



By Hand

29th September 2015

Ref: SEC/LEG/15/09/28

TO: ALL MARKET INTERMEDIARIES REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OF SRI LANKA

Directive issued under Section 13 (c) of the Securities and Exchange Commission of Sri Lanka Act No. 36 of 1987 (as amended)

The Securities and Exchange Commission of Sri Lanka (SEC), at its 359th meeting held on 11th August 2015 decided to re-issue the regulatory standards approved by the SEC for compliance by Registered Market Intermediaries and currently issued under the title 'Rules Applicable to Market Intermediaries', by way of a Directive.

Pursuant to the above said decision, the SEC, in the exercise of the powers vested in terms of Section 13 (c) of the Securities and Exchange Commission of Sri Lanka Act No. 36 of 1987 (as amended), hereby directs all Market Intermediaries registered with the SEC to comply with the regulatory standards specified in the Annexure attached hereto under the title "Regulatory Standards Applicable to Market Intermediaries".

These standards are binding on all Market Intermediaries.

Review and revision of 'Regulatory Standards applicable to Market Intermediaries:

The SEC is currently reviewing these 'Regulatory Standards Applicable to Market Intermediaries' to determine its adequacy and effectiveness.

Comments and recommendations on these standards as currently applicable and any proposed amendments are invited from Market Intermediaries and should be sent in by the 30th of October 2015 to Regulatoryreview@sec.gov.lk

Vajira Wijegunawardane

Director General

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REGULATORY STANDARDS APPLICABLE TO REGISTERED MARKET INTERMEDIARIES

GENERAL STANDARDS

01. The Regulatory Standards set out herein shall apply to all Market Intermediaries registered under Section 19 A of the Securities and Exchange Commission of Sri Lanka Act No. 36 of 1987 (as amended) and shall be deemed as requirements or criteria to be complied with, in accordance with Part V to the Schedule of the Securities and Exchange Commission of Sri Lanka Act (the SEC Act). Every Market Intermediary as defined under Section 55 of the SEC Act shall be bound to comply with:

- the standards set out herein and any amendments or additions thereto;
- other terms and conditions contained in Part V to the Schedule of the SEC Act; and
- all directives issued and that may be issued as applicable to Market Intermediaries from time to time by the Commission.

02. No person shall engage in any activity of a Market Intermediary or hold himself out as doing so unless he is a holder of a Certificate of Registration issued by the Securities and Exchange Commission of Sri Lanka as a Market Intermediary belonging to the category of that regulated activity.

03. The SEC may waive compliance with any of the standards set out herein after having satisfied itself that the attendant circumstances justify such waiver.

REGISTRATION FEE:

04. A Registered Market Intermediary shall pay such registration fee in respect of each regulated activity in such manner as may be specified or prescribed.

MINIMUM FINANCIAL REQUIREMENTS

05. No holder of a Certificate of Registration as a Market Intermediary shall carry on any regulated activity in respect of the registration without the written consent of the Commission if the minimum financial requirements as may be specified by the Commission are not met.

CODE OF CONDUCT FOR ALL MARKET INTERMEDIARIES

06. All Registered Market Intermediaries shall comply with all general or special directives issued to them by the Commission and must observe both the letter and spirit of the directives issued.
07. No Registered Market Intermediaries shall contravene any written law enacted for the protection of the members of the public against financial loss by dishonesty, incompetence or malpractice.
08. All Registered Market Intermediaries shall always furnish true information to the Commission.
09. All Registered Market Intermediaries shall not act fraudulently or dishonestly in the performance of the regulated activity and shall not engage in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which reflect in the opinion of the Commission discredit on its or his method of conducting business.
10. No Registered Market Intermediaries shall engage or be associated with any other business practices in such a manner as to cast doubt on its or his competence and soundness of judgment.
11. All Registered Market Intermediaries shall always strive to act in the best interests of clients.
12. All Registered Market Intermediaries shall always strive to act efficiently, honestly and fairly.
13. All Registered Market Intermediaries shall ensure that all directors and individuals employed to carry on the registered activity shall be fit and proper persons as may be determined by the Commission and shall possess the requisite qualifications as required by the Commission.
14. All Registered Market Intermediaries shall maintain a register containing the names of the individuals referred in 13 above in such form and manner as may be specified by the Commission.

DEALING WITH AUTHORIZED PERSONS WHO CARRY OUT SUPERVISION

15. Where the Commission appoints a person for purposes of supervising the compliance by a Market Intermediary in terms of the provisions of the SEC Act, the terms and conditions set out in Part V to the Schedule of the SEC Act and the criteria stipulated under this Directive, the Registered Market Intermediary shall;

- (1) furnish the authorized person with any information that the authorized person may require to determine whether the Market Intermediary has complied with the provisions of the SEC Act (as amended) or with the terms and conditions set out in Part V to the Schedule of the SEC Act and the standards stipulated herein or under any other Directives which are applicable to Market Intermediaries; and
- (2) take such steps as are necessary to ensure compliance with the provisions of the SEC Act, the terms and conditions set out in Part V to the Schedule of the SEC Act and the standards stipulated hereunder all other directives as may be applicable to the Market Intermediaries.

DUTY TO FURNISH THE COMMISSION WITH SUCH RETURNS AND INFORMATION AS THE COMMISSION REQUIRES

16. A Registered Market Intermediary shall furnish such returns and provide such information relating to its business as the Commission may require.
17. The Commission may specify that any information required herein shall be submitted within such period at such intervals in such manner or in such form as the Commission may specify and the Registered Market Intermediary shall comply with such requirement.

KEEPING OF BOOKS AND FURNISHING OF RETURNS

18. A Registered Market Intermediary shall;
 - (1) maintain or cause to be maintained, such accounting records and other books as will sufficiently explain the transactions and financial position of its business and enable true and fair profit and loss accounts and balance sheets in keeping with the Sri Lanka Accounting Standards to be prepared from time to time;
 - (2) maintain or cause to be maintained such accounting records and other books in such a manner as will enable them to be conveniently and properly audited; and
 - (3) retain such accounting records or other books as may be required to be maintained by the Commission for a period of not less than 6 years.

DUTY OF REGISTERED MARKET INTERMEDIARY, ITS DIRECTORS AND OFFICERS TO FURNISH INFORMATION

19. It shall be the duty of all Registered Market Intermediaries to furnish to an auditor or to an independent auditor appointed by the Commission;

- (1) all the information within its or his knowledge or which it or he is capable of obtaining; or
- (2) any information which the auditor or independent auditor requires to enable him to carry out his duties; and
- (3) shall ensure that all the information which is furnished to the auditor or independent auditor as the case may be is not false or misleading in any material particular.

20. Where the Commission having considered that it is in the interests of the Registered Market Intermediary or those of its or his clients, appoints an independent auditor or such other person or a body of persons to examine, audit and report either generally or in relation to any particular matter, upon the books, accounts and records of and assets held by the Market Intermediary, it shall be the duty of such intermediary;

- (1) to produce any books, accounts and records of and any assets held by the intermediary relating to his business; and
- (2) shall answer all questions relevant to an examination and audit which are put to him by the independent auditor or such other person appointed by the Commission.

21. A Registered Market Intermediary with intent to defeat the purposes of 20 above or with intent to prevent delay or obstruct the carrying out of any examination shall not;

- (1) destroy, conceal or alter any books or property relating to the business of the Market Intermediary; or
- (2) send or attempt to send or conspire with any other person to send out of Sri Lanka any such books or any property of any description belonging to or in the disposition of or under the control of the Market Intermediary.

NOTIFICATION ON THE HAPPENING OF CERTAIN EVENTS

22. Without prejudice to the generality of the duties imposed under Section 25 of the SEC Act, a Registered Market Intermediary shall on the occurrence of any one or more of the following events shall give to the Commission written notice, forthwith setting out the particulars of the event;

- (1) if the Registered Market Intermediary is in the course of being wound up or otherwise dissolved whether within or outside Sri Lanka or ceases to carry on the business to which the registration relates;

- (2) where the Market Intermediary has failed to comply with the provisions of the SEC Act, Part V to the Schedule of the SEC Act and the standards stipulated herein or any other Directive issued by the Commission from time to time;
- (3) where any information or document furnished to the Commission is false or misleading; or there is any change in any information or document furnished to the Commission;
- (4) where any execution against the Market Intermediary in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (5) where a receiver, liquidator or an equivalent person has been appointed in respect of any property of the Market Intermediary;
- (6) where the Market Intermediary whether within or outside Sri Lanka has entered into a compromise or scheme of arrangement with its creditors being a compromise or scheme of arrangement that is still in operation;
- (7) where the directors, or the chief executive officer has been convicted of any offence involving fraud or dishonesty or a violation of securities law within or outside of Sri Lanka; or
- (8) becomes an un discharged bankrupt.

23. Where a Registered Market Intermediary ceases to carry on the business in all or any of the regulated activities to which the Certificate of Registration relates, shall return the Certificate of Registration to the Commission within fourteen days of the date of the cessation.

SURRENDER OF CERTIFICATE OF REGISTRATION

24. (1) Subject to subsection (2) below, a Registered Market Intermediary may surrender the Certificate of Registration by sending it to the Commission together with a written notice of its surrender.
- (2) The surrender of a Certificate of Registration shall not take effect until the Commission is satisfied that adequate arrangements have been made to meet all the liabilities and obligations of the Registered Market Intermediary that are outstanding at the time when the notice of surrender was given by the Market Intermediary.

REVOCATION AND SUSPENSION OF A CERTIFICATE OF REGISTRATION OF A MARKET INTERMEDIARY

25. A Certificate of Registration of a Market Intermediary shall be deemed to be revoked;

(1) if the holder of the Certificate of Registration is wound up or otherwise dissolved whether within or outside Sri Lanka; or

(2) in the case of an individual holder of a Certificate of Registration, if the individual dies.

Interpretation

26. The words and terms defined in the Securities and Exchange Commission of Sri Lanka Act No. 36 of 1987 as amended by Act No. 26 of 1991, Act No. 18 of 2003 and Act No. 47 of 2009 shall unless the context so requires have the same meaning assigned to it in the said Act.

"Commission" means Securities and Exchange Commission of Sri Lanka;

"Connected Party" means the parent, subsidiary or an associate company of such party;

"Liquid Capital" means cash or investments which can be readily converted to cash such as bank/call deposits, re-purchase agreements with maturity of less than three months, commercial papers which are endorsed or guaranteed by a licensed commercial bank or licensed specialized bank with a term to maturity of less than three months and government issued securities with a term to maturity of one year or less;

"Net Capital" means,

a) The aggregate value of;

1. Stated Capital;
2. Reserves; and
3. SEC approved subordinate debt

or

b) Total assets minus total liabilities

adjusted by deducting any other item as specified by the SEC from time to time.

"SEC" means the Securities and Exchange Commission of Sri Lanka;

"SEC Act" means the Securities and Exchange Commission of Sri Lanka Act No.36 of 1987 as amended from time to time;

"Single Client" in the context of a corporate body means the borrowing company its parent and subsidiary company and in the context of a natural person means the borrower, his/her spouse and dependent children.

SPECIFIC STANDARDS APPLICABLE TO MARGIN PROVIDERS

The criteria set out in this Part shall be applicable to bodies corporate carrying on business as Margin Providers.

FIT AND PROPER CRITERIA FOR DIRECTORS AND PERSONS DEALING WITH CLIENTS

01 (1) A Registered Margin Provider shall not appoint an individual as a director or a person dealing with clients for and on its behalf, if such person has been:

- (a) convicted by any Court of Law in Sri Lanka or abroad subsequent to a finding of guilt for the commission of any offence which involves fraud, deceit or dishonesty; or
- (b) found to have committed or been connected with the commission of any act which involves fraud, deceit or dishonesty by any regulatory or supervisory authority; or
 - (i) established by law in Sri Lanka or abroad; or
 - (ii) constituted under law as a commission of inquiry, tribunal or other similar body; or
 - (iii) by any professional body which in the opinion of the SEC is of an established and credible stature; or
- (c) where a commission of an offence by such person has been compounded in terms of Section 51A of the SEC Act during the past 3 years, preceding the date of the appointment; or
- (d) found guilty of a capital market offence by a court of law in terms of the SEC Act or the Securities Law of any other country;

unless the prior approval of the Commission is obtained for such appointment.

The Commission on an application made under this provision by a Registered Margin Provider, may grant approval for such person to be appointed notwithstanding the above said prohibition under exceptional circumstances.

01 (2) (a) A Registered Margin Provider shall not allow an individual to continue as a director or a person dealing with clients, for a period as determined by the Commission, if such person, subsequent to his appointment as a director or

a person dealing with clients has been;

- (i) convicted by any Court of Law in Sri Lanka or abroad, subsequent to a finding of guilt for the commission of any offence which involves fraud, deceit or dishonesty; or
- (ii) found to have committed or been connected with the commission of any act which involves fraud, deceit or dishonesty by any regulatory or supervisory authority;
 - a. established by law in Sri Lanka or abroad; or
 - b. constituted under law as a commission of inquiry, tribunal or other similar body; or
 - c. by any professional body which in the opinion of the SEC is of an established and credible stature; or
- (iii) where a commission of an offence by such person has been compounded in terms of Section 51 A of the SEC Act; or
- (iv) found guilty of a capital market offence by a court of law in terms of the SEC Act or the Securities Law of any other country.

01 (2) (b) For the avoidance of doubt, the period in which a person described in 01 (2) (a) above shall be barred from functioning as a director or a person dealing with clients for and on behalf of a Registered Margin Provider may be;

- (i) for a period of months or for a period of years with a right to reapply at the end of the said period; or
- (ii) a permanent bar from the industry; or
- (iii) for a period from acting in a supervisory capacity or from performing a particular duty;

depending on the gravity of the offence, the impact of such offence on the market or other factor which the Commission shall deem to be relevant considering the circumstances surrounding the commission of such offence.

ACADEMIC QUALIFICATIONS AND EXPERIENCE

02. Every person, whether as director, employee or agent dealing with clients on behalf of the Margin Provider shall possess the qualifications and/or experience set out in sub clause (a) or (b) below.

- (a) (i) - Associate of the Institute of Chartered Accountants of Sri Lanka;
- Associate of the Chartered Institute of Management Accountants;
- A degree from an accredited Sri Lankan or foreign university;
- Chartered Financial Analyst;
- Associate of the Chartered Certified Accountants;
- Associate of the Chartered Institute of Bankers;
- Associate of the Institute of Bankers of Sri Lanka; or
- An equivalent or higher professional and/or academic qualification acceptable to the SEC;

and

- (ii) active experience in the financial/securities market for a minimum period of two years.

Experience in the financial/securities market for a minimum period of seven years.
Provided that experience for the stipulated duration per se will not fulfill the required qualification and the Commission shall consider the nature, scope and intensity of experience in determining its adequacy.

REQUIREMENT FOR MINIMUM NUMBER OF PERSONS DEALING WITH CLIENTS

03. The Margin Provider shall ensure that at least two persons with the 'qualifications and experience' specified in 02 above are employed by such Margin Provider and available to deal with clients.

The SEC may vary the number of such qualified personnel on account of the volume of business proposed to be undertaken or currently undertaken by such Margin Provider.

SEC SANCTION REQUIRED FOR OTHER BUSINESS

04. Business other than that of a Margin Provider may be carried out only with the prior written approval of the SEC.

FINANCIAL AND INFRASTRUCTURE REQUIREMENTS

05.a) A Margin Provider shall at all times maintain:

- (i) A minimum Net Capital as stipulated by the SEC from time to time;
- (ii) A minimum Liquid Capital as stipulated by the SEC from time to time.

b) The Margin Provider's exposure against the aggregate value of loans extended as margin should at no time exceed the value stipulated by the Commission from time to time.

The above requirement shall not be applicable to Registered Margin Providers licenced and regulated by the Central Bank of Sri Lanka. Such institution shall abide by the requirements stipulated by the Central Bank of Sri Lanka on credit exposure, which is determined according to the capital adequacy requirements imposed by the Central Bank of Sri Lanka.

c) The Initial Margin (or own funds requirement)

The Margin Provider shall ensure that the initial margin credit permitted to its clients on share purchases does NOT exceed 50% of the market value of the total securities portfolio of a particular client.

(Example: If a client has Rs.100 in cash (or stocks) but wishes to purchase shares exceeding that amount, your firm may allow the client to purchase up to a maximum of Rs. 200 worth of shares extending Rs. 100 worth of credit or 50% of the total value of the purchase to the client.)

d) Maintenance of Margin

The Margin Provider shall ensure a minimum Maintenance Margin of 30% at all times. Maintenance Margin is the minimum amount of borrowers' equity (own funds) that should be maintained at all times. A maintenance margin of 30% permits the market value of the share/portfolio of shares to drop until the credit component reaches 70% (0.70) of the Total Portfolio

e) The margin call

A margin call is required to be made when the value of the share/portfolio of shares falls below the maintenance margin requirement. The investor would be required to provide cash or securities to satisfy the maintenance margin requirement. In the event the investor fails to meet the shortfall within 03 market days, the Margin

Provider shall ensure that the securities pledged are sold with due notice to the relevant parties on the next market day to ensure compliance with paragraph (d) above, and notice shall be given to the client at the end of the market day, the sale is concluded.

- f) Pledged securities may only be re-pledged by the Margin Provider to entities licensed by the Central Bank of Sri Lanka and only up to a maximum of 100% of the value of the margin loans portfolio.
- g) The Margin Provider shall not extend margin facilities to its employees for the purchase of securities.
- h) All cash and securities of clients shall be maintained as segregated accounts and separate from securities and monies held by the Margin Provider on its own account.
- i) The maximum margin loan extendable by a Margin Provider to a single client shall at no time exceed 15% of the maximum margin loan exposure permissible in terms of criteria 5 (b) above.
- j) A Margin Provider shall always maintain adequate financial human and other resources sufficient to carry out the business as a Margin Provider.

REPORTING REQUIREMENTS

06. a) A Margin Provider shall provide the SEC with the information itemized below:
- (i) A Financial Report' prepared monthly compliant with the format and time lines as specified by the SEC
 - (ii) The Interim Financial Report shall;
 - (a) conform to the Sri Lanka Accounting Standards; and
 - (b) be signed pursuant to a Board resolution by a Director and the Chief Executive Officer.
- b) A copy of the statement of audited accounts of the Margin Provider, prepared annually in accordance with the Sri Lanka Accounting Standards shall be submitted to the SEC within a period of six months from the close of each financial year.
- c) The SEC shall be informed on a quarterly basis;
- (i) of the location of scrip pledged and re-pledged with adequate details to enable verification by the SEC;
 - (ii) details facilitating clear identification of the first ten largest clients in value in terms of margin facilities afforded by the Margin Provider.

- d) SEC shall be informed on a monthly basis any details of clients who have been extended credit in violation of criteria 5 (i); and
- e) A Margin Provider shall provide the SEC with financial information in conformity with formats specified by the SEC from time to time.

DISCLOSURE OF HOLDING COMPANIES/PARTIES

07. A Margin Provider shall keep the SEC informed of the percentage holding in it by its parent/owning company(s), subsidiary companies, associate companies and partnerships and of shareholders holding more than 20% or more of its equity.

REQUIREMENT FOR WRITTEN CONTRACTS

08. a) A Margin Provider shall execute a written contract prior to carrying out any business for and on behalf of a client containing all the terms and conditions agreed to between the client, Margin Provider and the broker of the client and shall ensure the due performance of the duties and obligations undertaken by the Margin Provider in such contract.
- b) Such contract shall not be modified in any way other than in writing, with due notice given to the client.
- c) Such contract shall specify the risks associated with margin trading for the client.
- d) A copy of such contract shall be handed over to the client no sooner it has been signed by all parties.
- e) The duties and obligations of each party shall be clearly and expressly stated in such contract and it shall be the duty of a Margin Provider to ensure that all parties to the contract discharge their duties and obligation as stated in the contract.

REGULATORY COMPLIANCE AND INTERNAL CONTROLS

09. a) A Margin Provider shall have an internal compliance manual applicable to its directors and employees/agents which sets out adequate compliance procedures and practices to ensure:
- (i) that the directors, employees and agents of the Margin Provider do not contravene the provisions of the SEC Act, Part V to the Schedule of the SEC Act, criteria set out herein or any other Directive issued by the Commission

from time to time; and

(ii) consistent and fair implementation of its operational procedures and administrative processes.

- b) A Margin Provider and its directors shall be responsible for due compliance with such internal compliance manual.
- c) A Margin Provider shall immediately inform the SEC in writing where any person acting on their behalf contravenes the provisions of the SEC Act, Part V to the Schedule of the SEC Act, criteria set out herein or any other Directive issued by the Commission from time to time as applicable.
- d) A Margin Provider shall make an Annual Compliance Report confirming compliance with the SEC Act, Part V to the Schedule of the SEC Act, the criteria set out herein and any other Directive issued by the Commission from time to time, as applicable and forward same to the SEC signed by a director and the Chief Executive Officer within 45 days after the closure of each financial year.

GOVERNANCE

10. A Margin Provider shall:

- a) establish and implement good business practices and follow just and fair principles in the conduct of business;
- b) comply with Codes and Best Practices applicable to the activities of a Margin Provider as may be issued by the SEC or determined by the SEC to be applicable;
- c) have internal procedure manuals sufficient to ensure the continuity of its operational activities;
- d) ensure that their account opening procedures are sufficiently diligent to identify clients;
- e) maintain an effective complaints handling process; and
- f) ensure that it does not carry out any activities which could cause a conflict of interest with its margin providing functions.

CLIENT INFORMATION, RECORD KEEPING AND CONFIDENTIALITY

11. a) A Margin Provider shall maintain the following records in its office:
- (i) all subsisting margin trading agreements entered into by the Margin Provider;
 - (ii) all margin trading agreements for a minimum period of six years from the date of cessation of such agreements;
 - (iii) details relating to all transactions including the identity of clients, spanning the immediately preceding period of six years; and
 - (iv) a comprehensive written record of all complaints received from clients and action taken thereon by the Margin Provider for a period of six years reckoned from the date on which the matter has been considered and concluded.
- b) A Margin Provider shall have suitable information recording and retrieval systems and maintain such information for inspection by the SEC.
- c) A Margin Provider shall ensure confidentiality at all times of all information relating to clients including such client's identity and transactions carried out for such client, unless disclosure of such information is required by the SEC or any other provisions of any written law.

ADVERTISEMENTS

12. a) Margin Providers shall ensure that the content in advertisements promoting its services as Margin Providers, are accurate and complete and does not have the capacity to mislead the public.
- b) Margin Providers shall submit the contents of all advertisements for the perusal of the SEC at least 5 days prior to its publication in the media.
- c) Margin Providers shall comply with any guidelines that may be issued by the Commission from time to time in respect of advertisements.

SPECIFIC STANDARDS APPLICABLE TO UNDERWRITERS

The criteria set out in this part shall be applicable to any person who:

- (a) is in connection with a public issue of securities of a company which has applied for a listing, guarantees to purchase unsubscribed securities of such company for a fee or commission; or
- (b) is in connection with a public issue of securities of a listed public company, guarantees to purchase unsubscribed securities of such company for a fee or commission; or
- (c) negotiates with a company as defined in paragraph (a) or (b) above to purchase such securities in the event of the offer being not fully subscribed; or
- (d) purchases such issue from the company specifically with a view to offering such securities to the public;

such person shall obtain registration as an 'Underwriter' with the SEC, prior to performing the functions mentioned above.

FIT AND PROPER CRITERIA FOR DIRECTORS AND PERSONS DEALING WITH CLIENTS

- 01 (1) A Registered Underwriter shall not appoint an individual as a director or a person dealing with clients for and on behalf of an Underwriter, if such person has been:
- (a) convicted by any Court of Law in Sri Lanka or abroad subsequent to a finding of guilt for the commission of any offence which involves fraud, deceit or dishonesty; or
 - (b) found to have committed or been connected with the commission of any act which involves fraud, deceit or dishonesty by any regulatory or supervisory authority;
 - (i) established by law in Sri Lanka or abroad; or
 - (ii) constituted under law as a commission of inquiry, tribunal or other similar body; or
 - (iii) by any professional body which in the opinion of the SEC is of an established and credible stature; or

- (c) where a commission of an offence by such person has been compounded in terms of Section 51 A of the SEC Act (as amended) during the past 3 years, preceding the date of the appointment; or
- (d) found guilty of a capital market offence by a Court of Law in terms of the SEC Act the Securities Law of any other country;

unless the prior approval of the Commission is obtained for such appointment.

The Commission on an application made under this provision by a Registered Underwriter, may grant approval for such person to be appointed notwithstanding the above said prohibition under exceptional circumstances.

- 01 (2) (a) A Registered Underwriter shall not allow an individual to continue as a director or a person dealing with clients, for a period as determined by the Commission, if such person, subsequent to his appointment as a director or a person dealing with clients has been;
- (i) convicted by any Court of Law in Sri Lanka or abroad subsequent to a finding of guilt for the commission of any offence which involves fraud, deceit or dishonesty; or
 - (ii) found to have committed or been connected with the commission of any act which involves fraud, deceit or dishonesty by anybody with regulatory or supervisory authority;
 - a. established by law in Sri Lanka or abroad; or
 - b. constituted under law as a commission of inquiry, tribunal or other similar body; or
 - c. by any professional body which in the opinion of the SEC is of an established and credible stature; or
 - (iii) where a commission of an offence by such person has been compounded in terms of the SEC Act (as amended); or
 - (iv) found guilty of a capital market offence by a Court of Law in terms of the SEC Act or the Securities Law of any other country.
- 01 (2) (b) For the avoidance of doubt, the period in which a person described in 01 (2) (a) above shall be barred from functioning as a director or a person dealing with clients for and on behalf of a Registered Underwriter may be;

- (i) for a period of months or for a period of years with a right to reapply at the end of the said period; or
- (ii) a permanent bar from the industry; or
- (iii) for a period from acting in a supervisory capacity or from performing a particular duty;

depending on the gravity of the offence, the impact of such offence on the market or other factor which the Commission shall deem to be relevant considering the circumstances surrounding the commission of such offence.

QUALIFICATIONS AND EXPERIENCE

02. Every Underwriter shall ensure that a minimum of two of its employees possess the qualifications and experience set out in sub clause (a) or (b) below.

- (a)
 - (i) Associate of the Institute of Chartered Accountants of Sri Lanka; or
 - (ii) Associate of the Chartered Institute of Management Accountants; or
 - (iii) Chartered Financial Analyst; or
 - (iv) Associate of the Chartered Certified Accountants; or
 - (v) Associate of the Chartered Institute of Bankers; or
 - (vi) Associate of the Institute of Bankers of Sri Lanka; or
 - (vii) An equivalent or higher professional and/or academic qualification acceptable to the SEC

and

active experience in the financial/Securities market for a minimum period of two years or substantive experience in underwriting.

- (b) experience in the financial/securities market relating to underwriting for a minimum period of five years.

Experience for the stipulated duration under clauses (a) and (b) above per se will not fulfill the required qualification and the SEC shall consider the nature, scope and intensity of experience in determining its adequacy.

SEC SANCTION REQUIRED FOR OTHER BUSINESS

03. Business other than that of an Underwriter may be carried out only with the written approval of the SEC, unless such Underwriter is a licensed or a Registered Financial Institution regulated by the Central Bank of Sri Lanka.

FINANCIAL AND INFRASTRUCTURE REQUIREMENTS

04. (a) Unless regulated as a licensed or Registered Financial Institution by the Central Bank of Sri Lanka, an Underwriter shall at all times maintain a minimum Net Capital stipulated by the Securities and Exchange Commission from time to time.

(b) All Underwriters shall obtain SEC approval on a case by case basis for any underwriting obligation prior to entering into any underwriting contract.

In considering the grant of approval the SEC shall require the Underwriter to demonstrate its financial capacity to meet a particular underwriting obligation.

SEC approval may be conditional on the Underwriter fulfilling further requirements as specified by the SEC. Such requirements will include those related to securing the Underwriter's capacity to fulfill the financial obligations undertaken in addition to any other requirement as may be deemed to be relevant to the Commission having regard to a particular case.

(c) An Underwriter shall always maintain adequate financial human and other resources sufficient to carry out the business as an Underwriter.

MATERIAL INFORMATION AND CONTRACT

(5) (a) An Underwriter shall execute a written contract prior to carrying out any business for and on behalf of a client containing all the terms and conditions agreed to by and between itself and the client.

(b) Such contract shall not be modified in any way other than in writing, with due notice to the Client.

DISCLOSURE OF HOLDING COMPANIES/PARTIES

06. An Underwriter shall keep the SEC informed of the percentage holdings in it/by it, its parent/owning company(s), subsidiary company(s), associate company(s) and partnership(s) and of shareholders holding more than 20% or more of its equity.

REPORTING REQUIREMENTS

07. An Underwriter shall provide the SEC with the information itemized below.

(a) (i) A Financial Report' prepared on a quarterly basis in conformity with the Sri Lanka Accounting Standards

- (ii) The Financial Report shall be signed by a director and the Chief Executive Officer.
- (b) A copy of the statement of audited accounts prepared annually in accordance with the Sri Lanka Accounting Standards shall be submitted to the SEC within a period of six months from the close of each financial year.
- (c) An Underwriter shall provide the SEC with information in conformity with formats specified by the SEC from time to time.

REGULATORY COMPLIANCE AND INTERNAL CONTROLS

- 08 (a) An Underwriter shall have an internal compliance manual applicable to its directors and employees which sets out adequate compliance procedures and practices to ensure:
- (i) that the directors and employees of the Underwriter do not contravene the provisions of the SEC Act, Part V to the Schedule of the SEC Act or the criteria set out herein; and
 - (ii) the consistent and fair implementation of its operational procedures and administrative processes.
- (b) An Underwriter and its directors shall be responsible for due compliance with such internal compliance manual.
- (c) An Underwriter shall give written instructions to the compliance officer to immediately inform the SEC in writing where any member of the staff or a director contravenes the provisions of the SEC Act, Part V to the Schedule of the SEC Act, the criteria set out herein or any other Directive issued by the Commission time to time
- (d) An Underwriter shall make an Annual Compliance Report signed by a director and its Chief Executive Officer confirming compliance with the SEC Act, Part V of the Schedule to the SEC Act, the criteria set out herein or any other Directive issued by the Commission from time to time and forward same to the SEC signed by a director and the Chief Executive Officer within 45 days after the closure of each financial year.

GOVERNANCE

09. An Underwriter shall:

- (a) establish and implement good business practices and follow just and fair principles in the conduct of business;

- (b) comply with codes and best practices applicable to the activities of an Underwriter as may be issued by the SEC or specified by the SEC to be applicable;
- (c) ensure that its relationships or activities create no conflict of interest between itself and its clients. In the event such conflict cannot be avoided there shall be full disclosure thereof to its clients and to the SEC;
- (d) not make any statement either oral or written which would misrepresent;
 - the services that the Underwriter is capable of performing or has rendered to other issuer company; or
 - his underwriting commitment.
- (e) not divulge to other issuers, press or any party any confidential information about his issuer company which has come to his knowledge and shall not deal in securities of the issuer company without making disclosure to the Board of Directors of the issuer company;

For the avoidance of doubt, an Underwriter in any event shall not dispose the securities of the issuer company whilst in possession of unpublished price sensitive information, relation to the issuer company.

- (f) not willfully make an untrue statement or suppress any material information.

CLIENT INFORMATION, RECORD KEEPING AND CONFIDENTIALITY

10. (a) An Underwriter shall maintain the following records in its office:

- (i) all subsisting agreements entered into by the Underwriter;
 - (ii) all agreements entered into by the Underwriter that have been concluded spanning a period of six years reckoned from the date of conclusion;
 - (iii) all transactions relating to clients including the identity of clients spanning the immediately preceding period of six years.
- (b) An Underwriter shall have suitable information recording and retrieval systems and maintain such information for inspection by the SEC.
 - (c) An Underwriter shall ensure confidentiality of all information relating to clients including such client's identity and transactions carried out for such client, unless and to the extent such disclosure is required by law.

ADVERTISEMENTS

11. An Underwriter shall ensure that the content in advertisements promoting its services is accurate and complete and does not have the capacity to mislead the public.
12. (a) Underwriters shall ensure that the content in advertisements promoting its services as Underwriters are accurate and complete and does not have the capacity to mislead the public.
 - (b) Underwriters shall submit the contents of all advertisements for the perusal of the SEC at least 5 days prior to its publication in the media.
 - (c) Underwriters shall comply with any guidelines that may be issued by the Commission from time to time in respect of advertisements.

SPECIFIC STANDARDS APPLICABLE TO INVESTMENT MANAGERS

The criteria set out in this Part shall be applicable to any person carrying on business as Investment Managers.

FIT AND PROPER CRITERIA FOR DIRECTORS AND PERSONS DEALING WITH CLIENTS

01 (1) A Registered Investment Manager shall not appoint an individual as a director or a person dealing with clients for and on its behalf , if such person has been:

- (a) convicted by any Court of Law in Sri Lanka or abroad subsequent to a finding of guilt for the commission of any offence which involves fraud, deceit or dishonesty; or
- (b) found to have committed or been connected with the commission of any act which involves fraud, deceit or dishonesty by a regulatory or supervisory authority;
 - (i) established by law in Sri Lanka or abroad; or
 - (ii) constituted under law as a commission of inquiry, tribunal or other similar body; or
 - (iii) by any professional body which in the opinion of the SEC is of an established and credible stature; or
- (c) where a commission of an offence by such person has been compounded in terms of Section 51A of the SEC Act during the past 3 years, preceding the date of the appointment; or
- (d) found guilty of a capital market offence by a court of law in terms of the SEC Act, or the Securities Law of any other country;

unless the prior approval of the Commission is obtained for such appointment.

The Commission on an application made under this provision by a Registered Investment Manager, may grant approval for such person to be appointed notwithstanding the above said prohibition under exceptional circumstances.

01 (2) (a) A Registered Investment Manager shall not allow an individual to continue as a director or a person dealing with clients, for a period as determined by the Commission, if such person, subsequent to his appointment as a director or a person dealing with clients has been;

- (i) convicted by any Court of Law in Sri Lanka or abroad subsequent to a finding of

guilt for the commission of any offence which involves fraud, deceit or dishonesty; or

- (ii) found to have committed or been connected with the commission of any act which involves fraud, deceit or dishonesty by any regulatory or supervisory authority;
 - a. established by law in Sri Lanka or abroad; or
 - b. constituted under law as a commission of inquiry, tribunal or other similar body; or
 - c. by any professional body which in the opinion of the SEC is of an established and credible stature;
- (iii) an offence committed by such person has been compounded in terms of Section 51 A of the SEC Act; or
- (iv) found guilty of a capital market offence by a court of law in terms of the SEC Act, or the securities law of any other country.

01 (2) (b) For the avoidance of doubt, the period in which a person described in 01 (2) (a) above shall be barred from functioning as a director or a person dealing with clients for and on behalf of a Registered Investment Manager may be;

- (i) for a period of months or for a period of years with a right to reapply at the end of the said period; or
- (ii) a permanent bar from the industry; or
- (iii) for a period from acting in a supervisory capacity or from performing a particular duty;

depending on the gravity of the offence, the impact of such offence on the market or other factor which the Commission shall deem to be relevant considering the circumstances surrounding the commission of such offence.

QUALIFICATIONS AND EXPERIENCE

02. Every Director and /or employee of an Investment Manager who are involved in managing client funds shall possess the qualifications and/or experience as set out in (a) or (b) below;

- (a)
 - (i) - Associate of the Institute of Chartered Accountants of Sri Lanka;
 - Associate of the Chartered Institute of Management Accountants- UK;
 - A degree from an accredited Sri Lankan or foreign university;

- Charter holder of the CFA Institute;
- Associate of the Chartered Association of Certified Accountants;
- Associate of the Chartered Institute of Bankers, UK;
- Associate of the Institute of Bankers of Sri Lanka;
- Diploma in Capital Markets, conducted by the SEC; or
- An equivalent or higher professional and/or academic qualification

and

(ii) experience in the financial/securities market for a minimum period of two years.

(b) Experience in the financial/securities market for a minimum period of seven years.

Provided that experience for the specified duration per se will not fulfill the required qualification and the Commission shall consider the nature, scope and intensity of experience in determining its adequacy.

An individual who wishes to obtain a registration as a Market Intermediary shall possess the qualifications/experience specified in 2 (a) above.

REQUIREMENT FOR A MINIMUM NUMBER OF PERSONS DEALING WITH CLIENTS

03. Every Investment Manager shall ensure that a minimum of two persons possessing qualifications and/or experience set out in 02 above are employed to manage client funds.

The SEC may direct an increase in the number of such qualified personnel on account of the volume of business proposed to be undertaken or undertaken by such an Investment Manager.

SEC SANCTION REQUIRED FOR OTHER BUSINESS

04. An Investment Manager shall not engage in any other business other than that of an Investment Manager unless prior written approval of the Commission is obtained.

FINANCIAL REQUIREMENTS AND INFRASTRUCTURE

05. (i) An Investment Manager shall at all times maintain a minimum Net Capital stipulated by the SEC from time to time.

(ii) An Investment Manager shall at all times, maintain a minimum Liquid Capital stipulated by the SEC from time to time.

06. An Investment Manager shall ensure that key duties and functions of the front office and back office are clearly segregated to avoid any conflicts of interest.

07. An Investment Manager shall maintain proper systems, processes and human resources suitable and adequate to support the due functioning of its business as an Investment Manager at all times.

CORPORATE GOVERNANCE

08. An Investment Manager shall at all time act in the best interest of the clients while establishing and implementing just and fair business practices.

09 All Investment Managers shall adhere to operational standards specified in Schedule 1 of the referred criteria.

MAINTENANCE OF RECORDS

10. a) All Investment Managers shall maintain the following records of clients in its office:

- (i) all powers of attorney granted to the Investment Manager by the clients;
- (ii) all subsisting agreements entered into by the Investment Manager;
- (iii) all agreements entered into by the Investment Manager that have been concluded spanning a period of six years from the date of conclusion pertaining to the identity of all clients, all transactions relating to clients including the bases for investment decisions;
- (iv) records to support investment analysis, recommendations, actions, and other investment-related communications with clients and prospective clients for a minimum period of six years;
- (v) a comprehensive written record of all complaints received from clients and action taken thereon by the Investment Manager representative of the duration of six years reckoned from the date of conclusion of action on such complaint.

b) An Investment Manager shall have suitable information recording and retrieval systems and maintain such information for inspection by the SEC.

c) An Investment Manager shall ensure confidentiality of all information relating to clients including such client's identity and transactions carried out for such client,

unless and to the extent such disclosure is required by law.

SEGREGATION OF CLIENT FUNDS

11. An Investment Manager shall ensure:

- a) that the money of each client is maintained in separate bank accounts to enable clear identification of the same;
- b) that the monies and assets held on behalf of the clients are not pooled;
- c) that all monies and assets held for and on behalf of clients are segregated from monies and assets held by the Investment Manager;
- d) that the monies of the clients shall not be utilised except as specifically sanctioned in writing by such clients.

MATERIAL INFORMATION AND CONTRACT

- 12. All Investment Managers shall provide clients and potential clients with an "Investment Management Services Guide" which shall include accurate and complete information. Without prejudice to the generality of this clause, the Guide shall include *inter alia* the provisions stated in Schedule 2 of the referred criteria.
- 13. All Investment Managers shall execute a written contract prior to carrying out any business for and on behalf of a client containing all the terms and conditions agreed to by and between itself and the client and such contract shall not be modified in any way other than in writing. Without prejudice to the generality of this clause it shall *inter alia* include provisions stated in Schedule 3 of the referred criteria.
- 14. All Investment Managers shall request for a Power of Attorney from the clients prior to carrying out any business for and on behalf of a client.

VALUATION

- 15. a) An Investment Manager shall ensure that it has systems that are capable of issuing clients with regular portfolio valuations and notification of all transactions made on behalf of the client.
- b) An Investment Manager shall provide its clients with current and accurate portfolio valuations on a monthly basis.

FINANCIAL REPORTING AND DISCLOSURES

- 16. An Investment Manager shall provide SEC with information as set out as follows:

- a) A 'Financial Report' prepared quarterly in conformity with the Sri Lanka Accounting Standards signed by a Director and the Chief Executive Officer pursuant to a Board resolution;
- b) A copy of the statement of audited accounts prepared annually in accordance with the Sri Lanka Accounting Standards shall be submitted to the SEC within a period of six months from the close of each financial year;
- c) An Investment Manager shall provide the SEC with information in conformity with formats stipulated by the SEC from time to time.

17. All Investment Managers shall immediately notify the SEC of the percentage holdings in it by its parent/owning company(s), subsidiary company(s), associate company(s) and partnership(s) and of shareholders holding more than 20% or more of its equity.

ADVERTISEMENTS

- 18. a) An Investment Manager shall ensure that the content in advertisements promoting its services is accurate, materially complete and does not have the capacity to mislead the public.
- b) The advertisement shall not guarantee a yield and/or return on investment.
- c) Any reference to performance shall only be demonstrated by reference to relevant and published benchmarks.
- d) An Investment Manager shall submit the contents of all advertisements for the perusal of the SEC at least 5 days prior to its publication in the media.
- e) An Investment manager shall comply with any guidelines that may be issued by the Commission from time to time in respect of advertisements.

REGULATORY COMPLIANCE AND INTERNAL CONTROLS

- 19. a) An Investment Manager shall have an internal compliance manual applicable to its directors and employees which sets out adequate compliance procedures and practices to ensure:
 - (i) that the directors and employees of the Investment Manager do not contravene the provisions of the SEC Act, Part V to the Schedule of the SEC Act, the criteria set out herein and any other Rules or Directives issued by the Commission time to time; and

- (II) the consistent and fair implementation of its operational procedures and administrative processes.
- b) An Investment Manager and its Directors shall be responsible for due compliance with such internal compliance manual.
- c) An Investment Manager shall make an Annual Compliance Report signed by a director and the Chief Executive Officer confirming compliance with Part V to the Schedule to the SEC Act, the criteria set out herein and any other Rules or Directives issued by the Commission time to time and forward same to the SEC within 45 days after the closure of each financial year.

SCHEDULE 01

CRITERIA ON OPERATIONAL STANDARDS

All Investment Managers shall;

- a) ensure that the account opening procedures facilitate Know Your Customer (KYC) guidelines issued by the Financial Intelligence Unit (FIU) of CBSL;
- b) exercise diligence and independence in analyzing investments and making investment recommendations and managing investment portfolios and shall establish and maintain procedures that will enable the monitoring of compliance by its employees;
- c) Ensure that all investment decisions, recommendations and actions shall be based and supported by appropriate research;
- d) maintain an effective complaints handling process;
- e) ensure that its relationships or activities create no conflict of interest between itself and its clients. In the event such conflict cannot be avoided there shall be full disclosure thereof to its clients and to the SEC;
- f) outsourcing of business shall be based on proper written agreements;
- g) shall not guarantee a specific return to a client or compensate clients for any loss made in the respective portfolios, unless attributable to negligence.

SCHEDULE 02

INVESTMENT MANAGER SERVICES GUIDE

The Investment Management Services Guide shall inter alia include the following;

- a) names of persons authorized by the Investment Manager and approved by the SEC to deal with clients in providing investment advice;
- b) dispute resolution mechanisms available to a client;
- c) notice of reporting frequency;
- d) the Company Profile and the Board of Directors; and
- e) such other information which could be reasonably construed as having a bearing on functions carried out by an Investment Manager.

SCHEDULE 03

WRITTEN CONTRACT BETWEEN THE INVESTMENT MANAGER AND THE CLIENT

The written contract between the Investment Manager and the clients shall inter alia include the following;

- a) the investment objective;
- b) the investment strategy and associated risks;
- c) the contract period;
- d) the income distribution policy;
- e) the maximum leverage level;
- f) the exit mechanism(s);
- g) the applicable taxes;
- h) the parameters within which investments may be carried out and the basis on which performance may be reviewed. Any measure used shall be a relevant published benchmark;
- i) the reporting frequency and content thereof; and
- j) the fee structure including terms of payment.

SPECIFIC STANDARDS APPLICABLE TO CREDIT RATING AGENCIES

The Criteria set out in this Part shall be applicable to bodies corporate carrying on business as a Credit Rating Agencies.

FIT AND PROPER CRITERIA FOR DIRECTORS AND PERSONS INVOLVED IN THE RATING PROCESS

01 (1) A Registered Credit Rating Agency shall not appoint an individual as a director or a person involved in the rating process, if such person has been;

- (a) convicted by any Court of Law in Sri Lanka or abroad, subsequent to a finding of guilt for the commission of any offence which involves fraud, deceit or dishonesty; or
- (b) found to have committed or been connected with the commission of any act which involves fraud, deceit or dishonesty by any regulatory or supervisory authority;
 - (i) established by law in Sri Lanka or abroad; or
 - (ii) constituted under law as a commission of inquiry, tribunal or other similar body; or
 - (ii) by any professional body which in the opinion of the SEC is of an established and credible stature; or
- (c) where a commission of an offence by such person has been compounded in terms of Section 51A of the SEC Act during the past 3 years, preceding the date of the appointment; or
- (d) found guilty of a capital market offence by a Court of Law in terms of the SEC Act, or the Securities Law of any other country;

unless the prior approval of the Commission is obtained for such appointment.

The Commission on an application made under this provision by a Registered Credit Rating Agency may grant approval for such person to be appointed notwithstanding the above said prohibition under exceptional circumstances.

01 (2) (a) A Registered Credit Rating Agency shall not allow an individual to continue as a director or a person involved in the rating process on behalf of a Credit Rating Agency, for a period as determined by the Commission, if such person, subsequent to his appointment as a director or a person involved in the rating process has been;

- (i) convicted by any Court of Law in Sri Lanka or abroad subsequent to a finding of guilt for the commission of any offence which involves fraud, deceit or dishonesty; or
- (ii) found to have committed or been connected with the commission of any act which involves fraud, deceit or dishonesty by any regulatory or supervisory authority;
 - a. established by law in Sri Lanka or abroad; or
 - b. constituted under law as a commission of inquiry, tribunal or other similar body; or
 - c. by any professional body which in the opinion of the SEC is of an established and credible stature; or
- (iii) where a commission of an offence by such person has been compounded offence in terms of Section 51 A of the SEC Act; or
- (iv) found guilty of a capital market offence by a Court of Law in terms of the SEC Act, or the Securities Law of any other country;.

01 (2) (b) For the avoidance of doubt, the period in which a person described in 01 (2) (a) above shall be barred from functioning as a director or a person involved in the rating process for and on behalf of a Registered Credit Rating Agency may be;

- (i) for a period of months or for a period of years with a right to reapply at the end of the said period; or
- (ii) a permanent bar from the industry; or
- (iii) for a period from acting in a supervisory capacity or from performing a particular duty;

depending on the gravity of the offence, the impact of such offence on the market or other factor which the Commission shall deem to be relevant considering the circumstances surrounding the commission of such offence.

QUALIFICATIONS AND EXPERIENCE

02. Every director and employee, involved in providing ratings on behalf of a Credit Rating Agency shall possess the qualifications and experience as set out in (a) or (b) below;

- (a) (i) Associate of the Institute of Chartered Accountants of Sri Lanka; or
- (ii) Associate of the Chartered Institute of Management Accountants; or

- (iii) Chartered Financial Analyst; or
 - (iv) Associate of the Chartered Certified Accountants; or
 - (v) Associate of the Chartered Institute of Bankers; or
 - (vi) Associate of the Institute of Bankers of Sri Lanka; or
 - (vii) Degree in Accountancy, Economics, Finance or Business Administration from an accredited Sri Lankan or foreign university; or
 - (viii) An equivalent or higher professional and/or academic qualification acceptable to the Commission;
- and**
- (ix) active experience in the financial/ securities market for a minimum period of two years.

- (b) relevant and active experience in the financial/securities market for a minimum period of seven years.

Provided that experience for the stipulated duration per se will not fulfill the required qualification and the Commission shall consider the nature, scope and intensity of experience in determining its adequacy.

REQUIREMENT FOR MINIMUM NUMBER OF PERSONS AS RATING ANALYSTS

- 03. The applicant shall have at least two persons in its employment with the qualifications and experience set out in the criteria set out herein to act as rating analysts.

The SEC may direct an increase in the number of such qualified personnel if the volume of the business proposed to be undertaken or undertaken by such Credit Rating Agency increases.

INFRASTRUCTURE AND PERSONNEL REQUIREMENTS

- 04. (a) The applicant shall always maintain adequate financial human and other resources sufficient to carry out the business as a Credit Rating Agency.
- (b) A Credit Rating Agency shall appoint a Compliance Officer with qualification and experience the criteria set out herein who shall be responsible for ensuring compliance procedures and practices of the Credit Rating Agency.

DISCLOSURES

- 05. A Credit Rating Agency shall keep the SEC informed of the percentage holding in it by its parent/owning company(s), subsidiary companies, associate companies and partnerships and of shareholders holding more than 20% or more of its equity.

PROMOTERS OF CREDIT RATING AGENCIES

06. (a) The Commission shall not consider an application made for the registration of a Credit Rating Agency unless the applicant is promoted by persons belonging to any of the following categories;

- (i) A bank regulated by the Central Bank of Sri Lanka; or
- (ii) A foreign bank operating in Sri Lanka with the approval of the Central Bank of Sri Lanka; or
- (iii) A foreign Credit Rating Agency recognized in the country of its incorporation, having at least five years experience in rating securities.

(b) The promoters of the applicant shall collectively hold at least 30% of the total paid up capital of the applicant for a minimum period of five years.

CONTINUING REGISTRATION REQUIREMENTS

07. A person registered as a Credit Rating Agency shall ensure continued compliance with the following requirements:

(1) Financial /Disclosure Requirements

Capital Requirements –

- (i) A Credit Rating Agency will at all times maintain the Net Capital stipulated by the SEC from time to time.
- (ii) A Credit Rating Agency will at all times, maintain Liquid Capital as stipulated by the SEC from time to time.

(2) Professional Indemnity Policy

A Credit Rating Agency shall at all times maintain a Professional Indemnity Policy with an approved insurer. The policy should cover legal liability for claims against the Credit Rating Agency arising out of its business as a Credit Rating Agency. Without prejudice to the generality the policy shall include the following:

- (a) The Professional Indemnity Policy shall be for a minimum amount of Rupees 15 Million or 20% of the annual revenue of the Credit Rating Agency rounded to the closest Rs.5 Million.

(b) The excess under the policy shall be for no more than 10% of the policy cover with a maximum excess of Rupees 2.5 Million.

(c) SEC shall be notified of events reportable under the policy to the insurance company.

(d) A copy of policy or cover note until issued is to be lodged with the SEC.

(3) A Credit Rating Agency shall at all times have appropriate staff and systems to monitor compliance and conflicts of interest.

(4) All ratings completed are to be published on the Credit Rating Agency's web site unless the rating is a result of a request for a private rating. For the avoidance of doubt, any rating given to an instrument intended to be issued to the public or to qualify an instrument shall be published on the website.

(5) All open ratings or changes thereto must be lodged monthly with the SEC. A copy of all listed securities' rating is to be copied to the SEC when completed.

(6) A Credit Rating Agency shall inform the SEC immediately if Liquid Capital falls below 120% of the required Liquid Capital or if Liquid Capital has fallen by over 50% since it was last reported to the SEC.

MATERIAL INFORMATION AND CONTRACTS

08. A Credit Rating Agency shall execute a written contract prior to carrying out any business for and on behalf of a client in its capacity as a Credit Rating Agency, containing the terms and conditions agreed to between the parties including the procedure to be followed in carrying out a rating, the fees to be charged by the Credit Rating Agency and shall ensure that such procedure is complied with uniformly in respect of all rating activities carried out by such company.

Such contract shall not be modified in any way other than in writing.

RATING PROCESS AND CRITERIA

09. (a) The applicant shall have formulated in writing its rating criteria and any amendments made thereto from time to time. The rating criteria and methodology must be forwarded to the Commission together with the application for registration. Upon completion of the registration process this criteria must be made readily available to the public free of charge and shall be published on the company web-site.

(b) Every Credit Rating Agency shall specify the rating process and any modifications to the process including the introduction of any new rating instruments.

- (c) Every Credit Rating Agency shall have a professional Rating Committee comprising minimum of three persons who are qualified in terms of the criteria set out herein to assign a rating.
- (d) At the time of applying for registration, the applicant shall give the names of all members of the Rating Committee and their current designations and qualifications.
- (e) All members of the Rating Committee shall each give an individual declaration (certified by an Attorney-at-Law) that they will not engage in the rating process of securities issued by companies in which they have any interest as shareholders or otherwise. The Commission has to be informed of the appointment of any new members to the Rating Committee.
- (f) The Credit Rating Agency shall ensure that members of the Rating Committee are independent of the entity subject to the rating and have no interest or connection that could be perceived as presenting a conflict of interest.

INDEPENDENCE OF CREDIT RATING AGENCIES AND AVOIDANCE OF CONFLICT OF INTEREST

10. (a) A Credit Rating Agency shall engage solely in the business of operating a Credit Rating Agency;
- (b) The directors and the employees of the Credit Rating Agency and the members of the Rating Committee shall not have transactions with companies whose securities are rated by them except for those entered into on an "arm's length" basis.

Such "arm's length" transactions would include transactions as a subscriber or consumer of a utility company and a holder of a current account with a commercial bank, or a holder of an insurance policy with an insurance company.

However, all such arm's length transactions and the attendant terms and conditions of such transaction, inclusive of all such transactions entered into by the Credit Rating Agency itself as a body corporate, (i.e. instances where a Credit Rating Agency, a director or employee or member of the rating committee obtains a loan or borrowing facility from such company whose securities are being rated) shall be strictly disclosed to the Compliance Officer, who shall take note of same.

- (c) A Credit Rating Agency's disclosures of actual and potential conflicts of interest to the client should be complete, timely, clear, concise and specific.

- (d) A Credit Rating Agency shall demonstrate the organization's independence from the companies it rates if and when required to do so by the Commission;
- (e) A Credit Rating Agency shall ensure that its rating analysts owning any shares in any corporate entity or business firm shall refrain from participating in the rating process of such corporate entity or business firm;
- (f) A Credit Rating Agency shall ensure that they do not carry out any activities which could cause a conflict of interest in terms of its credit rating functions;
- (g) No employee of the Credit Rating Agency with the "capacity to influence" a rating shall participate in or otherwise influence the determination of the Credit Rating Agency's rating of any particular entity or obligation.

An employee shall be deemed to have the "capacity to influence" the same in circumstances which has potential to impair his independence which shall include the circumstances set out below, where he;

- (i) owns securities of the rated entity or any entity related and/or connected thereto;
 - (ii) has had employment or other significant business relationship with the rated entity within the six months immediately preceding such rating;
 - (iii) has an immediate relation (i.e. spouse, partner, child, sibling) who currently works for the rated entity; and
 - (iv) has any other relationship with the rated entity or any agent of the rated entity that could in the particular circumstances be perceived as presenting a conflict of interest.
- (h) No Credit Rating Agency shall rate a security issued by an entity which is;
- (i) a borrower of its promoter, or
 - (ii) a subsidiary of its promoter, or
 - (iii) an associate of its promoter, if
 - a. there are common chairman, directors between Credit Rating Agencies and these entities.
 - b. there are common employees.
 - c. there are common chairman, directors, employees on the rating committee.
- (i) No Credit Rating Agency shall rate a security issued by its associate or subsidiary rating agency or if its rating committee has a chairman, director or employee who is a chairman, director or employee of any such entity.

- (j) A Registered Credit Rating Agency shall provide for an independent review panel to handle appeals by the clients who are dissatisfied with the rating.
Such review panel shall consist of minimum three qualified persons in terms of 02 above and shall be independent from the issue and the original rating panel.
- (k) In the event there is an appeal, it is required to publish the report of the review panel on the website of the Credit Rating Agency.

STANDARD OF CARE

11. A Credit Rating Agency shall ensure that their directors and staff act with due diligence and a reasonable degree of care in carrying out their functions.

REPORTING REQUIREMENTS

12. A Credit Rating Agency shall provide the information set out below;
- (a) (i) a 'Financial Report' prepared on a quarterly basis. The report shall be submitted to the Commission by the twentieth day of the following month;
- (ii) the Financial Report shall-
- conform to the Sri Lanka Accounting Standards In the case of a holding company financial information of the group and the said holding company shall be set out separately;
 - be signed by a director and its Chief Executive Officer;
 - be endorsed with a certification by the directors that 'The information contained in the Report is accurate and is subject to audit;
- (b) audited accounts prepared in accordance with the Sri Lanka Accounting Standards. The accounts shall be submitted to the Commission within a period of six months from the close of each financial year; and
- (c) all audit and non-audit services carried out by the Auditors of the Credit Rating Agency for the agency itself together with the fees and expenses charged should be disclosed separately in the relevant Audited Accounts.

COMPLIANCE

13. A Credit Rating Agency shall have an internal Compliance Manual applicable to its directors and employees which sets out adequate compliance procedures and practices to ensure that the directors and employees of the Credit Rating Agency do not contravene the provisions of the SEC Act, Part V to the Schedule to the SEC Act, criteria stipulated hereunder or any other Directive issued by the Commission from time to time;

- (a) A Credit Rating Agency shall be required to instruct the Compliance Officer in writing to immediately inform the Commission in writing where any member of the staff or a director contravene the provisions of the SEC Act, Part V of the Schedule to the SEC Act, standards stipulated hereunder or any other Directive issued by the Commission from time to time; and
- (b) The Compliance Officer of every Credit Rating Agency shall make an Annual Compliance Report setting out the extent of compliance with the SEC Act, Part V of the Schedule to the SEC Act, standards stipulated hereunder or any other Directive issued by the Commission from time to time and forward same to the SEC signed by a director and the Chief Executive Officer within 45 days after the closure of each financial year.

GOVERNANCE & COMPLIANCE

- 14.(a) A Credit Rating Agency shall establish and implement good business practices and follow just and fair principles in the conduct of business.
- (b) A Credit Rating Agency shall comply with Codes and Best Practices applicable to the activities of a Credit Rating Agency as may be issued by the Commission or determined by the Commission to be applicable.
- (c) A Credit Rating Agency shall make full and material written disclosure to the public of the ratings carried out by them and the key elements underlying the decision and also the bases for the same.
- (d) A Credit Rating Agency shall ensure that their rating analysts use reasonable care and exercise independent judgment when conducting credit analysis and also use reasonable judgment regarding the inclusion or exclusion of relevant factors and distinguish between facts and opinions in credit analysis reports.
- (e) A Credit Rating Agency shall have internal practice manuals sufficient to ensure the continuity of its operational activities.
- (f) A Credit Rating Agency shall maintain an effective complaints handling process.
- (g) A Credit Rating Agency shall ensure that the credit rating analysts and the members of the Rating Committee refrain from soliciting or obtaining any benefits from anyone with whom the Credit Rating Agency does business.
- (h) A Credit Rating Agency shall disclose in all its communications to the public, when its ratings are not initiated at the request of the issuer and whether the issuer participated in the rating process.

- (i) A Credit Rating Agency shall refrain from rating any issue of a company in which:
 - a) it has any interest whatsoever, whether financially or otherwise and/or;
 - b) its director(s) has any interest whatsoever, whether financially or otherwise.
- (j) A Credit Rating Agency shall have its own Code of Conduct to be strictly adhered to by its Rating Committee, directors, analysts and employees.
- (k) In the event the Credit Rating Agency resorts to outsourcing of work, then the Credit Rating Agency shall include that fact in the Credit Rating Agreement entered into with the client in order for the client to be informed of same. The Credit Rating Agency shall obtain from the person to whom the functions are outsourced an undertaking to comply with the SEC Act, Part V to the Schedule to the SEC Act, criteria stipulated hereunder or any other Directive issued by the Commission from time to time particularly which prohibits conflict of interest situations.

CLIENT INFORMATION, RECORD KEEPING AND CONFIDENTIALITY

15. (a) A Credit Rating Agency shall maintain the following records in its office;
- (i) all internal records to support its credit rating opinions for a period of six years;
 - (ii) all particulars relating to clients up to date at the rating agency office which shall include the name and registered address and contact numbers of such companies, names and addresses of its directors as at the date of rating, its issued share capital and the nature of business; and
 - (iii) a comprehensive written record of all complaints received from clients and action taken thereon by the Credit Rating Agency for a period of at least six years from the date of receipt of such complaint;
- (b) A Credit Rating Agency shall have a suitable information recording and retrieval system and maintain such information for inspection by the Commission.
- (c) A Credit Rating Agency shall ensure confidentiality at all times of all information relating to clients including such client's identity and transactions carried out for such client unless and to the extent such disclosure is required by law; and
- (d) The employees of the Credit Rating Agency shall be prohibited from engaging in transactions in securities when they possess confidential information concerning the issuer of such security.

ADVERTISEMENTS

16. (a) Credit Rating Agencies shall ensure that the content in advertisements promoting its services is accurate, materially complete and does not have the capacity to mislead the public.
- (b) The Credit Rating Agency shall submit the contents of all advertisements for the perusal of the SEC at least 5 days prior to its publication in the media.
- (c) Credit Rating Agencies shall comply with any guidelines that may be issued by the Commission from time to time in respect of advertisements.