

Highlights of Major Changes made by 3rd Amendment in 4 Securities Related Regulations

A. Securities Businessperson (Securities Broker and Securities Dealer) Regulation, 2064

- 1. Short Title and Commencement (Rule 1 & Rule 2):**

The name of regulation is now changed to "Securities Businessperson (Securities Broker and Securities Dealer) Regulations, 2064". The word "market maker" has been removed from the title of regulation, definition and necessary paragraphs of the regulations.
- 2. Provisions regarding License (Rule 3):**

The application for license to be submitted pursuant to sub rule (1) shall be accompanied with the documents as per format prescribed in Schedule -16. For the source of investment of the applicant owning the securities broker company or corporate body.
- 3. Securities Business may be Operated through Subsidiary Company (Rule 7):**
 - a. Class "A" BFI established under the prevailing law may conduct securities business as securities broker or securities dealer through their respective 51% owned subsidiary company only after obtaining the approval from the Board. However, such entity shall not be permitted to buy or sell securities of its parent company and subsidiaries of its parent company (sub rule 1).
 - b. Promoter shareholder, basic shareholder, director, CEO, employee and close family member of such respective person of parent company shall not be permitted to own the share of the subsidiary company (sub rule 3).
- 4. Provision relating to M&A (Rule 7 Ka):**

Securities broker and securities dealer can acquire/be acquired or merged with other securities broker and dealer after approval from Board. With regards to M&A, Board can issue directives for necessary guidance. Also if parent company of securities broker or dealer is merged with another entity, such respective securities broker or dealer shall also have to be merged.
- 5. Change in ownership (Rule 12):**

Fee of 0.25% on sale/transfer of shares shall be deposited along with application for change in ownership of securities business entity. However, proceeds of sale of such share transaction shall not be less than net worth of security business entity.
- 6. Reserve fund (Rule 34A)**

To manage the institutional risk and for maintaining the financial stability, security broker and dealer shall transfer 10% of the profits of the entity to the fund annually. However, such deposited amount shall not be distributed as cash dividend. Schedule 9 prescribes the paid-up capital of Securities dealer to be increased to minimum of Rs 200 million.
- 7. Functions that may be carried out by the Securities Broker and Securities Dealer (Rule 27):**

Securities broker shall from now onwards facilitate margin trading with prior intimation to the board and also securities dealer can perform additional functions such as dealing in shares in his own name, can act as Securities Broker, Qualified Institutional Investor and Underwriter as may be approved by the Board.
- 8. Securities Dealer with license of securities broker**

shall in priority consider the instructions of the client and act/transact in securities accordingly. Until and unless the instructions are received from the client, securities dealer shall not buy or sell the securities in his own name. Securities dealer shall intimate the details of securities transacted by him up to the end of the 7th working day of the following quarter ended to the Board. Further irrespective of anything stated elsewhere in this regulations, securities broker shall not provide securities business services to his shareholder, chief executive, employee and the close family members of the respective person.
- 9. Order from Client to be registered:**

The Stock Broker making transaction only after registering the order of the client to the Board has been effectively removed by the third amendment.

B. Security Registration and Issue Regulation, 2073

1. **Definition (Rule 2):**
Book Building Process: Book building process means the process or method of determining the price of securities by an organized institution at the time of initial public offering. SEBON has not prescribed the detail regulation for book building process which will be prescribed in future.
2. **Public Offering of Securities (Rule 9)**
 In case of organized banking, financial or insurance business, which wants to apply for the initial public offering of the Securities should have conducted the AGM presenting the audited financial statement for the full financial year in which it operates as per its main objective.

 Provided that, if the public offering of securities cannot be made within the time stipulated by the regulatory body due to failure of the entity to present the financial statement for a complete year then the entity may go for public offering if board approves it after prior verification by the management. (Sub-Rule 2)
3. **Duration of public offering (Rule 10):**
 The securities issued for public can be made open for public for a period of maximum of 15 days. (sub-rule 2). Previously it was 30 days.
4. **Issue of Right Securities (Rule 17):**
 The decision regarding the issue of right shares should be presented at the annual general meeting within two months from the date of decision made by the BOD and application should be submitted to SEBON within a period of two months from the date of such decision.
5. **Duration of Right Shares (Rule 18):**
 The duration for the issue of rights shares as per Rule 17 shall be for a period of at least 21 days.
6. **Period for allotment of Right shares (Rule 20):**
 The right shares which has been sold shall be allotted within a period of 15 working days from the date of closure of such issue. And auction notice for sale of unsold securities shall be published within 7 days of allotment.
7. **Sale of Securities through Offer for Sale (Rule 24):**
 Those organizations which have registered the securities in the Board but have not listed the securities in the stock exchange shall publish an offer for sale of such shares which are owned by it in such a way that it is not less than 10% of the paid up shares.
 Provided that, the shareholders holding less than 10% of the paid up shares shall not be eligible to sale the shares through offer for sale. The securities so issued will be regarded as shares issued in IPO.
8. **Issue of securities at premium (Rule 25):**
 After satisfying the following criteria, the organization can issue its securities in premium:
 - Operating at profit for preceding three years.
 - Net worth should exceed paid up value per share.
 - The decision for issue of securities at premium should be approved by AGM.
 - The methods and justifications used for determining the premium price and certified securities rating report from an outside expert shall be submitted.
 - It should have obtained at least average or above average credit rating.
9. **Public Offering through Book Building Procedures (Rule 25c):**
 After satisfying the following criteria, an organization can use the book building methods for public offering of securities:
 - It has been operating at net profit for last three financial years.
 - It has decided to issue securities by using book building methods at the annual general meeting.
 - Net worth per share shall be at least 150 percent of the paid-up value per share
 - It should have obtained at least or above average credit rating.
10. **Issuance of Bonds, Debentures and Securities in Foreign Capital Markets (Rule 41a):**
 Institution can issue its Bonds in the international market after obtaining approval from SEBON and NRB. Such fund received needs to be invested in Nepal.

C. Mutual Fund Regulation 2067

1. Short Title and Commencement (Rule 1 (1 & 2):

The name of this rule shall be 'Mutual Fund Regulation 2067' & will be effective from the date specified by SEBON (i.e. 13 February 2020).

2. Additions in Definitions Para (Rule 2):

"Size of scheme" and "Net asset value" terms have been added and defined under Rule 2.

3. Establishment of Mutual fund (MIF) (Rule 3):

Two new entities has been made eligible to register and establish mutual fund

- Organized entity carrying out financial transactions as per prevailing law, insurance companies and non-banking financial institutions established as per special act.
- Paid up capital should be at least NPR 2 billion.

4. Appointment of fund supervisor (Rule 6):

Fund sponsor while appointing the fund supervisor as per rule 10 or while changing the fund supervisor by whatsoever reason should take the board approvals as per rule 6(2).

The work procedure and work division as determined as per sub rule 11 should be submitted to the board within 15 days.

5. Cancellation of registration (Rule 11):

In addition to earlier rule, the fund sponsor can give an application with a proper reason to the board for cancellation of the registration.

6. Service Fees and Charges (Rule 23):

Summary of service fees and charges:

- Annual Service fee charged by fund supervisor, scheme manager and depository shall not be more than 0.20%, 1.5% and 0.20% of Net asset value (NAV) respectively.
- The collection of above mentioned fees shall be made within one month from the end of fiscal year.
- 3% of the service fee amount collected during each quarter by fund supervisor, scheme manager and depository shall be deposited to board within 30 days from the end of the respective quarters. Penal interest of 10% p.a. shall be payable in case of failure to deposit the same on time.

7. Provisions regarding Transaction of open-ended mutual fund (Rule 27):

While determining the re-purchasing price of units of open-ended mutual fund pursuant to sub rule (1), it shall be required to determine the daily NAV and consider it as re-purchasing price. The scheme manager while re-purchasing the unit can charge up to 1.50% of re-purchasing price (exit fee). However,

the scheme manager cannot charge any fees while selling the units.

8. Collection center of open-ended mutual fund (Rule 27):

Open ended mutual fund scheme manager or fund sponsor can arrange to sell and re-purchase their units through their any branch offices or other bank and financial institutions.

9. Provisions regarding delisting of scheme (Rule 31):

It is required to give application for cancellation of listing of scheme on stock exchange one month prior to maturity of Scheme.

10. Investment Threshold (Rule 36):

The restrictions for the Fund Manager for making investments from amount of each scheme shall be as follows:

- Investment in ordinary share of any one entity - maximum of 10% of paid up capital of such corporate body. However, at least 20% of the investment of the scheme should be maintained in the form of ordinary shares investment over the tenure of the scheme.
- Maximum of 20% of Preference shares or Debentures issued by any organized entity.
- While investing in securities issued any organized entity or investing in scheme of any other mutual investment fund, it shall not be more than 10% of Net asset value of its own scheme.
- Fixed bank deposits shall be limited to 15% of net asset value of its own scheme.

However, above threshold is not applicable during last 6 months of scheme.

Investment in money market instruments shall be limited to 10% of net asset value of its own scheme.

11. Reserve fund to be maintained:

The Fund manager shall maintain the reserve of 10% from the net profit of every year for the risk management. This reserve cannot be used to distribute the cash dividends. Rule 38 (Ka).

12. Casting vote in AGM(Rule 46Ka):

Mutual fund cannot represent as director, cast vote in AGM or give proxy in AGM of any institutions. However, they can participate in AGM of its invested company.

13. Fees for License has been amended as follows: (Annex 10 Chapter 10)

Scheme Manager: Rupees Five Lakhs
Depository: Rupees One Lakhs

D. Securities Business (Merchant Banker) Regulation, 2064

1. Application to be made for the exit from and entry to new business (Rule 6)

Rule 6 has been replaced and now divided into Rule 6 and Rule 6A.

Rule 6(1) deals with the merchant banker wishing to add new business under this Act.

In addition to the existing clauses of this rule, the following clauses have been added:

Clause 6(2): While reviewing the application made pursuant to Rule 6(1), the board upon its discretion may require the applicant to provide further documents or clarification.

Clause 6(4): The board after examining the application in accordance to Clause 6(2) and Clause 6(3) and upon receiving the license fee shall issue the license to the merchant banker.

Rule 6A deals with discontinuance of some or all of its operations. The new rule has no longer requires the merchant banker to apply for cancellation with 30 days of making the decision. However, the following clauses have been added under this rule

Clause 6A(1): The merchant banker deciding to discontinue any or all of its licensed operation obtained as per regulation has to bifurcate and prepare details of tax and other liabilities for each operation. Accordingly, application along with such details and original copy of license of the Merchant banker needs to be filed with board for closure of respective operation.

Clause 6A(2): After the merchant banker decides in accordance with Clause 6A(1), it will not be able to conduct new business related to such decided exit operations.

2. Provisions related to ownership (Rule 10)

If the shareholders of a merchant bank wishes to sell or transfer their shares or if the merchant banker has to add a new shareholder then such change in shareholder details shall be registered with the board.

The merchant banker will have to submit an application along with a fee of 0.3% on sale or transfer of shares with the required details and documents as per Schedule 3 and Schedule 11 of the new shareholder who has fulfilled the requirements as above.

3. Incompetence of directors and chief executive (Rule 14)

The directors and the chief executive of the merchant banker should not have held a beneficial position in the board or securities market or securities broker or securities dealer or

central deposit services or any other merchant banker or credit rating institution.

4. Service fee (Rule 24)

The merchant banker will have to pay 3% service charge of its revenue to SEBON quarterly within 30 days after expiry of each quarter. A penalty of 10% per annum will be incurred in addition to the service fee if the merchant banker fails to make the payment in the said period.

5. Reserve fund (Rule 25 A)

To manage the institutional risk and for maintaining the financial stability, the merchant banker shall transfer 10 percent of its profit to the reserve fund annually. If the fund has been maintained in accordance with mutual fund regulation 2067 it shall not be liable to maintain **reserve** fund under this rule. Further the amount transferred in such fund cannot be distributed as dividend by way of cash in any case.

6. Corporate social responsibility (Rule 30 A)

The merchant banker has to establish a Corporate social responsibility (CSR) fund and shall set aside at least 1 percent of its profit before tax for CSR activities. The CSR work carried out has to be notified to the board within 7 days from carrying such activities.

7. Ceiling on Underwriting and Portfolio management services (Annex 9(c))

A merchant banker can underwrite maximum of 3 times of its net worth and can manage portfolio maximum of 15 times of its net worth. The net worth is based on latest audited financial statements.

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