

CHAPTER 5

THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

PART I

Question 1

What are the default for which a stock-broker may be penalized under the provisions of Securities and Exchange Board of India Act, 1992 in respect of his dealings with the investors? State the factors that must be taken into account by the adjudicating officer while determining the quantum of penalty in such cases.
(May, 2000)

Answer

Penalty for default in case of stock brokers: Section 15F of Securities and Exchange Board of India Act, 1992 provides for penalty for default in case of stock brokers. If any person who, is registered, as a stock broker under this Act:

- (a) fails to issue contract notes in the form and in the manner specified by the stock exchange of which such broker is a member, he shall be liable to a penalty not exceeding five times the amount for which the contract note was required to be issued by that broker.
- (b) fails to deliver any security or fails to make payment of the amount due to the investor in the manner or within the period specified in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.
- (c) charges an amount of brokerage which is in excess of the brokerage specified in the regulations, he shall be liable to a penalty of one lakh rupees or five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

Factors to be taken into account by the adjudicating officer: Section 15J of SEBI Act stipulates that the following factors shall be taken into account by the adjudicating officer while adjudging the quantum of penalty:

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable as a result of the default.
- (b) the amount of loss caused to an investor or group of investors as a result of the default.

Corporate Laws and Secretarial Practice

- (c) the repetitive nature of the default.

Question 2

What provision has been made under Section 15G of the SEBI Act, 1992, in connection with penalty for insider trading?
(November, 2000)

Answer

If any insider who:

- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate on any stock exchange on the basis of any unpublished price sensitive information; or
- (ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
- (iii) counsels, or procures for, any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,

shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher. [Section 15, SEBI Act, 1992].

Question 3

A group of investors are upset with the functioning of two leading stock brokers of Calcutta Stock Exchange and want to make a complaint to SEBI for intervention and redressal of their grievances. Explain briefly the purpose of establishing SEBI and what type of defaults by the stock brokers come within the purview of SEBI Act, 1992.
(May, 2002)

Answer

The Securities and Exchange Board of India (SEBI) was established primarily for the purpose of (i) to protect the interests of investors in securities (ii) to promote the development of securities market (iii) to regulate the securities market and (iv) for matters connected therewith and incidental thereto.

The following defaults by stock brokers come within the purview of SEBI Act:

- (a) any failure on the part of the stock broker to issue contract notes in the form and in the manner specified by the Stock Exchange.
- (b) any failure on the part of the broker to deliver any security or to make payment of the amount due to the investor in the manner or within the period specified in the regulations.
- (c) any collection of charges by way of brokerage in excess of the brokerage as specified in the regulations. (Section 15 F, SEBI Act, 1992.)

The Securities and Exchange Board of India Act, 1992

Question 4

- (a) *On the complaint of Mr. Kamlesh Gupta, after enquiry SEBI finds that Mr. P. Mehta a Chief Executive Officer of the Company, on the basis of unpublished price sensitive information, has indulged in the trading of the securities of that company. Explain, on the basis of the said finding, what action can SEBI take against Mr. P. Mehra under the Securities and Exchange Board of India Act, 1992.*
- (b) *Mr. Clever who is Registered as an Intermediary fails to enter into an agreement with his client and hence penalised by SEBI under Section 15B of the SEBI Act. Advise Mr. Clever as to what remedies are available to him against the order of SEBI. (May, 2002)*

Answer

- (a) Section 15G of the Securities and Exchange Board of India (SEBI) Act, 1992 deals with penalty for Insider Trading. According to this, if any insider
- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate on any stock exchange on the basis of any unpublished price sensitive information; or
 - (ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law, or
 - (iii) counsels or procures for, any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,

shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

As such SEBI can, after following the prescribed procedure, impose a penalty on Mr. P. Mehra. The maximum penalty that SEBI can impose is Rupees twenty-five crores or three times the amount of profits made out of insider trading, whichever is higher.

(b) Remedies against SEBI order

Section 15B of the Securities and Exchange Board of India Act, 1992 lays down that if any person, who is registered as an intermediary and is required under this Act or any rules or regulations made there under, to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Mr. Clever has been penalised under the above mentioned provision. Two remedies are available to Mr. Clever in this matter :-

- (i) Appeal to the Securities Appellate Tribunal :

Section 15 T of the SEBI Act, 1992 provides that any person aggrieved by an order of the Board made, on and after the commencement of the Security Laws (Second Amendment) Act, 1999, under this Act or the rules or regulations made there under

Corporate Laws and Secretarial Practice

may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

Such appeal shall be filed within a period of 45 days from the date on which a copy of the order made by the Board is received and it shall be in such form and be accompanied by such fee as may be prescribed. However, the Tribunal may entertain an appeal after satisfied that there was sufficient cause for not filing it within the said period.

The Tribunal may, after giving the parties an opportunity of being heard, pass such orders as it thinks fit, confirming, modifying or setting aside the order appealed against.

(ii) Appeal to the High Court

Section 15 Z of the SEBI Act, 1992 provides that any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the decision or order to him on any question or fact or law arising out of such order. The High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

Question 5

SEBI received a complaint from an investor that he has not received the payment due to him from a registered stock broker. Explain the action that can be taken by SEBI against the stock broker under the provisions of Securities and Exchange Board of India Act, 1992 and the factors that will be taken into account while taking such action. (May, 2003)

Answer

The registered stock broker is liable to a penalty under section 15F of SEBI Act, 1992 in respect of certain defaults. According to section 15F (b), if a registered stock broker fails to make payment of the amount due to the investor in the manner or within the period specified in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less [SEBI (Amendment) Act, 2002].

For the purpose of adjudging under section 15 F, SEBI shall appoint any of its officers not below the rank of Division Chief to be an adjudicating officer for holding an enquiry in the prescribed manner after giving the person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty. While holding an inquiry, the adjudicating officer has certain powers laid down in Section 15I(2).

While adjudging quantum of penalty under section 15J, the adjudicating officer shall have due regard to the following factors:

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the defaults.

The Securities and Exchange Board of India Act, 1992

- (b) the amount of loss to an investor or group of investors as a result of the default.
- (c) the repetitive nature of the default.

Taking into consideration the above factors, the adjudicating officer may levy a maximum penalty as prescribed in Section 15F for default by the concern stock broker in making the payment to the investor.

Question 6

Mr. Raman, an investor is not satisfied with the dealings of his stock broker who is registered with Delhi Stock Exchange. Mr. Raman approaches you to guide him regarding the avenues available to him for making a complaint against the stock broker under Securities and Exchange Board of India Act, 1992 and also the grounds on which such complaint can be made. You are required to briefly explain the answer to his queries. (November, 2003)

Answer

Securities and Exchange Board of India (SEBI) was established for regulating the various aspects of stock market. One of its function is to register and regulate the stock brokers. In the light of this, Mr. Raman is advised that the complaint against the erring stock broker may be submitted to SEBI.

The grounds on which or the defaults for which complaints may be made to SEBI are as follows:

- (a) Any failure on the part of the stock broker to issue contract notes in the form and manner specified by the stock exchange of which the stock broker is a member.
- (b) Any failure to deliver any security or any failure to make payment of the amount due to the investor in the manner within the period specified in the regulations.
- (c) Any collection of charges by way of brokerage which is in excess of the brokerage specified in the regulations.

Question 7

Explain briefly the powers of SEBI under Securities and Exchange Board of India Act, 1992 to seize the records of a Stock broker or other Intermediaries associated with Securities Market.

(May, 2004)

Answer

Seizure of records

Section 11C was inserted by SEBI (Amendment) Act, 2002. Where SEBI has reasonable grounds to believe that (a) transactions in securities are being dealt with in a manner detrimental to the investors or securities market or (b) any intermediary or any person associated with securities has violated provisions of SEBI Act, rules, regulations or directions issued by SEBI, SEBI can appoint an investigating Authority to investigate the affairs of such intermediary/person and report matter thereon to the Board [Section 11C (1)].

Corporate Laws and Secretarial Practice

If Investigating Authority is of the opinion that the records are likely to be destroyed or mutilated or secreted or altered, he can make application to Judicial Magistrate of First Class for an order of seizure of such books, registers, other documents and record [Section 11C(8). The Magistrate can authorize Investigating Authority to enter premises search and seize records. But Magistrate will authorize seizure of records of a listed company or company intending to be listed only if it is indulging in insider trading or market manipulation [11C(9)]. The seized records will be kept by Investigating Authority till conclusion of investigation and then return it to person concerned after placing identification marks on them [11C(10)].

Question 8

SEBI received complaints from some investors alleging that ABC Ltd. And some brokers are indulging in price manipulation in the shares of ABC Ltd. Explain the powers that can be exercised by SEBI under the Securities and Exchange Board of India Act, 1992 in case the allegations are found to be correct. (May, 2006)

Answer

SEBI Act, 1992: Price manipulation in the shares of ABC Ltd. can be considered as fraudulent and unfair trade practices relating to securities market. In this case SEBI may exercise the following powers under Section 11(4) of securities and Exchange Board of India Act, 1992.

- (i) Suspend the trading of any security (in this case the securities of ABC Ltd.) in a recognized stock exchange.
- (ii) Restrain persons (in this case ABC Ltd.) from accessing the securities market. It can also prohibit any person associated with securities market (i.e. brokers who have indulged in price manipulation) to buy, sale or deal in securities market.

SEBI may issue the above orders for reasons to be recorded in writing. SEBI shall, either before or after passing such orders give an opportunity of hearing to company and brokers concerned (proviso 2 to Section 11(4))

SEBI may also appoint an adjudicating officer who may levy penalty under Section 15 HA after holding an enquiry in the prescribed manner. According to Section 15HA if any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of Rs. 25 crores or 3 times the amount of profits made out of such practices, whichever is higher.

Prohibition on manipulation and deceptive practices: Further according to Section 12A, no person shall directly or indirectly indulge in following (i.e.) (a) using in manipulative or deceptive device in connection with purchase, sale or securities listed (b) Employ any scheme or device to defraud in connection with dealing in securities which are listed (c) engage in an act which would operate as fraud on deceit upon any person in connection with dealing in securities which are listed. SEBI may impose penalty upto Rs. 1 crore on any person who fails to comply with any provisions of SEBI Act (Section 15 HB).

The Securities and Exchange Board of India Act, 1992

Question 9

State the circumstances under which Securities and Exchange Board of India may exercise the following powers:

- (i) *Prohibit a company from issuing prospectus, any offer document or advertisement soliciting money from public for the issue of securities.*
- (ii) *Pass cease and desist order in respect of any listed company.*

Explain the remedies available under Securities and Exchange Board of India Act, 1992 to companies aggrieved by the above orders of SEBI
(November 2006)

Answer

Power of SEBI and remedies available to aggrieved persons: Section 11 of SEBI Act, 1992 specifies that the basic duty of SEBI is to protect the interests of investors in securities and regulate the securities market. The certain measures which can be taken by SEBI are to fulfill its objectives are listed in Section 11, 11A, 11 AA, 11B, 11C and 11 D. Section 11 A(2)(b)(i) specifically empowers SEBI to prohibit any company from issuing prospectus, any offer document or advertisement soliciting money from the public for the issue of securities by general or special order if such prohibition is necessary to the purpose of protection of investors.

According to proviso to Section 11 D, SEBI can issue cease and desist order in respect of any listed company only if SEBI has reasonable grounds to believe that such company has indulged on insider trading or market manipulation and not otherwise.

Aggrieved companies may appeal against orders of SEBI made under SEBI Act, rules or regulations to Securities Appellate Tribunal (SAT) under Section 15T (1)(a). Such appeal should be filed within 45 days from the date on which a copy of the order of SEBI is received by the company. It shall be in the prescribed form accompanied by prescribed fees. Delay in filing appeal can be condoned by SAT for sufficient reasons (Section 15 T(3)) Efforts will be made by SAT to dispose of appeal within 6 months [Section 15T(6)].

If the company is aggrieved by the order of SAT, further appeal against the order of SAT can be made to Supreme Court within 60 days from the date of communication of the order on any question of law arising out of such order. The period can be extended by Supreme Court upto further 60 days if sufficient cause is shown (Section 15Z).

Thus, appeal lies only on question of law. As far as facts are concerned, decision of SAT is final. Further, Section 20 A bars jurisdiction of civil court in respect of orders issued by SEBI.

Question 10

As on 31st December, 2006, following information and figures are noticed from the Annual Accounts for the year ended 31st March, 2006 of CAS Ltd., a Company listed with the Stock Exchange, Mumbai:

- (i) *Authorised Share Capital Rs. 20.22 Crores comprising of 2 Crore Equity Shares of Rs. 10 each.*

Corporate Laws and Secretarial Practice

- (ii) *Paid up Share Capital Rs. 9.00 Crores comprising of 80 lac Equity Shares of Rs. 10 each fully paid up and 20 lac Equity Shares of Rs. 10 each called and paid upto Rs. 5 each. The total paid up capital is paid up in cash.*
- (iii) *Securities Premium Account Rs. 20.00 Crores.*
- (iv) *5 lac Full Convertible Debentures of Rs. 100 each. These debentures are due for conversion on 31st March, 2007 in full into fully paid Equity Shares of Rs. 10 each in the ratio of one Debenture: two Equity Shares.*
- (v) *General Reserve Rs. 30.00 crores.*
- (vi) *Fixed Assets Revaluation Reserve Rs. 10.00 crores.*
- (vii) *Outstanding Liabilities in respect of Bonus to Employees & workers Rs. 25.00 lacs.*
- (viii) *Outstanding Liabilities in respect of Interest payable on Public Deposits comprising of Fixed Deposits from general public Rs. 15.00 lacs.*

Following other information is gathered from the books of account and other records of the said Company for the period upto 31st December, 2006:

- (a) *The partly paid shares were made fully paid prior to 30th June, 2006.*
- (b) *Bonus to employees and workers was paid on 15th September, 2006.*
- (c) *Interest on Public Deposits was outstanding on 31st December, 2006.*

The Directors of CAS Ltd. Wants to issue Bonus Shares on or after 1st April, 2007 in ratio of 1:1. Advise the Directors on the matter with reference to the guidelines issued by Securities and Exchange Board of India on Bonus Issue.
(May 2007)

Answer

According to Guidelines issued by Securities & Exchange Board of India on Bonus Issue, a listed Company proposing to issue bonus shares has to comply with the following:

- (i) Pending the conversion of Fully Convertible Debentures (FCDs) / Partly Convertible Debentures (PCDs), the Company cannot issue shares by way of bonus unless similar benefit is extended to the holders of FCDs / PCDs through reservation of shares and the shares so reserved may be issued at the time of conversion of FCDs / PCDs on the same terms on which the bonus issues were made.
- (ii) The bonus issue is made out of free reserve built out of genuine profits or securities premium collected in cash only.
- (iii) Fixed Assets Revaluation Reserves are not capitalized for the purpose of bonus issue.
- (iv) The bonus issue is not made in lieu of dividend.
- (v) The bonus issue can be made only after any partly paid shares are made fully paid.
- (vi) The Company should not have defaulted in payment of interest or principal in respect of fixed deposits and interest on existing debentures or principal on redemption.

The Securities and Exchange Board of India Act, 1992

- (vii) The Company should have sufficient reasons to believe that it has not defaulted in respect of the payment of statutory dues like contribution to P.F., Gratuity and bonus to employees etc.
- (viii) The Board of Directors' proposal to make bonus issue is implemented within six months from the date of approval by the Board of Directors and the same can not be revoked.
- (ix) The bonus issue must be permitted by the Articles of Association and if the Articles of Association does not contain such a clause, then first the same should be suitably amended.
- (x) If Authorised Capital is not sufficient to accommodate the post bonus issue paid up capital, the capital clause of the Memorandum of Association should be suitably amended.
- (xi) A compliance certificate by the Company duly countersigned by the statutory auditor or company secretary in practice is to be submitted to SEBI.

Based on the abovementioned guidelines of SEBI, the Board of Directors is advised as follows:

- (a) Check the Articles of Association whether it allows the issue of bonus shares. If not, the Articles of Association should be amended to include the relevant clause.
- (b) The Paid up Share Capital of the Company as on 31st March, 2006 was Rs. 9.00 Crores and after the partly paid shares were made fully paid, the paid up share capital became Rs. 10.00 Crores. Moreover, after the conversion of 5 lac FCDs, the paid up capital will increase by 10 lac shares of Rs. 10/- each, that means the paid up capital shall become 11.00 Cores as on 31st March, 2007. The Directors want to make bonus issue in the ratio of 1:1. Therefore, the post bonus issue paid up capital shall become Rs. 22.00 crores. But the Authorised Share Capital is only Rs. 20.00 Crores, hence, the Directors are required to take steps to increase the authorized capital to at least Rs. 22.00 crores.
- (c) The Company is having sufficient amount in General Reserve and Securities Premium Account and the Directors can use from Any/both of these accounts for bonus issue. But they should not utilize any amount from the Fixed Assets Revaluation reserve.
- (d) Since the Bonus to employees and workers have been paid within the time allowed by the Payment of Bonus Act, the requirement of the SEBI Guidelines have been fulfilled.
- (e) The default in paying the interest on fixed deposits should be rectified by paying the necessary amount as provided in the Companies (Acceptance of Deposit Rules) 1975.
- (f) The Directors should pass necessary resolution in the meeting of Board of Directors and take further steps to issue the bonus shares within six months from the passing of such resolution.
- (g) After the issue of bonus shares, the company should forward a compliance certificate duly counter signed by its statutory auditor or a company secretary in practice to SEBI.

Corporate Laws and Secretarial Practice

Question 11

- (i) *What do you understand by the term “Price Sensitive Information” as contemplated in the Securities and Exchange Board of India Act, 1992 ? What are the information which can be deemed to be “Price Sensitive Information”.*
- (ii) *MGR Ltd. wants to issue certain shares on preferential basis and has sought your advise in respect of pricing the shares for such issues. You are required to state the Guidelines issued by Securities and Exchange Board of India in respect of pricing of the issue of shares on a preferential basis.* (May 2008)

Answer

- (i) Any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of the company, is referred to as “Price Sensitive Information”.

The following can be deemed to be “Price Sensitive Information”:

- (i) Periodical financial results of the company
 - (ii) intended declaration of dividends (both interim and final)
 - (iii) issue of securities or buy-back of securities
 - (iv) any major expansion plans or execution of new projects
 - (v) Amalgamation or merger or takeovers
 - (vi) disposal of the whole or substantial part of the undertaking
 - (vii) any significant changes in policies, plans or operations of the company.
- (ii) According to the Securities and Exchange Board of India (Disclosure and investor Protection) Guidelines, 2000 the issue of shares on a preferential basis can be made at a price not less than the higher of the following:
 - (i) the average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the six months preceding the relevant date;
 - or
 - (ii) the average of the weekly high and low of the closing prices of the related shares quoted on a stock exchange during the two weeks preceding the relevant date.

For the purpose of above, “relevant date” means the date thirty days prior to the date on which the meeting of General Body of shareholders is held, in terms of Section 81(1A) of the Companies Act, 1956 to consider the proposed issue.

Question 12

Mr. DB is a member of RPA Ltd. He obtains an order against the company for redressal of his grievances against the company. But the company fails to redress the grievances of DB within the time fixed by the SEBI. The Board thereafter imposed penalty upon the company U/s 15C

The Securities and Exchange Board of India Act, 1992

of the SEBI Act. RPL Ltd. seeks your advice whether it has any remedy against the order of SEBI. Advise.
(November 2008)

Answer

Section 15C of Securities Exchange Board of India Act, 1992 lays down that if any listed company or any person who is registered as an intermediary, after having been called upon by the board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the board, such company or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

RPA limited was penalized under the provisions of above-mentioned section. Now two remedies are available to RPA limited in this matter:

- (i) **Appeal to the Securities Appellate Tribunal:** Section 15T of the SEBI Act, 1992 provides that any person aggrieved by an order of the Board made, on and after the commencement of the security laws (second amendment) act 1999, under this act or the rules or regulations made there under may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

Such appeal shall be filed within a period of 45 days from the date on which a copy of the order made by the Board is received and it shall be in such form and be accompanied by such fee as may be prescribed. However the Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within the said period.

The Tribunal may, after giving the parties an opportunity of being heard, pass such orders as it thinks fit, confirming, modifying or setting aside the order appealed against.

- (ii) **Appeal to the Supreme Court:** Section 15Z of the SEBI Act, 1992 provides that any person aggrieved by any decision or an order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or an order to him on any question of law arising out of such order. The Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

PART II

Question on SEBI (DIP) guidelines 2000 given here are for reference only. Answers have not been given as the guidelines are subject to changes from time to time. Students are advised to refer either the Study material or visit the Sebi's Web Site www.sebi.gov.in

Question 1

What is the specific advantage of Book-building process in connection with issue of securities by a company? State the guidelines issued by SEBI in this regard in respect of the following

Corporate Laws and Secretarial Practice

matters:

- (i) *Determination of issue price and that of successful bidders.*
- (ii) *Reservation for individual investors who have not participated in the bidding process and basis of allotment to such investors.* (May, 2000)

Question 2

The Balance Sheet of M/s Get Rich Quick Ltd. as at 31.3.2001 disclosed the following details:

- (i) *Share Capital* Rs. 150 crores
- (ii) *Reserves and Surplus* Rs. 750 crores

The company has issued in the year 1996, fully convertible debentures of Rs.100 crores, which are due for conversion in the year 2001. The company proposes to issue bonus shares in the ratio of 1 : 1. Explain briefly the SEBI guidelines to be followed by the company

(May, 2001)

Question 3

M/s Ambitious Financiers Ltd., an existing unlisted Public Company, is planning to issue to the public five lakhs fully convertible debentures of Rs. 100 each. Explain the eligibility norms to be fulfilled by the company as per SEBI guidelines before making the issue. (May, 2001)

Question 4

State briefly the guidelines issued by SEBI for compliance by the companies making an initial public offer of equity shares or any other security convertible at a later date into equity shares proposing to list them on the Over the Counter Exchange of India. (November, 2001)

Question 5

M/s Herbal Pharma Limited, a listed company, decides to make a public issue of equity shares. Explain briefly the eligibility norms prescribed by SEBI guidelines to be complied with by the company. (May, 2002)

Question 6

Super Chemicals Limited, a closely held unlisted company, is in need of about Rs. 20 crores for financing its expansion programme. The company has not declared any dividend so far though it has made good profits from the commencement of commercial operations on 1st January, 1995. The paid-up capital of the company was increased to Rs. 3.5 crores on 1st April, 1998. The net worth of the company as per latest audited Balance Sheet as at 31st March, 2002 is Rs. 5 crores. The company seeks your advice as to its eligibility to raise Rs. 20 crores through public issue of equity shares at a premium. Advise with reference to relevant guidelines issued by SEBI. (May, 2003)

The Securities and Exchange Board of India Act, 1992

Question 7

Following information and figures are noticed from the Annual Accounts for the year ended 31st March, 2003 of MNP Limited, a listed company:

- (i) Authorised Shares Capital Rs.10 crores comprising of one crore Equity shares of Rs.10 each.*
- (ii) Paid-up Share Capital of Rs.4.5 crores comprising of 40,00,000 Equity shares of Rs.10 each fully paid-up and 10,00,000 Equity shares of Rs.10 each called and paid-up to Rs.5 each. The total paid-up capital is paid up in cash.*
- (iii) Securities Premium Account Rs.10 crores.*
- (iv) 2,50,000 fully convertible debentures of Rs.100 each. These debentures are due for conversion on 30th June, 2003 in full into fully paid Equity shares of Rs.10 each in the ratio of two equity shares for one debenture.*
- (v) General Reserve Rs.15 crores.*
- (vi) Fixed asset revaluation reserves Rs.2.5 crores.*

It was further ascertained that the partly paid shares were made fully paid by 30th June, 2003.

The Directors of MNP Limited propose to issue bonus shares in the ratio of 1:1.

Advise the Directors on the matter with reference to the guidelines issued by SEBI on bonus issue. What will be your advice, if the company has defaulted in the matter of payment of interest on fixed deposits?
(November, 2003)

Question 8

An unlisted Company, having paid-up Share Capital of Rs.3 crores consisting of 30,00,000 Equity Shares of Rs. 10 each fully paid-up, proposes to make an initial Public offer of 90,000 Equity Shares of Rs.10 each at a premium of Rs.5 per share, in July, 2004. The promoters acquired 10,00,000 shares on 1st January, 2000 and another 10,00,000 shares on 1st January, 2004 at face value:

- (i) What should be the minimum contribution that should be made by the promoters of the above company in order to comply with the guidelines issued by SEBI?*
- (ii) State also the period for which the promoters are required in excess of the enquired minimum contribution.*
(May, 2004)

Question 9

The Annual Accounts of CALM Ltd., a listed company from for the year ended 31st March, 2003 were finalized on 31st May, 2004. The Company had a paid up capital of Rs.50.00 Lacs and free reserves of Rs.100.00 Lacs. The Company did not have any accumulated losses. The Board of Directors of the Company wishes to make a public issue of Equity Shares

Corporate Laws and Secretarial Practice

amounting to Rs. 10.00 Crores comprising of offer to public through offer document, firm allotment and promoters contribution. State, how this can be done under SEBI Guidelines.

What would be your answer in the following cases:

- (a) If CALM Ltd. was a Private Sector Bank known as CALM Bank Ltd.
- (b) If the issue of above mentioned Rs.10.00 Crores was a right issue (November, 2004)

Question 10

(a) As on 31st December, 2004, following information and figures are noticed from the Annual Accounts for the year ended 31st March, 2004 of SKP Ltd., a Company listed with The Stock Exchange, Mumbai:

- (i) Authorised Share Capital Rs.20.00 Crores comprising of 2 Crore Equity Shares of Rs.10 each.
- (ii) Paid up Share Capital Rs.9.00 Crores comprising of 80 lac Equity Shares of Rs.10 each fully paid up and 20 lac Equity Shares of Rs.10 each called and paid up to Rs.5 each. The total paid up capital is paid up in cash.
- (iii) Securities Premium Account Rs.20.00 Crores.
- (iv) 5 lac Fully Convertible Debentures of Rs.100 each. These debentures are due for conversion on 31st March, 2005 in full into fully paid Equity Shares of Rs.10 each in the ratio of one Debenture: two Equity Shares.
- (v) General Reserve Rs.30.00 Crores.
- (vi) Fixed Assets Revaluation Reserve Rs.10.00 Crores.
- (vii) Outstanding Liabilities in respect of Bonus to Employees and Workers Rs.25.00 lacs.
- (viii) Outstanding Liabilities in respect of Interest payable on Public Deposits comprising of Fixed Deposits from general public Rs.15.00 lacs.

Following other information is gathered from the books of account and other records of the said Company for the period upto 31st December, 2004:

- (a) The partly paid shares were made fully paid prior to 30th September, 2004.
- (b) Bonus to employees and workers was paid on 15th September, 2004.
- (c) Interest on Public Deposits was outstanding on 31st December, 2004.

The Directors of SKP Ltd. wants to issue Bonus Shares on or after 1st April, 2005 in the ratio of 1:1. Advise the Directors on the matter with reference to the guidelines issued by Securities and Exchange Board of India on Bonus Issue.

- (b) Excel Ltd., a public limited company listed with The Stock Exchange, Mumbai, wants to make issue of equity shares on preferential basis pursuant to a scheme approved under Corporate Debt Restructuring framework specified by Reserve Bank of India to various persons as may be selected by the Board of Director of the Company. Following information relevant to the preferential issue is available:

The Securities and Exchange Board of India Act, 1992

- (i) *Total No. of equity shares to be issued: 50 Lac equity shares of Rs.10 each out of which 30 lac equity shares will be allotted on 30th June, 2005 as fully paid up and balance 20 lac equity shares shall be allotted on the same date but paid up to Rs.5 each and balance Rs.5 shall be called upon at a later date and shall be paid up on 30th November, 2005.*
- (ii) *Out of the proposed allottees some persons are holding their shares in Excel Ltd. in physical form and not in dematerialized form and some persons had sold their entire shareholding in Excel Ltd. in January, 2005.*
- (iii) *The meeting of general body of shareholders for approving the preferential issue was held on 15th March, 2005.*

Based on the above information you are required to answer the following queries with reference to the SEBI (Disclosure and Investor Protection Guidelines, 2000:

- (i) *What would be the lock-in period for the shares allotted on preferential basis?*
- (ii) *Who are the persons not entitled for allotment of shares on preferential basis?*

(May 2005)

Question 11

- (a) *An investor has complained to SEBI that he has not received the payment due to him from the stock-broker registered with Calcutta Stock Exchange Association Ltd. The complainant has requested SEBI to take appropriate action against the stock-broker. You are required to state with reference to the provisions of Securities and Exchange Board of India Act, 1992 the answer to the following:*
 - (i) *What action SEBI can take against the stock-broker on the complaint as stated above?*
 - (ii) *What is the procedure to be adopted and what are the factors that will be taken into account while taking such action?*
- (b) *Following information is available from the records of Star Chemicals & Engineering Ltd.:*
 - (i) *The Company is a closely held unlisted Company.*
 - (ii) *The paid up share capital of the Company since 1st April, 1999 is Rs.3.00 crores and its net worth as at 31st March, 2005 was Rs.5.00 crores as per audited Balance Sheet.*
 - (iii) *The Net Tangible Assets of the Company as per last 3 (three) audited Balance Sheet as at 31st March, 2003, 2004 and 2005 were Rs.4.00 crores, 4.50 crores and 5.00 crores respectively, out of which monetary assets were less than Rs.50 lacs in each of three years.*
 - (iv) *The Company was incorporated in 1996 and commenced its business on 1st April, 1996 and since then it has earned good profits and it has not incurred any loss in any year in past.*
 - (v) *The Company has not declared any dividend so far, but according to the profits*

Corporate Laws and Secretarial Practice

earned so far, the management could have declared the dividend in each of the last five years.

- (vi) *The name of the Company was changed from Star Engineering Ltd. to its present name with effect from 1st October, 2004.*

The Company wants to make a public issue of shares to raise Rs.20.00 crores by issuing equity shares at premium. For the purpose of including the information in the prospectus, the company has prepared its accounts for 12 months ended 30th September, 2005 showing segment-wise revenue, which reveals that revenue from Chemical segment is more than the revenue from Engineering segment.

You are required to state the relevant guidelines issued by SEBI and your conclusion whether the company can make the desired issue of equity shares based on the facts stated above.
(November 2005)

Question 12

A designated Financial Institution under the Companies Act, 1956 proposes to go for issue of shares. Referring to the SEBI guidelines the institution seeks your advice on the following:

- (i) *What minimum reservation to promoters is to be made by the Financial Institution ?*
- (ii) *To what conditions shall the Financial Institution be subject to, for reservation for employees out of the proposed issue? Advise.*

Question 13

XYZ Automobiles Ltd. intends to make a public issue of 2,00,00,000 equity shares of Rs. 10 each through the 100% book building process indicating a price band.

You are required to answer the following with reference to the SEBI (Disclosure and Investor Protection) Guidelines:

- (i) *What is the price band that can be indicated in the red herring prospectus, if the floor price is proposed to be fixed at Rs. 300 per equity share ?*
- (ii) *What are the restrictions, if the company wants to revise the price band during the bidding period?*
- (iii) *How the shares are to be allocated to different categories of investors like Qualified institutional buyers, Retail individual investors, etc.?*
(November 2006)

Question 14

Securities and Exchange Board of India (SEBI) has issued certain guidelines in respect of fixation of exit price through "Book Building" process for the shares to be bought back by the listed companies, who want to voluntarily delist their shares from the stock exchanges. You are required to state the salient features of the said "Book Building" process.

(May 2007)

The Securities and Exchange Board of India Act, 1992

Question 15

KYC a recognized Stock Exchange has not maintained proper books of account of the stock exchange, on the ground that such books of account are not essential. A complaint in this regard was made to SEBI who appointed Mr. E. An expert to make an enquiry. Explain whether SEBI is authorized to make inquiry and take action against the stock exchange.

(November 2007)

Question 16

M/s Earth Chemicals and Engineering Ltd. is a closely held unlisted company with a paid up share capital of Rs. 3.00 crores, since 1st April, 2001 and its net worth as on 31st March, 2007 was Rs. 5.00 crores. The net tangible assets of the company as per last three audited balance sheets as at 31st March, 2005, 2006 and 2007 were Rs. 4.00 crores, 4.50 crores and 5.00 crores respectively out of which momentary assets were less than Rs. 50 lakhs in each of the three years. The company was incorporated in 1998 and commenced its business on 1st April, 1998 and since then it has earned good profits and it has not incurred any loss in any year in the past. The company has not declared any dividend so far. But according to the profits earned so far, the management could have declared dividends in each of the last five years. The name of the company was changed from Earth Engineering Ltd. to its present name effective from 1st October, 2006. The company wants to make a public issue of shares to raise Rs. 20.00 crores by issuing equity shares at premium. For the purpose of including the information in the prospectus. The company has prepared its accounts for 12 months ended 30th September, 2007 showing segment wise revenue, which reveals that revenue from chemical segment was more than the revenue from engineering segment. Keeping the relevant guidelines issued by SEBI into account, examine whether the company can make the desired issue of equity shares based on the facts stated above.

(November 2007)

Question 17

An investor has complained to SEBI that he has not received the payment due to him from the stock broker registered with Calcutta Stock Exchange Association Ltd. The complainant has requested SEBI to take appropriate action against the stock broker. State with reference to the provisions of Securities and Exchange Board of India Act, 1992. The action that can be taken against the stock broker, the procedure to be adopted and the factors that will be taken into account of SEBI.

(November 2007)

Question 18

Excel Ltd., a Public Limited Company listed with the Stock Exchange, Mumbai, wants to make issue of equity shares on preferential basis pursuant to a scheme approved under Corporate Debt Restructuring framework specified by Reserve Bank of India to various persons as may be selected by the Board of Directors of the Company. Following information relevant to the preferential issue is available.

- (i) Total No. of equity shares to be issued : 50 lac equity shares of Rs. 10 each out of which 30 lac equity shares will be allotted on 30th June, 2008 as fully paid up and balance 20 lac equity shares shall be allotted on the same date but paid up to Rs. 5 each and*

Corporate Laws and Secretarial Practice

balance Rs. 5 shall be called upon at a later date and shall be paid up on 30th November, 2008.

- (ii) Out of the proposed allottees some persons are holding their shares in Excel Ltd. in physical form and not in dematerialized form and some persons had sold their entire shareholding in Excel Ltd. in January, 2008.*
- (iii) The meeting of general body of shareholders for approving the preferential issue was held on 15th March, 2008.*

Based on the above information you are required to answer the following queries with reference to the SEBI (Disclosure and Investor Protection) Guidelines, 2000:

- (i) What would be the lock-in period for the shares allotted on preferential basis?*
- (ii) Who are the persons not entitled for allotment of shares on preferential basis?*

(May 2008)

Question 19

The promoters of ABC Ltd. an unlisted company decide to go for a public issue. They seek your advice in respect of the following matters:

Whether equity shares can be reserved in a firm allotment category for promoters at a price different from the price at which shares are offered to the public.

Circumstances in which the equity shares can be issued in denomination of Rs.2 per share.

Need for past track record of distributable profits.

Requirement of net tangible assets in the previous years.

(November 2008)