-regulation (1) thereof, and after the sub-regulation so re-numbered the following new sub-regulation shall be inserted, namely—
- “(2) Words and expressions used but not defined in these regulations shall have the same meaning as have been assigned to them under the Act or the Securities Contracts (Regulation) Act, 1956 (42 of 1956), or the Depositories Act, 1996 (22 of 1996), or the Companies Act, 2013 (18 of 2013) or any rules or regulations made thereunder or any statutory modification or re-enactment thereto, as the case may be.”
- III. In regulation 9A, in sub-regulation 1, after clause (f), the following new clause shall be inserted, namely —
- “(g) where the merchant banker is acting as an underwriter, it shall enter into a valid agreement with the body corporate on whose behalf it is acting as an underwriter and shall abide by the regulations made under the Act in respect of the activities carried on by it as underwriter.”
- IV. In regulation 14, after sub-regulation 3, the following new sub-regulation shall be inserted, namely—
- “(4) Every merchant banker acting as an underwriter shall also maintain the following records with respect to—
- (i) details of all agreements entered with a body corporate on whose behalf it is acting as an underwriter;

- (ii) total amount of securities of each body corporate subscribed to in pursuance of an agreement;
- (iii) statement of capital adequacy requirements;
- (iv) such other records as may be specified by the Board from time to time.”

V. In regulation 22, the words and symbols “Chapter XA of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009” shall be replaced with the words and symbols “Chapter VIII of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018”.

VI. After regulation 22, the following new regulations shall be inserted, namely—
“Agreement with clients.

22A. Every merchant banker acting as an underwriter shall enter into an agreement with each body corporate on whose behalf it is acting as an underwriter and the said agreement shall, amongst other things, provide for the following, namely—

- (i) the period for which the agreement shall be in force;
- (ii) the allocation of duties and responsibilities between the underwriter and the client
- (iii) the amount of underwriting obligations;
- (iv) the period, within which the underwriter has to subscribe to the issue after being intimated by or on behalf of such body corporate;
- (v) the amount of commission or brokerage payable to the underwriter;
- (vi) details of arrangements, if any, made by the underwriter for fulfilling the underwriting obligations.

General responsibilities of a merchant banker as an underwriter.

22B. (1) A merchant banker acting as an underwriter shall not derive any direct or indirect benefit from underwriting the issue other than the commission or brokerage payable under the agreement for underwriting entered with client.

(2) At any point of time, the total underwriting obligations under all the agreements shall not exceed twenty times of the net worth of the merchant banker.

(3) Every merchant banker acting as an underwriter, in the event of being called upon to subscribe for securities of a body corporate pursuant to an agreement for underwriting, shall subscribe to such securities within 45 days of the receipt of such intimation from such body corporate.”

VII. In schedule III, after clause 32, the following new clauses shall be inserted, namely—

“33. A merchant banker or any of its directors, partners or manager having the management of the whole or substantially the whole of affairs of the business, shall not either through its account or their respective accounts or through their associates or family members, relatives or friends indulge in any insider trading.

34. A merchant banker acting as an underwriter shall not make any statement, either oral or written, which would misrepresent—

(a) the services that the underwriter is capable of performing for its client, or has rendered to any other issuer company;

(b) his underwriting commitment.

35. A merchant banker acting as an underwriter shall not indulge in any unfair competition, which is likely to be harmful to the interest of other entities acting as underwriters carrying on the business of underwriting or likely to place such other underwriters in a dis-advantageous position in relation to the underwriter while competing for, or carrying out any assignment.”

AJAY TYAGI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA

Footnotes:

1. The Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992 was published in the Gazette of India on December 22, 1992 vide No. LE/11112/92.
2. The Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992 was amended -
 - i. on September 7, 1995 by the Securities and Exchange Board of India (Merchant Bankers) Amendment Regulations, 1995 vide No. SEBI/LE/1/9/95;
 - ii. on November 28, 1995 by the Securities and Exchange Board of India (Payment of Fees) Amendment Regulations, 1995 vide No. S.O. 939 (E);

- iii. on June 6, 1996 by the Securities and Exchange Board of India (Merchant Bankers) Amendment Regulations, 1996 vide SEBI/LE/III/5/96;
- iv. on December 9, 1997 by the Securities and Exchange Board of India (Merchant Bankers) Amendment Regulations, 1997 vide No. S.O. 837 (E);
- v. on December 15, 1997 by the Securities and Exchange Board of India (Merchant Bankers) Amendment Regulations, 1997 vide No. S. O. 869(E);
- vi. on January 21, 1998 by the Securities and Exchange Board of India (Merchant Bankers) Amendment Regulations, 1998 vide No. S.O. 74 (E);
- vii. on September 30, 1999 by the Securities and Exchange Board of India (Merchant Bankers) (Amendment) Regulations, 1999 vide No. S.O. 799 (E);
- viii. on November 17, 1999 by the Securities and Exchange Board of India (Merchant Bankers) (Second Amendment) Regulations, 1999 vide No. S.O. 1119 (E);
- ix. on March 28, 2000 by the Securities and Exchange Board of India (Appeal to the Securities Appellate Tribunal) (Amendment) Regulations, 2000 vide No. S.O. 278 (E);
- x. on May 29, 2001 by the Securities and Exchange Board of India (Investment Advice by Intermediaries) (Amendment) Regulations, 2001 vide No. S.O. 476 (E);
- xi. on September 27, 2002 by the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 vide No. S.O. 1045 (E);
- xii. on October 1, 2003 by the Securities and Exchange Board of India (Merchant Bankers) (Amendment) Regulations, 2003 vide No. S.O. 1154 (E);
- xiii. on March 10, 2004 by the Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004 vide S.O. No. 398(E);
- xiv. on April 18, 2006 by the Securities and Exchange Board of India (Merchant Bankers) (Amendment) Regulations, 2006 vide No. S.O. 560 (E);
- xv. on May 3, 2006 by the Securities and Exchange Board of India (Merchant Bankers) (Second Amendment) Regulations, 2006 vide No. S.O. 640 (E);
- xvi. on September 7, 2006 by the Securities and Exchange Board of India (Merchant Bankers) (Third Amendment) Regulations, 2006 vide No. S.O. 1448 (E);

- xvii. on May 28, 2007 by the Securities and Exchange Board of India (Merchant Bankers) (Amendment) Regulations, 2007 vide Notification No.11/LC/GN/2007/2517;
- xviii. on March 31, 2008 by the Securities and Exchange Board of India (Payment of Fees) (Amendment) Regulations, 2008 vide F. No. 11/LC/GN/2008/21669;
- xix. on May 26, 2008 by the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 vide Notification No. LAD-NRO/GN/2008/11/126538;
- xx. on August 26, 2009 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 vide Notification No. LAD/ NRO/GN/2009-10/15/174471;
- xxi. on April 13, 2010 by the Securities and Exchange Board of India (Merchant Bankers) (Amendment) Regulations, 2010 vide Notification No. LAD-NRO/GN/2010-11/04/1109;
- xxii. on April 19, 2011 by the Securities and Exchange Board of India (Change in Conditions of Registration of Certain Intermediaries) (Amendment) Regulations, 2011 vide Notification No. LAD/ NRO/GN/ 2011-12/03/12650;
- xxiii. on July 5, 2011 by the Securities and Exchange Board of India (Merchant Bankers) (Amendment) Regulations, 2011 vide Notification No. LAD-NRO/GN/2011-12/09/21233;
- xxiv. on August 16, 2011 by the Securities and Exchange Board of India (Merchant Bankers) (Second Amendment) Regulations, 2011 vide Notification No. LAD-NRO/GN/2011-12/17/26149;
- xxv. on March 29, 2012 by the Securities and Exchange Board of India (Merchant Bankers) (Amendment) Regulations, 2012 vide Notification No. LAD-NRO/GN/2011-12/40/7335;
- xxvi. on May 23, 2014 by the Securities and Exchange Board of India (Payment of Fees) (Amendment) Regulations, 2014 vide Notification No. LAD-NRO/GN/2014-15/03/1089;
- xxvii. on December 8, 2016 by the Securities and Exchange Board of India (Change in Conditions of Registration of Certain Intermediaries) (Amendment) Regulations, 2016 vide Notification No. SEBI/LAD/NRO/GN/ 2016-17/023;

- xxviii. on March 29, 2017 by the Securities and Exchange Board of India (Payment of Fees and Mode of Payment) (Amendment) Regulations, 2017 vide Notification No. SEBI/LAD-NRO/GN/2016-17/38;
- xxix. on April 17, 2020 by the Securities and Exchange Board of India (Regulatory Sandbox) (Amendment) Regulations, 2020 vide Notification No. SEBI/LAD-NRO/GN/2020/10.
