

[Home](#)[Back](#)**FORM**

Memorandum of appeal under section 29 read with section 15T of the Securities and Exchange Board of India Act, 1992 (15 of 1992)

For use in Appellate Tribunal's Office

Date of Filing \_\_\_\_\_

Date of receipt by post \_\_\_\_\_

Registration number \_\_\_\_\_

In the Securities Appellate Tribunal between:

A.B. - Appellant

C.D. and others - Respondent(s)

Details of appeal:

1. Particulars of the appellant:

- (i) Name of the appellant
- (ii) Address of registered office of the appellant
- (iii) Address for service of all notices.

2. Particulars of the despondent or respondents:

- (i) Name of the respondent or respondents.
- (ii) Office address of the respondent or respondents.
- (iii) Address of service of all notices.

3. Jurisdiction of the Appellate Tribunal - The appellant declares that the matter of the appeal falls within the jurisdiction of the Appellate Tribunal.

4. Limitation - The appellant further declares that the appeal is within the limitation as prescribed in section 15W of the Securities and Exchange Board of India, 1992.

5. Facts of the case and the orders passed by the case and the orders passed by the Adjudicating Officer.

The facts of the case are given below:

(give here a concise statement of facts and grounds of appeal against the specific order of Adjudicating Officer, in a chronological order, each paragraph containing as neatly as possible as separate issue, fact or otherwise).

6. Relief(s) sought. - In view of the facts mentioned in paragraph 5 above, the appellant prays for the following relief(s) (Specify below the relief(s) sought explaining the grounds for relief(s) and the legal provisions (if any) relied upon).

7. Interim order, if prayed for. - Pending final decision on the appeal the appellant seeks issue of the following interim order:

(Give here the nature of the interim order prayed for with reasons)

8. Matter not pending with any other court, etc.- The appellant further declares that the matter regarding with this appeal has been made is not pending before any court of law or any other authority or any other Tribunal.

9. Particulars of bank draft postal order in respect of the deposit of penalty imposed:

- (1) Name of the bank on which drawn
- (2) Demand draft number

OR

- (1) Number of Indian Postal Order(s)
- (2) Name of the issuing post office
- (3) Date of issue of postal order(s)
- (4) Post Office at which payable

10. Particulars of bank draft postal order in respect of the fee paid in terms of rule 6 of these rules.

- (1) Name of the bank on which drawn
- (2) Demand draft number

OR

- (1) Number of Indian Postal Order(s)
- (2) Name of the issuing post office
- (3) Date of issue of postal order(s)
- (4) Post Office at which payable

11. Details of Index - An index in duplicate containing the details of the documents to be relief upon is enclosed.

12. List of enclosures.

Verification

1, \_\_\_\_\_ son/daughter/wife of Shri  
 \_\_\_\_\_ being the (Name in full and block letters)  
 \_\_\_\_\_ of  
 \_\_\_\_\_ holding a valid power of attorney from  
 (Designation) (Name of the company) \_\_\_\_\_ do hereby verify that the  
 contents of para 1 to 11 are true to my personal knowledge and belief and that I have (Name of  
 the company) not suppressed any material facts.

Signature of the appellant

Place:

Date:

To,

The Registrar,  
 \_\_\_\_\_  
 \_\_\_\_\_

---

Disclaimer | Acknowledgement

All text and media on these pages are © Copyright, Securities and Exchange Board of India. All rights reserved

**PROFESSIONAL PROGRAMME EXAMINATION (NEW SYLLABUS)  
ELECTIVE PAPER 9.2 – CAPITAL, COMMODITY AND MONEY MARKET**

**PRACTICE TEST PAPER**

OPEN BOOK EXAMINATION

*Time allowed: 3 hours*

*Max Marks: 100*

***Attempt all questions. All questions are compulsory.***

**Question No. 1**

**Suppose that the following order has been passed by a Whole-time Member of SEBI.**

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA  
CORAM:....., WHOLE TIME MEMBER  
IN THE MATTER STE LTD In respect of M/s ROSE ( Prop. GHANA)  
SEBI Registration No. INB .....(PAN:.....)  
Sub-broker of XYZ Ltd.**

**Date of hearing:** September 19, 2011

**Appearances**

**For Noticee:** Mr. Amit, Advocate

**For SEBI:** Mr. Mahesh, Deputy General Manager Ms. Sasmita, Deputy Legal Adviser

**ORDER**

**Under Regulation 28(2) read with Regulation 38 (2) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008**

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation in the trading in the scrip of M/s STE Limited (hereinafter referred to as 'STEL' / 'Company') during the period from January 01, 2002 to July 31, 2002. The shares of STEL are listed on Bombay Stock Exchange (hereinafter referred to as 'BSE') and Ahmedabad Stock Exchange (hereinafter referred to as 'ASE'). Investigations, inter alia, revealed that STEL, which had a paid up capital of Rs.3,60,00,000 comprising 36 lakh shares, issued additional shares to the tune of 3 crores on a preferential basis to certain entities . These shares were issued by STEL to the shareholders of two companies, namely M/s. ABC Ltd. (hereinafter referred to as 'ABC') and M/s. PQR Ltd (hereinafter referred to as 'PQR') on swap basis. The shares of STEL so allotted were fraudulently dematerialized using an in-principle listing approval from ASE. Further, it was seen that immediately prior to allotment, several fictitious demat accounts were opened using forged and fictitious documents. The shares allotted on preferential basis were found to have been transferred, in some instances, to such fictitious accounts. Following this, the said shares were routed through various entities and finally offloaded onto unsuspecting investors at BSE, even though BSE had refused listing permission for these additional shares.

2. Pursuant to the said investigation, it was alleged that one of the entities, viz., M/s ROSE (hereinafter referred

to as 'ROSE'/ 'the noticee'), received unlisted shares of STEL from various entities in off market transactions and thereafter transferred these shares to brokers who then offloaded the unlisted shares on the market.

3. Based on the findings of investigation, SEBI initiated enquiry proceedings as against the noticee in terms of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'Enquiry Regulations'), by appointing an Enquiry Officer under Regulation 5(1) of Enquiry Regulations vide order dated April 7, 2008 to enquire into the alleged violation of the provisions of Regulations 3, 4(b),(c) and 6(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 1995 (hereinafter referred to as 'PFUTP Regulations, 1995') read with Regulations 3(a), (c), (d), 4(1), (2) (a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations, 2003') and Clauses A(1), (2) and D (1), (4) and (5) of Code of Conduct as stipulated in Schedule II under Regulation 15 of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as 'Brokers Regulations'). As the Enquiry Regulations were repealed with the notification of SEBI (Intermediaries) Regulations, 2008, the Enquiry Officer/ Designated Authority (hereinafter referred to as the 'Enquiry Officer') submitted his Report dated November 23, 2009, in terms of Regulation 27 of SEBI (Intermediaries) Regulations, 2008, recommending thereby that the certificate of registration of the noticee be suspended for a period of six months.

4. Subsequently notices dated December 29, 2009 and June 09, 2010 (hereinafter referred to as the 'SCN') under Regulation 28 of SEBI (Intermediaries) Regulations, 2008, were issued to the noticee, asking it to show cause as to why action as recommended by the Enquiry Officer or a higher penalty should not be imposed on the noticee. The noticee was advised to reply to the SCN, within twenty one days from the date of receipt thereof. It was also informed that in case of failure, it would be presumed that it had no explanation to offer and SEBI shall be free to take such action in the manner as it deemed fit. A copy of the Enquiry Report was also forwarded to the noticee along with the SCN.

5. An opportunity of personal hearing was granted to the noticee before me on December 16, 2010. However, the noticee did not appear for the said hearing citing health reasons. The noticee replied to the SCN vide letter dated December 22, 2010. Subsequently, one more opportunity of hearing was granted to the noticee on September 19, 2011. On the scheduled date, Mr Amit, Advocate, appeared before me as the authorized representative of M/s ROSE and made submissions. The noticee has, *inter alia*, submitted as under:

- (i) The noticee was holding these shares in trust for the allottees.
- (ii) The shares were not unlisted shares.

6. I have carefully considered the Enquiry Report, the SCN issued to the noticee along with the submissions of the noticee and other material available on record. Thus, the issue that arises for my consideration is whether the noticee had violated Regulations 3, 4(b),(c), and 6 (a) of PFUTP Regulations, 1995 read with Regulations 3(a), (c), (d) and 4(1), (2) (a) of PFUTP Regulations, 2003 and Clauses A(1), (2) and D (1), (4) and (5) of the Code of Conduct as stipulated in Schedule II under Regulation 15 of the Brokers Regulations.

7. I note that the paid up capital of the company as on January 1, 2002 was Rs.33,60,00,000/- (3,36,00,000 shares of Rs.10/-). The above capital of the company consisted of 3,00,00,000 shares allotted on a preferential basis (swap for consideration other than cash). The shares of the preferential allotment remained unlisted at BSE. Hence, the submission of the noticee that the shares were not unlisted is without merit.

8. I note that the major brokers/sub brokers and their clients who had traded during the investigation period are as under:

Member Broker	Sub-Broker	Major Ultimate Client	Gross Purchase		Gross Sales	
			Shares	%	Shares	%
PLI Pvt. Ltd.		Karan	285053	0.59	14927712	31.21
		Nitin			1988023	4.13
		Yatindra			3454658	7.18
		YC Corporation			274313	0.57
	Total Trading by broker			296023	0.62%	20691706
XYZLtd.	Vasu	ROSE			892000	1.85
	JamBhai	Sunil			2003700	4.16
	ROSE	Nitin	31928	0.07	49982	0.10
		ROSE(GHANA)	34948	0.076	38054	0.076
	Total trading by broker			518930	1.08%	3305629
Sampark	SPF(Prop: Pankaj)	Hitendra	10000	0.02	260500	0.54
		Farooq	1004011	2.09	1004976	2.09
		KC Corporation		0.00	1050000	2.18
		Trading account	1071504	2.23	1091952	2.27
		Nitin	146314	0.30	812586	1.69
	Total trading by broker			2529550	5.26%	4452659
Imtiaz		Total 273 clients.	10827004	22.50%	6555277	13.62%
Total traded quantity			48116275	100%	48116275	100%

9. As it was observed that a few clients who were the major sellers had sold more than the listed capital of the company, while their purchases were comparatively less as stated above, demat accounts of these clients including Karan, Nitin, Yatindra, ROSE and Sunil, KC Corporation were analyzed to find out the source of their acquisition. Analysis of their demat statements revealed the following:

- (i) The preferential allottees had dematerialised the shares they had received in the allotments and had transferred these shares to Rinku and GHANA (proprietor of M/s ROSE, the noticee herein).
- (ii) Rinku was holding 5 lakh shares from the preferential allotment and further received 71,81,980 shares from the preferential allottees of ABC Ltd. and 1,90,00,000 shares (on a single day) from the allottees of PQR Ltd.
- (iii) Rinku transferred 2,33,72,565 shares to GHANA. GHANA also received 11,09,556 shares from some of the other preferential allottees in the scrip during the Investigation period.

10. Subsequently, the noticee delivered these shares to the brokers/sub brokers, details of which are stated below. The shares were sold in the market by these brokers/ subbrokers.

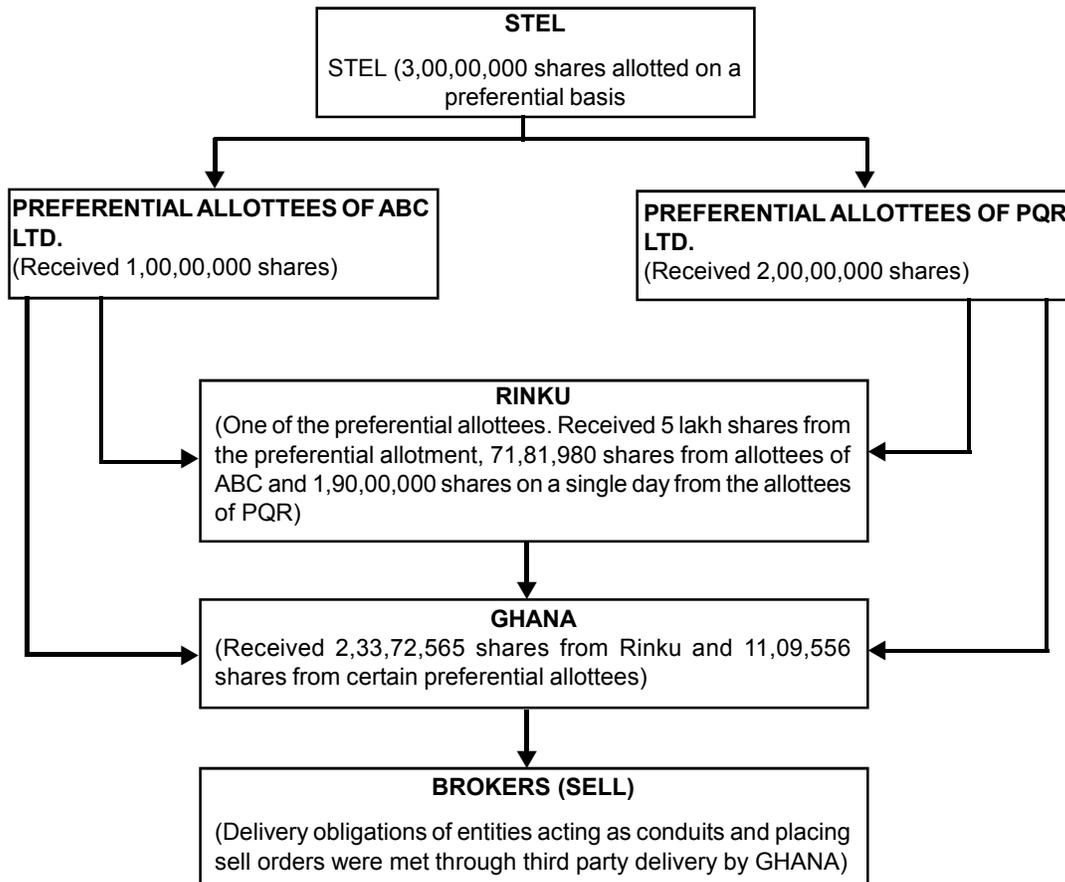
Name of the Broker/sub-broker	No of shares
PLI Pvt. Ltd	2,05,34,963
XYZ Ltd.	20,00,000
SPF	12,68,286

The aforesaid shares were unlisted. Thus, it is alleged that the noticee aided and abetted the allottees in off loading the shares which they received in the preferential allotment.

11. I note that none of the aforementioned entities who traded in the scrip, except GHANA (proprietor of M/s ROSE), had received any shares through off- market transfers, nor had they delivered any shares to the respective brokers. Their delivery obligations were met through third party delivery by Shri GHANA (ROSE).

12. The scheme of manipulation in the scrip of STEL can be represented diagrammatically as under:

13. Thus, I note from the above that the noticee was part of the manipulation in the scrip of STEL as it received shares from the allottees in the preferential allotment through off- market and subsequently transferred to the brokers/sub-brokers for sale through the market.



14. I further note that SPF, one of the entities to whom the noticee transferred the unlisted shares, is related to the noticee. While the noticee has denied that Pankaj, the proprietor of SPF is his cousin, I note that the telephone No..... registered in the name of ROSE, is allotted to the address ..... I note that this is the same address as that of SPF.

15. I also note that 1,83,957 shares were sold by M/s PLI Pvt. Ltd. On behalf of ROSE as client, but contract notes were issued in the name of Mr. Karan. The noticee, during the proceedings before the Enquiry Officer, admitted that the transaction was on behalf of Mr. Karan, and submitted that the same was due to an error and has been rectified.

16. From the above, I find that the noticee has not only received the shares in off market from Rinku and other preferential allottees but also transferred the same to PLI Pvt Ltd., XYZ Ltd. and SPF, who in turn sold them in the market. By doing so, the noticee has aided and abetted the preferential allottees, brokers/sub-brokers and clients in offloading the unlisted shares in the market.

17. In view of the facts and circumstances of the case, the violation of Regulations 3, 4(b), 4(c), 6(a) of PFUTP Regulations, 1995 read with Regulation 3(a),(c),(d) 4(1),(2)(a) of PFUTP Regulations, 2003 and Clauses A(1) (2) and D (1) (4) (5) of Code of Conduct for Stock Brokers as stipulated in Schedule II under Regulation 15 of the Brokers Regulations stands established.

18. Therefore, taking into consideration the facts and circumstances of the case, I, in exercise of the powers conferred upon me in terms of Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby state that the certificate of registration of the noticee, **M/s ROSE (Prop. GHANA) (SEBI Registration No. ....)** (**PAN: .....**) be suspended for a period of six (6) months from the date of this order.

19. This order shall come into effect on expiry of 21 days from the date of this order.

Place:

Date:

Whole Time Member

SEBI

Draft an appeal to Securities Appellate Tribunal under Section 15T of the SEBI Act, 1992 against this order in about 1500 words.

(50 Marks)

### Question No. 2

M/s ABC Limited (Target Company) a public limited company listed at NSE and BSE, has total paid up capital of Rs. 13,41,43,160/- comprising of 13,41,43,160 equity shares of Rs 1/-each. The promoter of the Target Company is a body corporate i.e. GB Private Limited (GBPL) (unlisted company) and holding 75% equity share capital of Target Company and balance shareholding is held by Indian Public. The promoters of GBPL are M/s GI Private Limited (GIPL) holding 90% shareholding of GBPL. The total shareholding of M/s GIPL is held by other three bodies corporate i.e. M/s AH Private Limited (AHPL), M/s AI Private Limited (AIPL) and M/s DR Private Limited (DRPL). The individuals are holding majority shareholdings of all these three bodies corporate viz. AHPL, AIPL and DRPL. Mrs. Jain is holding 21.57%, 24.92% and 28.40% equity stakes in AHPL, AIPL and DRPL respectively. Mrs. Malhotra is holding 23.53%, 19.93 % and 28.40 % stakes in AHPL, AIPL and DRPL respectively. Mrs. Malhotra and Mrs. Jain together with the Person Acting in Concert, who are their relatives, are in control of AHPL, AIPL and DRPL. In the light of the above, explain the following:

- (i) Whether the transfer of all the shares by Mrs. Jain and Mrs. Malhotra in unlisted companies i.e. AHPL, AIPL and DRPL by way of gift to their immediate relative i.e. brother ( who is not directly or indirectly part of the promoter group of target company of share holder of any of the unlisted holding company) shall attract the provisions of SEBI (SAST) Regulations, 2011? If the answer is yes, explain with detailed provisions which are attracted.
- (ii) Whether the above said transfer of shares by Mrs. Jain and Mrs. Malhotra in unlisted companies i.e. AHPL, AIPL and DRPL by way of gift to their immediate relative i.e. brother shall be eligible for exemption under the SEBI (SAST) Regulations, 2011? If yes, then subject to which regulation it can claim exemption?
- (iii) Whether for the above said transfer, the individual promoters of AHPL, AIPL and DRPL i.e. Mrs. Jain and Mrs. Malhotra and their brother will be deemed to be qualifying persons for claiming exemption?

(30 marks)

### Question No. 3

Hedging has generally proved to be one of the most popular techniques for risk management, it is imperative to

**CAPITAL, COMMODITY AND MONEY MARKET**  
(Elective Paper 9.2)

Time allowed : 3 hours

Maximum marks : 100

**NOTE:** Answer **ALL** Questions.

**Question 1**

The Amazing Co. Ltd. (ACL) is a listed company on BSE and NSE for over 15 years. The financial performance of the company is rated to be good while the stock performance is lacklustre. The liquidity in the stock is random and often neglected. Poor liquidity is often attributed to poor holding of stock in the hands of retail investors. The shareholding pattern of the company as filed with the stock exchange is as under :

S. No.	Category of shareholder	No. of Shareholders	No. of shares (₹ 10 each)
1.	Promoter & Promoter Group and Person acting in concert	15	29,56,500
2.	Public financial institution	4	1,50,000
3.	Foreign institutional investor	2	50,000
4.	Bodies corporate	15	27,340
5.	Resident individuals	102	34,450
6.	Others	6	3,400
		144	32,21,690
7.	GDR	74	1,24,400
		218	33,46,090

The company has also allotted 1,67,304 convertible debentures of ₹100 each to promoters, which are due for conversion in the next six months. Each debenture will be converted into one equity share of ₹10 each at a premium of ₹90 each.

In light of the above, answer the following :

- What is the percentage of public holding required to be maintained in ACL under Rule 19A of Securities, Central's (Regulations) Rules, 1957? How much of the promoter holding is required to be diluted to comply with the continuous listing requirements? Mention the percentage of holding by each category. (8 marks)
- Justify whether the underlying shares issued against GDR constitute public holding. (8 marks)

- (c) What are the options available to promoters for increasing public holding and the pros and cons of each process ? (12 marks)
- (d) Whether acquisition by way of convertible debentures trigger the provisions of takeover code. Analyse with relevant provisions. (8 marks)
- (e) Briefly describe the process of offer for sale (OFS) for dilution of promoter holding. (14 marks)

**Answer 1(a)**

The percentage of holding is as under:

Sl. No.	Category of Shareholder	No. of Share Holders	No. of Shares (₹10 Each)	Percentage of Holding	No of Shares Including Convertible Debentures (Conversion Due in Next Six Months)	Percentage of Holdings Including Convertible Debentures (Conversion Due in Next Six Months)	Public Holding/ Promoter Holding
1	Promoter and Promoter Group and PAC	15	29,56,500	88.36%	3123804	88.91%	Promoter
2	Public Financial Institution	4	1,50,000	4.48%	1,50,000	4.27%	Public
3	Foreign Institutional Investor	2	50,000	1.49%	50,000	1.42%	Public
4	Bodies Corporate	15	27,340	0.82%	27,340	0.78%	Public
5	Resident Individuals	102	34,450	1.03%	34,450	0.98%	Public
6	Others	6	3,400	0.10%	3,400	0.096%	Public
		144	32,21,690				
7	GDR	74	1,24,400	3.72%		3.54%	Not to be considered public holding till it's conversion. (Refer Rule 2(e) of Securities Contracts Regulation Rules, 1957
		218	33,46,090		3513394		

From the above table:

- (i) Total promoter holding before including the convertible debentures which is due for conversion within six months = 88.36%
- (ii) Total promoter holding after including the convertible debentures which is due for conversion within six months = 88.91%
- (iii) Percentage of GDR to be excluded from public holding (before inclusion of convertible debentures which is due for conversion within six months) = 3.72%
- (iv) Percentage of GDR to be excluded from public holding (after inclusion of convertible debentures which is due for conversion within six months) = 3.54%

Accordingly the calculation of public holding:

- (a) *Before inclusion of convertible debentures which is due for conversion within six months*

100- (Total promoter holding before including the convertible debentures which is due for conversion within six months+ Percentage of GDR to be excluded from public holding(before inclusion of convertible debentures which is due for conversion within six months)=100-88.36-3.72=7.92%

- (b) *After inclusion of convertible debentures which is due for conversion within six months*

100- (Total promoter holding after including the convertible debentures which is due for conversion within six months+ Percentage of GDR to be excluded from public holding(after inclusion of convertible debentures which is due for conversion within six months)=100-88.91-3.54=7.55%

Under Rule 19(2) and Rule 19(A) of the securities contracts (Regulations) Rules, 1957, the minimum public holding in ACL should be at 25% of the issued capital. The public holding in ACL is 7.92% (before including convertible debentures) and 7.55% (after including convertible debentures).

Accordingly the promoters are to dilute 17.08% (before including convertible debentures) and 17.45% (after including convertible debentures)

### **Answer 1(b)**

As defined in Rule 2(e) of Securities Contracts Regulation Rules 1957, public shareholdings means equity shares of the company held by public and shall exclude shares which are held by custodian against depository receipts issued overseas. Accordingly underlying shares issued against Global Depository Receipts will not constitute public shareholding, till conversion of GDRs into equity shares.

### **Answer 1(c)**

As per Clause 40A (ii) of equity listing agreement, where the issuer company is required to achieve the minimum level of public shareholding specified in Rule 19(2)(b) and/or Rule 19A of the Securities Contracts (Regulation) Rules, 1957, it shall adopt any of the following methods to raise the public shareholding to the required level:-

- (a) *Issuance of shares to public through prospectus*

The Promoters may dilute their shareholding in the Company in percentage

terms by issuing additional shares to public through prospectus. This will increase the share capital of the Company and thus bring down the shareholding of the promoters. However, this process is time consuming and takes six months to one year. Moreover, the company may not require the funds and servicing capital may put additional burden on the company. However, the chance of success of increasing public holding will be high as substantial marketing is done by lead managers.

(b) *Offer for sale of shares held by promoters to public through prospectus*

This option available to the promoters is to dispose of their shareholding in the Company through offer for sale of shares to public through prospectus. It is much the same way as (a) above except that the proceeds accrue to promoters (seller) and the cost of public issue is also borne by the promoter (seller).

(c) *Sale of shares held by promoters through the secondary market in terms of SEBI circular CIR/MRD/DP/05/2012 dated February 1, 2012*

This is also called Offer for sale by promoters through stock exchanges. This method offers flexibility, savings in cost and time and tax advantages over the alternative, which is follow-on public offering.

(d) *Institutional Placement Programme (IPP) in terms of Chapter VIIIA of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended*

While this process of IPP is also economical, it restricts offer only to institutions, which may not show interest in the stock, being a mid-sized company. Therefore, the purpose may not be served.

(e) *Rights Issues to public shareholders, with promoter/promoter group shareholders forgoing their entitlement to equity shares, whether present or future, that may arise from such issue*

The promoters may also dilute their shareholding through issue of additional shares to the existing shareholders, other than promoters, on rights basis. However, this is again a time consuming process and may not get desired success unless the issue price is kept much lower than the market price of the shares. Further, this may bring down the market capitalization of the stock. Therefore, this option is not advisable.

(f) *Bonus Issues to public shareholders, with promoter/promoter group shareholders forgoing their entitlement to equity shares, whether present or future, that may arise from such issue*

Under this process the promoters are to forego their entitlement of bonus shares which is a loss for them.

(g) any other method as may be approved by SEBI, on a case to case basis.

**Answer 1(d)**

As reported, the company has allotted 1,67,304 lakh fully convertible debentures of ₹100 each to promoters which results into 1,67,304 additional shares upon conversion leading to increase in promoter holding beyond 75%. It will trigger takeover code under which the promoters have to offer to acquire the balance public holding and delist the company from the stock exchanges.

Alternatively, the promoters may plan the dilution of promoter holding to the necessary level to bring the minimum public shareholding as prescribed. However, disclosure has to be made to stock exchange and SEBI.

**Answer 1(e)**

OFS i.e. Offer for sale facilitates promoters of a listed company to dilute their existing shareholding through an exchange based bidding platform. The process is transparent, secure and convenient. Except promoters and persons acting in concert who are offering the securities, all class of investors can participate in buying the shares through OFS route. The following are the steps involved in OFS process:

- The promoter shall appoint a broker for OFS and declare the intention to sell shares at least one clear trading (on T-2 day, T being the day of OFS issue) day before trading starts. The announcements for OFS shall contain following details:
  - (i) Name of the Seller(s) i.e. Promoters/Promoter group entities/ Non-Promoter shareholder and the name of the company whose shares are proposed to be sold.
  - (ii) Name of the Exchange(s) where the orders shall be placed. In case orders are to be placed on both BSE and NSE, one of them shall be declared as the Designated Stock Exchange (“DSE”).
  - (iii) Date and time of the opening and closing of the offer.
  - (iv) Allocation methodology i.e. either on a price priority (multiple clearing prices) basis or on a proportionate basis at a single clearing price.
  - (v) Number of shares being offered for sale.
  - (vi) The maximum number of shares that the seller may choose to sell over and above the offer made at point (v) above.
  - (vii) The name of the broker(s) on behalf of the seller(s).
  - (viii) The date and time of the declaration of floor price, if the seller(s) chooses to announce it to the market. Alternatively, a declaration to the effect that the floor price will be submitted to the DSE in a sealed envelope that shall be disclosed post closure of the offer.
  - (ix) Conditions, if any, for withdrawal or cancellation of the offer.
- The bids are accepted only for one day during trading hours.
- All orders must be backed by a margin as may be stipulated by an exchange from time to time.
- Orders will be allowed to be cancelled / modified only if they are supported by 100% upfront margin.
- If the seller chooses to declare floor price, it shall be declared after the close of trading hours. If the floor price is not to be declared, it shall be given in a sealed envelope before the opening of the offer which shall be disclose at the end of the trading.
- 25% of the offer shall be reserved for mutual funds and insurance companies. Minimum 10% of the offer size must be reserved for the retail investors.

- No single bidder other than mutual funds and insurance companies shall be allotted more than 25% of the size of the OFS.
- Settlement takes place on T+1 basis.
- If the offer price is lower than the floor price, allotments take place on T+1 day and investors are credited with the share and promoters are given funds.
- Funds of the unsuccessful bidders will be returned by the exchange to the investors concerned.
- Brokers would issue contract notes to all successful bidders.

### Question 2

- (a) XYZ Ltd. is considering merger with ABC Ltd. The shares of XYZ Ltd. are currently traded @ ₹25. It has 2,00,000 shares outstanding and its earnings after taxes (EAT) amount to ₹4,00,000.

ABC Ltd. has 1,00,000 shares outstanding, its current market price is ₹12.50 and its EAT are ₹1,00,000. The merger will be effected by means of stock swaps (exchange). ABC Ltd. has agreed to a plan under which XYZ Ltd. will offer the current market value of the shares of ABC Ltd. :

- (i) What are the pre-merger earnings per share (EPS) and P/E ratio of both the Companies ?
- (ii) If P/E ratio of ABC Ltd. is 8, what is the current market price of the share of the company ? What is the exchange ratio ? What will be the post-merger EPS of XYZ Ltd. ?
- (iii) What must the exchange ratio be for XYZ Ltd. so that pre and post-merger ratio be the same ?

(10 marks)

- (b) Poor 'due diligence' erodes the confidence of public investing in capital markets. Justify and elaborate as to what constitutes due diligence. (10 marks)

- (c) What are the norms for framing a corporate disclosure policy ? (10 marks)

### Answer 2(a)(i)

#### Pre-merger EPS and P/E Ratio of XYZ Ltd. and ABC Ltd.

Particulars	XYZ Ltd.	ABC Ltd.
Earning after taxes	4,00,000	1,00,000
No. Of shares outstanding	2,00,000	1,00,000
EPS (Earning after tax/No. of shares)	2	1
Market share per share (Rs.)	25.00	12.50
Price Earning (P/E) Ratio (Market Price / EPS)	12.50	12.50

**Answer 2(a)(ii)**

If the P/E Ratio of ABC Ltd. is 8, the Current Market price of ABC Ltd. shall be = ₹8  
i.e. EPS \* P/E (Rs. 1 x 8)

Exchange Ratio = ₹25/8= 3.125 i.e. One share of XYZ Ltd. for every 3.125 Equity Share of ABC Ltd.

Post Merger EPS of XYZ Ltd.

$$= \frac{[(Rs. 4,00,000 + Rs. 1,00,000)]}{[2,00,000 + (1,00,000/3.125)]}$$

$$= 5,00,000/2,32,000$$

$$= ₹2.16$$

**Answer 2(a)(ii)****Desired Exchange Ratio**

Total No. Of shares in post-merged company= (Post-merger earnings)/ Pre-merger EPS of XYZ Ltd.

$$= 5,00,000/2 = 2,50,000$$

$$\text{Number of shares required to be issued} = 2,50,000 - 2,00,000$$

$$= 50,000$$

$$\text{Therefore, the exchange ratio} = 5,00,000/1,00,000$$

$$= 0.50$$

i.e. one share of XYZ Ltd. for every two Equity Shares of ABC Ltd.

**Answer 2(b)**

Due Diligence is nothing but an independent and a professional verification of material information required to be furnished in the prospectus for making informed investment decisions. Due diligence is with respect to financials (past, present, future), business opportunities, strengths and weaknesses of the business in which the company is operating, the litigation that the companies are drawn into including but not limited to the tax liabilities, the risk management systems in the company, internal controls, key managerial personnel, etc.

**Areas for Due Diligence**

Some of the areas under which documents are to be looked at in the due diligence process is as under:

*Legal status of the company* : A merchant banker has to review the Memorandum and Articles of Association of the company, its certificate of incorporation, commencement of business of the company, change of name certificate, history / businesses of the company, any special rights available to any shareholder through a special agreement, restriction on transfer of securities, etc.

**CAPITAL, COMMODITY AND MONEY MARKET**  
(Elective Paper 9.2)

Time allowed : 3 hours

Maximum marks : 100

**NOTE :** Answer **ALL** Questions.

**Question 1**

Read carefully the following order passed by an Adjudicating Officer of the Securities and Exchange Board of India :

BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. JJ/AM/AO-35/2014]

UNDER SECTION 15-1 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of : Ms. Rosy  
(PAN - XXXXXXXXXX)

In the matter of : Fantastic Limited

**FACTS OF THE CASE :**

- (i) Securities and Exchange Board of India (hereinafter referred to as 'SEBI') carried out an examination in the scrip of Fantastic Limited (hereinafter referred to as 'Company'). The shares of the Company are listed on the Bombay Stock Exchange Limited (hereinafter referred to as 'BSE'). It was observed that Ms. Rosy (hereinafter referred to as 'Noticee') was holding 1,64,800 shares of the Company (representing 5.03% of shareholding of the Company) in the quarter ending March, 2005. It was also observed that the Noticee sold 50,000 shares (representing 1.53% of shareholding of the Company) on 31st May, 2005 and 1,00,000 shares (representing 3.05% of the shareholding of Company) on 3rd June, 2005 in off-market; thereby bringing down her holding to 0.45%. However, it was alleged that the Noticee failed to make disclosures as required under Regulation 13(3) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations').

**APPOINTMENT OF ADJUDICATING OFFICER**

- (ii) The undersigned was appointed as the Adjudicating Officer vide order dated 16th January, 2014 and the said appointment was conveyed vide proceedings of the whole-time member dated 22nd January, 2014 to inquire and adjudge under Section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act, 1992'), the alleged violation of provisions of Regulation 13(3) read with Regulation 13(5) of PIT Regulations committed by the Noticee.

*SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING*

- (iii) *A Show Cause Notice (hereinafter referred to as 'SCN') in terms of the provisions of Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') was issued to the Noticee on 31st January, 2014, calling upon the Noticee to show cause why an inquiry should not be held against her under Rule 4(3) of the Adjudication Rules and penalty be not imposed under Section 15A(b) of SEBI Act, 1992 for the alleged violations.*
- (iv) *The aforesaid SCN was duly delivered to the Noticee on 1st February, 2014. Subsequently, vide letter dated 6th February, 2014, the Noticee acknowledged the receipt of the SCN and requested for additional 15 days' time to submit reply. Thereafter, vide Notice of Inquiry dated 21st February, 2014, the Noticee was given an opportunity of personal hearing on 5th March, 2014 and the Noticee was advised to submit her reply, if any, on or before 5th March, 2014.*
- (v) *On the scheduled date of personal hearing, Mr. James, Authorised Representative (hereinafter referred to as 'AR') of the Noticee appeared and made the following submissions :*

*"We are making submissions vide letter dated 4th March, 2014. Further, the Company was under BIFR and was discharged in September, 2009. Since the Company was in difficult times, no records were maintained and our interest was only to revive the Company by transferring the shares to the brother-in-law of the Noticee. In view of our submissions, a lenient view may be taken. We have no further submissions to make in the matter."*

- (vi) *The Noticee had made the following submissions vide her letter dated 4th March, 2014 :*

*"I was the wife of one of the promoter shareholders of Fantastic Limited and the company was controlled and managed by AOIL. Due to certain family settlements, the entire shareholding of the company was finally transferred to Dr. AK. In this process, the shares held by me were disposed of by way of inter se transfers and market transactions in the year 2005. Since the transaction took place many years ago, I do not recollect whether any disclosures were made by me to the stock exchange under SEBI (Prohibition of Insider Trading) Regulations and I do not have any copies of the same. In case, there has been no filing, it has been only due to sheer ignorance of the requirement and there was no malafide intention. Further, I would also like to submit that there was no change in control of the company and the control remained within our own family after these sales. On the basis of the above submissions, I request you to kindly excuse the non-filing, if any, and drop any further proceedings against me."*

*ISSUES FOR CONSIDERATION*

- (vii) *After perusal of the material available on record, I have the following issues for consideration, viz.,*
- A. *Whether the Noticee has violated provisions of Regulation 13(3) read with 13(5) of PIT Regulations ?*

- B. Whether the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992 ?
- C. What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992 ?

#### FINDINGS

- (viii) On perusal of the material available on record and having regard to the facts and circumstances of the case, I record my findings hereunder :

ISSUE 1: Whether the Noticee has violated provisions of Regulation 13(3) read with 13(5) of PIT Regulations ?

- (ix) From the SCN, I note that the Noticee was holding 1,64,800 shares of the Company (representing 5.03% of the shareholding of the Company) in the quarter ending March, 2005. I also note that the Noticee sold/transferred 50,000 shares (representing 1.53% of the shareholding of the Company) on 31st May, 2005 and 1,00,000 shares (representing 3.05% of the shareholding of the Company) on 3rd June, 2005 in off-market. Therefore, the Noticee reduced her shareholding in the Company from 5.03% to 0.45%. Such reduction obliges the Noticee to make required disclosure to the Company under Regulation 13(3) of PIT Regulations within the time-limit prescribed under Regulation 13(5) of PIT Regulations. I note that the Noticee, in her reply dated 4th March, 2014, has submitted that due to certain family settlements the shares held by her were disposed by way of inter se transfers and market transactions in the year 2005. During the course of personal hearing, the AR of the Noticee submitted that the Company was under BIFR and as the Company was in difficult times, no records were maintained and interest of the Noticee was only to revive the Company by transferring shares to the brother-in-law of the Noticee. However, I am of the considered opinion that these do not absolve the Noticee from her duty of making necessary disclosures under Regulation 13(3) of PIT Regulations.

- (x) In view of the above, I hold that the Noticee was under an obligation to make the required disclosures under Regulation 13(3) of PIT Regulations, which the Noticee failed to do. Therefore, the Noticee has violated the provisions of Regulation 13(3) read with Regulation 13(5) of PIT Regulations.

ISSUE 2: Whether the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992 ?

- (xi) I note that the Noticee, in her reply dated 4th March, 2014, has submitted that "In case, there has been no filing, it has been only due to sheer ignorance of the requirement and there was no mala fide intention. Further, I would also like to submit that there was no change in control of the company and the control remained within our own family after these sales." However, the Hon'ble Supreme Court of India in Civil Appeal No.9523-9524 of 2003 in the matter of SEBI vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC), has held that "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant."

- (xii) *As already observed, the Noticee disposed substantial shares of the Company but failed to make disclosures as required under Regulation 13(3) read with 13(5) of PIT Regulations. Hence, I find that the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992.*

*ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992 ?*

- (xiii) *While imposing monetary penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992.*
- (xiv) *In the absence of material on record, the amount of disproportionate gain or unfair advantage made as a result of the default and the amount of loss caused to the investors due to the said default cannot be quantified. The Noticee was under obligation to make the necessary disclosure to the Company which, in turn, would have made the necessary disclosures to BSE, in terms of provisions of PIT Regulations. However, as stated earlier, by virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making disclosure, the Noticee has concealed the vital information which is detrimental to the interest of investors in securities market. Further, there is nothing on record to indicate that the default of the Noticee was repetitive.*
- (xv) *In the forgoing paragraphs, it is now established that the Noticee failed to make necessary disclosures under Regulation 13(3) read with 13(5) of PIT Regulations. Considering the facts and circumstances of the case and the violation committed by the Noticee, I find that imposing a penalty of ₹4,00,000 (Rupees Four Lakh only) for violation of Regulation 13(3) read with 13(5) of PIT Regulations on the Noticee would be commensurate with the violation committed by her.*

#### ORDER

- (xvi) *In terms of the provisions of the SEBI Act, 1992 and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹4,00,000 (Rupees Four Lakh only) under Section 15A(b) of SEBI Act, 1992 for violation of Regulation 13(3) read with Regulation 13(5) of PIT Regulations on Ms. Rosy.*
- (xvii) *The penalty shall be paid by way of demand draft drawn in favour of "SEBI - Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this Order. The said demand draft shall be forwarded to the Division Chief, Integrated Surveillance Department, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400051.*
- (xviii) *In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, copies of this Order are being sent to the Noticee and also to the Securities and Exchange Board of India.*

Date: May 15, 2014

Signed / ---

Place: Mumbai

Adjudicating Officer

Assume that Ms. Rosy is aggrieved by the above order and wishes to file an appeal before the Securities Appellate Tribunal against the above order. Draft an appeal in about 1,500 words. (50 marks)

### Answer 1

BEFORE THE SECURITIES APPELLATE TRIBUNAL AT MUMBAI

APPEAL NO. \_\_ OF 2014

In the matter of Securities and Exchange Board of India Act, 1992 (15 of 1992)

And

In the matter of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter, "**PIT regulations**")

And

In the matter of powers conferred under section 15 I of the SEBI Act, 1992 read with rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter, "**Adjudication rules**")

And

In the matter of Appeal against the Adjudication Order No JJ/AM/AO-35/2014 dated 15.05.2014 passed by The Ld. Adjudicating Officer, Securities and Exchange Board of India (hereinafter, **respondent**) *inter alia* imposing a monetary penalty of ₹4,00,000/- (Rupees Four Lakh Only) under section 15 A(b) of the SEBI Act, 1992 and rule 5 of the Adjudication rules on the Appellant (hereinafter, "**impugned order**")

#### In the matter of:

Ms. Rosy	)	
C/o Fantastic Limited	)	
Dalal Street, Fort,	)	
Mumbai – 400 023	)	.... Appellant

Versus

The Ld. Adjudicating Officer	)	
Securities and Exchange Board of India	)	
Having its registered office at	)	
SEBI Bhavan, Plot No. C4-A, G-Block,	)	
Bandra Kurla Complex, Bandra (East)	)	
Mumbai – 400 051	)	... Respondent

### MEMORANDUM OF APPEAL

#### DETAILS OF APPEAL:

##### 1. Particulars of Appellant

- |                                                    |   |                                                                                                                         |
|----------------------------------------------------|---|-------------------------------------------------------------------------------------------------------------------------|
| (i) Name of the Appellant                          | : | Ms. Rosy                                                                                                                |
| (ii) Address of Registered office of the Appellant | : | C/o Fantastic Limited<br>Dalal Street, Fort, Mumbai – 400 023<br>Tel. No.: 022 - 99999999<br>E-mail: rosy@fantastic.com |

- (iii) Address of Service of all notices : Mr. Governance Professional  
Practice Company Secretary  
CBD Belapur, Navi Mumbai – 400 614
- (iv) Telephone, Fax No. and email : Tel. No. 022- 99999999  
Address, if any : E-mail: rosy@fantastic.com

## **2. Particulars of Respondent**

- (i) Name of the Respondent : The Adjudicating Officer,  
Securities and Exchange Board of  
India
- (ii) Office Address of the Respondent : SEBI Bhavan,  
Mumbai – 400051
- (iii) Address of Respondent : Same as Above  
For Service of all notices:
- (iv) Telephone, Fax No. and email : Tel No. 91-22-2644 9000  
Address: : Fax No. 91-22-2644 9019 to 9022

## **3. Jurisdiction of the Appellate Tribunal**

The appellant declares that the matter of Appeal falls within the jurisdiction of the Appellate Tribunal.

## **4. Limitation**

The appellant further declares that the Appeal is filed within the limitation as prescribed in section 15W of the SEBI Act, 1992.

## **5. Facts of the Case and the Details of the Orders against which Appeal is Filed**

This Appeal has been preferred against impugned order passed by respondent imposing a heavy penalty of ₹4,00,000/- (Rupees Four Lakh Only) under section 15 A(b) of the SEBI Act, 1992 r.w. rule 5 of the Adjudication rules for the alleged violation of regulation 13 (3) r/w Regulation 13 (5) of PIT regulations for appellant's dealing in Fantastic Limited (hereinafter, "**Fantastic**"/ "**Company**"). The copy of impugned order dated 15.05.2014 is annexed hereto marked as "**Exhibit-A**"

Briefly stated, the facts of the case are as follows:

- 5.1 The appellant lady is a wife of promoter shareholder of the Company which is controlled and managed by AOIL. The appellant humbly states that she has been functioning as a law abiding citizen with a clean and unblemished track record and has never been penalized by SEBI for any violation of the SEBI Act, 1992 and rules & regulations framed thereunder save and except the present proceedings.

5.2 The list of dates and the chronology of events in the subject matter of the present proceedings are listed below:

SR. NO.	PARTICULARS
1	The appellant was holding 1,64,800 shares representing 5.03% of the total paid up capital of the Company as on 31.03.2005
2	On and around May 2005, under the scheme of family settlement, it was decided that out of her holding of total 1,64,800 shares (5.03%), ownership of 1,50,000 (4.58%) shares would be transferred to her brother- in-law Dr. AK so as to revive the Company.
3	In pursuance thereto, on 31.05.2005 appellant sold/transferred 50,000 shares (1.53 %) to Dr. AK. Thereafter on 03.06.2005 appellant transferred 1,00,000 shares (3.05%) by way of off market transfer to Dr. AK. Thereby her shareholding in the Company was reduced to 0.45%. It was only by execution of aforesaid off market transaction of 1,00,000 shares (3.05%) on 03.06.2005, change of appellant's shareholding in the Company exceeded 2% i.e. from the last disclosure of 5.03 % as on 31.03.2005, it came down to 0.45% hence under regulation 13(3) of PIT regulations, appellant was required to make disclosure to the Company in prescribed form i.e. Form C.
4	During the relevant period, the Company was Sick Company and passing through difficult time hence there was no staff to maintain proper records of the Company. The Company remained under BIFR up to September 2009.
5	Without any communication received from SEBI, present proceeding was initiated against the appellant by issuance of a Show Cause Notice dated 31.01.2014 (hereinafter, " <b>SCN</b> ") i.e. after nearly 8 ½ years from the execution of the impugned transaction calling upon the appellant to show cause as to why an inquiry should not be held against her for the alleged non compliances of disclosure requirements under PIT regulations on execution of the above referred transactions executed way back in June 2005. A copy of the aforesaid SCN dated 31.01.2014 is annexed hereto marked as " <b>Exhibit-B</b> ".
6	An opportunity of personal hearing was granted to the appellant on 05.03.2014 wherein Mr. James , her authorised representative appeared before the respondent and made oral submissions and requested that under the peculiar facts and circumstances of the case, a lenient view may please be taken. A written submissions by letter dated 04.03.2014 were also filed wherein also request was made to drop the proceedings on the ground as mentioned therein. A copy of the proceeding sheet of the

	personal hearing dated 05.03.2014 and reply dated 05.03.2014 is annexed thereto marked as “ <b>Exhibit-C</b> ” and “ <b>Exhibit-D</b> ” respectively.
7	Without considering factors as prescribed under section 15 J of the SEBI Act, 1992 respondent passed impugned order on 15.05.2104 imposing a hefty penalty of ₹4,00,000/- on the appellant.

- 5.3 The appellate humbly states that the contents of her submissions as listed hereinabove are not repeated for the sake of brevity and pleads before the Hon’ble Tribunal to consider the same as if, it is set out herein seriatim.
- 5.4 On the subject matter of present proceedings, the appellant would like to submit as under:
- (i) It was only pursuant to the “*Scheme of family settlement*”, shares of Fantastic owned by her were transferred in two tranches on 31.05.2005 and 03.06.2005. A copy of the family settlement agreement is annexed hereto marked as “**Exhibit-E**”.
  - (ii) The subject matter of examination pertains to a period more than 8 ½ years old and the appellant being an individual is not expected to preserve records beyond six years particularly when the matter is not ‘*subjudice*’. It is possible that she or someone on her behalf, appellant being wife of the promoter shareholder of the Company might have complied with the relevant disclosure requirements particularly when disclosure were required to be made by the appellant to the Company only.
  - (iii) The impugned transaction is an interse transfer of shares between the promoters hence the same did not result in any change in control of the Company. Therefore appellant humbly submits that a disclosure requirement was of no material consequence to the investing public at large.
  - (iv) Further, the impugned transaction which triggered disclosure requirements was carried out through off market and has not taken place on the stock exchange hence had no impact on the trading operation of the Company on the stock exchange.
  - (v) It is indeed most pertinent to mention that there was no intention to suppress any material information from the shareholder of the company and that the Appellant had not consciously or deliberately avoided filing of the requisite information with the Company.
  - (vi) In the view of the aforesaid, the said violation, if any, is only technical, procedural and venial breach and has not caused any adverse consequences to anybody.
- 5.5 Thus appellant is aggrieved by the impugned order passed by respondent, imposing a heavy penalty of ₹4,00,000/- (Rupees four lakh only) under

section 15 A (b) of SEBI Act, 1992 and rule 5(1) of the Adjudication rules which in its humble submission is in violation of the principle of equity and good conscience.

#### 5A. GROUNDS OF APPEAL

Being aggrieved and dissatisfied by the impugned order dated 15.05.2014 passed by respondent, appellant begs to prefer the present Appeal *inter alia* on the following grounds, each without prejudice to the other. The appellant craves leave to add, alter, and amend such grounds if and when necessary.

- i. The respondent has failed to appreciate that the query with regard to disclosure requirement is made after a long gap of 8½ years and failure on the part of appellant to show the evidences ought not to result into imposition of penalty on the appellant.
- ii. In para (xiv) of the impugned order, respondent has erroneously held that the “*..investors were deprived of the important information at the relevant point of time*” ignoring that disclosure was triggered pursuant to family settlement, transaction was executed off market between the promoters and that there was no change in management and control of the Company.
- iii. The respondent has failed to take a holistic approach on the submission made by the appellant and has failed to appreciate the peculiar facts and circumstance of the present case in its correct perspective.
- iv. The appellant humbly submits that it had not acted deliberately in defiance of law or was not guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation.
- v. Penalty imposed by respondent is grossly disproportionate to the alleged violation and grossly ignored the provisions of section 15 J of the SEBI Act, 1992 that no disproportionate gain or unfair advantage accrued to the appellant as a result of the default, if any; there is no investors complaint: no loss is caused to an investor or group of investors as a result of the default; and that even after recoding under para xiv of the impugned order that the nature of the default is not repetitive has not taken heed of any of the aforesaid factors.
- vi. Appellant would like to place reliance on the decision of the Hon’ble Tribunal in *Samrat Holdings Ltd. vs. SEBI & Ors* (Appeal 23 Of 2000) & *Cabot International Capital Corporation Vs. Adjudicating Officer, SEBI* (Appeal 24 of 2000) wherein the Hon’ble Tribunal had considered scope of section 15 J of SEBI Act, 1992 in context of unintentional failure to comply with the regulation and orders were set aside. A copy of the aforesaid orders of Hon’ble SAT are enclosed herewith marked as “**Exhibit-F**” and “**Exhibit-G**” respectively.
- vii. Appellant hereby reserves her right to add, amend or modify any of the grounds mentioned hereinabove as and when needed.

- viii. Appellant craves leave to refer to the contents of all other documents on which it places reliance, as and when produced.

**6. RELIEFS SOUGHT**

Based on the above submissions, appellant humbly prays for the following relief:

- 6.1 That the impugned Order dated 15.05.2014 (being "Exhibit -A" to the Appeal) passed by the respondent be set aside;
- 6.2 For such other relief's as may be warranted on the basis of the facts and circumstances to this Appeal in furthering justice as this Hon'ble Tribunal deems fit.

**7. INTERIM RELIEFS**

The Appellant prays:

- (i) that pending the hearing and final disposal of the Appeal, this Hon'ble Tribunal be pleased to stay the operation and implementation of the said order dated 15.05.2014 being Exhibit "A" to the Appeal.
- (ii) that pending the hearing and final disposal of the Appeal, this Hon'ble Tribunal be pleased to restrain the Respondents from acting upon or in pursuance or furtherance of the said impugned order dated 15.05.2014 being Exhibit "A" to the Appeal.

GROUND FOR INTERIM ORDER:

- (i) The balance of convenience requires that the interim relief as prayed for be granted by this Hon'ble Tribunal.
- (ii) No harm, loss, prejudice or damage would be caused to the Respondent or the securities market if such reliefs are granted.

**8. MATTER NOT PENDING WITH ANY OTHER COURT ETC.**

The appellant declares that no other proceedings have been filed by the appellant in respect to the subject matter of this Appeal and therefore the subject matter of this Appeal is not pending before any Court of Law, Tribunal or other Authority.

**9. PARTICULARS IN RESPECT OF FEE PAID**

The appellant has paid fees towards this Appeal as per Rule 9 of the Securities Appellate Tribunal (procedure) Rules, 2000, the details whereof are as under:

Amount of Fees :  
 Name of the Bank :  
 Demand Draft No :  
 Demand Draft Date :

**10. DETAILS OF INDEX:**

An index containing the details of the documents to be relied upon is enclosed.

**11. LIST OF ENCLOSURES : As per attached Sheet**

Date : July 11, 2014

Place : Mumbai

Ms. Rosy

Appellant

**VERIFICATION**

I, Ms. Rosy, appellant do hereby declare and verify that the contents of paragraphs number 1 to 11 are true to the best of my personal knowledge and belief and that I have not suppressed material fact.

Date : July 11, 2014

Place : Mumbai

Ms. Rosy

Appellant

**Question 2**

*XYZ Ltd., as on date, has two sets of shareholders, namely, promoters (set 'A') and others (set 'C'). It proposes to make a preferential allotment to a new set of investors (set 'B'). The shareholding pattern before and after the preferential allotment would be as under :*

Investors sets	% of Shareholding	
	Pre-preferential Allotment	Post-preferential Allotment
A	50	25
B	0	50
C	50	25

*In the light of the relevant provisions, discuss the following :*

- Whether 'B' is obliged to make an open offer, under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 on acquisition of 50% of shares through preferential allotment and, if so, what is the minimum size of open offer; (8 marks)*
- Whether 'A' can tender shares in the open offer, which 'B' may make under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; (7 marks)*
- Whether the shareholding of 'A' would constitute a part of 'public shareholding' under the Securities Contracts (Regulation) Rules, 1957, after the preferential allotment; (8 marks)*
- Whether XYZ Ltd. will be delisted if as a result of open offer, the holdings of 'B' exceed maximum permissible non-public shareholding. (7 marks)*

**Answer 2**

- (a) 'B' is acquiring 50% share capital of XYZ Ltd. by way of preferential allotment. Since this would entitle it to exercise more than 25% of voting rights of XYZ Ltd., it is obliged to make an open offer under regulation 3(1) of the Takeover Regulation, 2011. Regulation 10 does not exempt this kind of acquisitions from the obligation to make an open offer. Regulation 7(1) requires that the open offer shall be for at least twenty six per cent of total shares of the target company. This is irrespective of the size of public holding.
- (b) 'A' is not an acquirer or a PAC with the acquirer. He can tender shares in the open offer made by 'B'. This is evident from regulation 3(1) read with regulation 7(1) make it clear that the open offer is required to be made by the acquirer and PAC with him. Regulation 7(6) prescribe that open offer shall be made to all shareholders of the target company, other than the acquirer, PAC with him and the parties to any underlying agreement including persons deemed to be acting in concert with such parties. It is thus clear that any shareholder, other than acquirer and PACs with him, can tender shares in the open offer. Even the promoters of the company, not acting in concert with the acquirer, can participate in the open offer and exit by tendering their shares. It has been held in *M/s. Modipon Limited v. SEBI* (Appeal No. 34/2001, SAT Order dated 31.7.2001): "For the reasons stated above, though SEBI's finding that the Appellant is a promoter of MRL is tenable it cannot be held that the Appellant is an acquirer or a person acting or deemed to be acting in concert with the acquirers and thereby ineligible to participate in the public offer. I am of the view that there is no legal backing flowing from the Act, or the Regulations to uphold the SEBI's decision holding the Appellant ineligible to participate in the public offer made vide letter dated May 30, 2001." Therefore 'A' can tender shares in the open offer as it is not an acquirer or a PAC. Even if 'A' continues to be a promoter depending on the nature and extent of preferential allotment, it can still tender the shares.
- (c) 'A' does not remain promoter after the preferential allotment. Under rule 2(d) of the SCRR, public includes all shareholders except the promoters and promoter group. Since 'A' is not a promoter any more, its holding would be a part of 'public holding' under rule 2(e) of the SCRR. Further, clause 35 of the Listing Agreement requires that in all cases wherein the change in capital structure due to restructuring exceeds +/- 2% of the paid up share capital, the company shall file a revised shareholding pattern with the stock exchanges within 10 days from the date of allotment of shares pursuant to such change in the capital structure. This filing would obviously indicate who the new promoters are, if there is any change, and what are their holdings. Hence it is not that once a person becomes promoter, he remains promoter forever. In the instant case, the capital of the XYZ Ltd. increases by 100% and this would necessitate a filing of revised shareholding pattern within 10 days and depending on the nature of preferential allotment, 'A' may or may not continue to be the promoter.

The definition of 'control' is an inclusive one and not exhaustive and has two distinct and separate limbs: (a) the right to appoint majority of directors, or (b) the ability to control the management or policy decisions by various means

referred to in the definition. This control of management or policy decisions could be by virtue of shareholding or management rights or shareholder agreement or voting agreements or in any other manner. In the instant case, the shareholding of 'A' in XYZ Ltd. reduces to 25%. It loses the right to appoint majority of directors and the ability to control management or policy decisions. It has no understanding or agreement whatsoever with 'B' to retain or acquire such right or ability. Therefore, 'A' does remain 'promoter' after the preferential allotment within the inclusive definition of 'control'. As regards non-inclusive aspects of control, reliance can be placed on the ratio in *M/s. Subhkam Ventures (I) Private Ltd. V. SEBI* (Appeal No. 8/2009, Order dated 15.1.10) where it has been held in the context of an acquirer: "Control is a proactive and not a reactive power. It is a power by which an acquirer can command the target company to do what it wants it to do. Control really means creating or controlling a situation by taking the initiative. Power by which an acquirer can only prevent a company from doing what the latter wants to do is by itself not control. In that event, the acquirer is only reacting rather than taking the initiative. .... The test is whether the acquirer is in the driving seat. To extend the metaphor further, the question would be whether he controls the steering, accelerator, the gears and the brakes. If the answer to these questions is in the affirmative, then alone would he be in the control of the company. In other words, the question to be asked in each case would be whether the acquirer is then driving force behind the company and whether he is the one providing motion to the organization. If yes, he is in control but not otherwise. In short, control means effective control." By this ratio, 'A' does not continue to have control over XYZ Ltd. after the preferential allotment and, therefore, does not remain promoter. 'B' acquires de fact and de jure control with the preferential allotment and becomes new promoter of XYZ Ltd.

- (d) Under regulation 7(5) of the SEBI (SAST) Regulations, 2011, the acquirer cannot make a voluntary delisting offer under the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, unless a period of twelve months has elapsed from the date of the completion of the offer period. Therefore, the acquirer is required under regulation 7(4) to bring down the non-public shareholding to the level specified and within the time permitted under the SCRR. As specified under clause 40 of the Listing Agreement, it could be done by: (a) issuance of shares to public through prospectus; or (b) offer for sale of shares held by promoters to public through prospectus /stock exchanges; or (c) sale of shares held by promoters through the secondary market.

### Question 3

*The confluence of hedgers, speculators and arbitrageurs ensures liquidity and efficient price discovery in the commodity derivatives market. Comment.*

*(5 marks)*

### Answer 3

For a market to succeed, it must have all three kinds of participants – hedgers, speculators and arbitrageurs. The confluence of these participants ensures liquidity

and efficient price discovery on the market. Commodity markets give opportunity for all three kinds of participants.

1. *Hedgers* : Hedger is a user of the market, who enters into futures contract to manage the risk of adverse price fluctuation in respect of his existing or future asset. Hedgers are those who have an underlying interest in the commodity and are using futures market to insure themselves against adverse price fluctuations.
2. *Speculators* : A trader, who trades or takes position without having exposure in the physical market, with the sole intention of earning profit is a speculator. A speculator is one who enters the market to profit from the future price movements. Speculators accept the risk that hedgers seek to avoid, giving the required liquidity to the market. Contrary to the hedging, speculation involves risk but no offsetting of cash market position.
3. *Arbitrageurs* : A third category of market participants is the arbitrageurs. Arbitrage refers to the simultaneous purchase and sale in two markets so that the selling price is higher than the buying price by more than the transaction cost, resulting in risk-less profit to the arbitrageur. Arbitrage is making purchases and sales simultaneously in two different markets to profit from the price differences prevailing in those markets.

#### Question 4

*Critically examine the mechanism of mobilisation of resources through American Depository Receipts. (5 marks)*

#### Answer 4

Companies either raise funds from the domestic market or through international market. One of the important mechanism through which investment in Indian Securities takes place in overseas market is through Depository Receipts (DRs). The DR route is attractive to investors because it offers a combination of simplicity, protection and flexibility, as compared to direct investment in foreign market. DR can be issued in the form of American Depository Receipts (ADR) or Global Depository Receipts (GDR). An American Depository Receipt (ADR) is a negotiable security representing ownership in some underlying shares of a non-US company, which can be traded on US stock exchanges. ADRs are denominated in US dollars and function on the lines of the shares of a US company in terms of trading and dividend payment. The following would clear the mechanism of the working of an ADR:

1. Indian company would issue rupee denominated shares to a Depository outside India, where the ADRs are proposed to be issued.
2. Indian custodian would keep these securities in his custody.
3. The investment banker would organize road shows for marketing the issue.
4. The foreign Depository would issue dollar denominated ADRs to foreign investors.
5. Listing of ADRs in American Stock Exchanges would take place.
6. Indian company has to comply with various requirements of SEC requirements.

**Question 5**

*Evaluate the following instruments from the perspective of investors :*

(a) *Treasury Bills*

(b) *Certificate of Deposit*

(c) *Commercial Paper.*

*(5 marks)*

**Answer 5**

**(a) Treasury Bills** : Treasury Bills are very useful instruments to deploy short term surpluses depending upon the availability and requirement. Besides, better yields and availability for very short tenors, another important advantage of treasury bills over bank deposits is that the surplus cash can be invested depending upon the staggered requirements. The benefits of treasury bill can be summarized as under:

(a) No tax deducted at source

(b) Zero default risk being sovereign paper

(c) Highly liquid Money Market instrument

(d) Better returns especially in the short term

(e) Transparency

(f) Simplified settlement

(g) High degree of tradability and active secondary market facilitates meeting unplanned fund requirements.

**(b) Certificate of Deposit** : Certificate of Deposit (CD) provide higher yield than Treasury bills and savings account. CDs are liquid instruments as they are transferable by endorsement and delivery. The holder can resell his certificate to another. As the rate of interest is fixed, the return on investment is secured despite the rate fluctuations in the market. There is no lock-in period for the CDs.

**(c) Commercial Paper** : Commercial Paper (CP) is a quick and cost effective way of raising working capital. Investing in CP is the best way to take the advantage of short term interest rate fluctuations in the market. It provides an easy exit option to the investors by quitting the investment. It has a wide range of maturity period.

**Question 6**

*Write a critique on penal provisions in the Forward Contracts (Regulation) Act, 1952.*

*(5 marks)*

**Answer 6**

Section 20 of the Forward Contracts (Regulation) Act, 1952 deals with the penalty

for contravention of certain provisions of Chapter IV under this Act. Under this section any person who –

- (a) (i) in any return, statement or other document required by or under this Act, makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement; or
- (ii) without reasonable excuse (the burden of proving which shall be on him) fails to furnish any return, statement or other document or any information or to answer any question or to comply with any requisition made under this Act or any rules made thereunder; or
- (iii) enters into any forward contract during the period of suspension of business of a recognised association in pursuance of a notification under Section 14; or
- (b) is a member of any association, other than a recognised association, to which a certificate of registration has not been granted under this Act; or
- (c) publishes or circulates information relating to the rate at which any forward contract has been entered into in contravention of any of the bye-laws of a recognised organisation, or
- (d) organises or assists in organising, or is a member of any association in contravention of the provisions contained in the proviso to sub-section (1) of Section 18; or
- (e) enters into any forward contract or any option in goods in contravention of any of the provisions contained in sub-section (1) or sub-section (3A) or sub-section (4) of Section 15, Section 17 or Section 19;

shall on conviction be punishable —

- (i) for a first offence, with imprisonment which may extend to one year or with a fine of not less than one thousand rupees, or with both;
- (ii) for a second or subsequent offence under clause (d), or under clause (e) [other than an offence in respect of contravention of the provisions of sub-section (4) of Section 15 with imprisonment which may extend to one year and also with fine; provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the Court, the imprisonment shall be not less than one month and the fine shall not be less than one thousand rupees.

*“Note: In answers to the questions based on case study, the students may write any other alternative answer with valid reasoning.”*

---

## **INSURANCE LAW AND PRACTICE** (Elective Paper 9.3)

Time allowed : 3 hours

Maximum marks : 100

**NOTE :** Answer **ALL** Questions.

### **Question 1**

*New Horizon General Insurance Company was granted a licence over a decade ago to transact general insurance business. On 1st April, 2012, it received a proposal from Excellent Polymers to take a fire and allied perils insurance policy. The proposal revealed that the proposer was a manufacturer of PVC granules. According to the proposal form and other information obtained from the proposer, the plant had been commissioned in December, 2011. The coverage required was for building ₹50 lakh, plant and machinery ₹75 lakh and stocks ₹ 1.5 crore. Based on the proposal and other information given, the insurance company issued fire and allied perils policy after collecting the necessary premium. However, the risk was not inspected by the insurance company before granting the insurance.*

*On 26th August, 2012, the insurance company received a telegram from Excellent Polymers intimating a major fire accident in the factory in the early morning hours of 26th. The insured followed-up the telegram by a letter and claim form claiming loss of entire stocks worth ₹1.5 crore, substantial portion of which was finished goods of PVC granules. As per the claim form, the fire originated in the control section and spread to the stocks. The insurance company deputed Pavitra Surveyors, a surveyor holding a valid licence issued by the insurance regulator, to survey and assess the loss. The surveyor submitted its report assessing the loss at ₹1.5 crore as claimed by the insured. The fire brigade report also stated the probable cause of the fire as accidental.*

*Immediately, on the receipt of the telegram from the insured, the insurance company rushed Manoj, its claims officer, an engineer, to the factory at around 10.45 AM on 26th August, 2012. Prem, proprietor of the factory was not available but his son Anil, took Manoj around the site. By that time the fire had been extinguished and the fire brigade had also left the site. Manoj observed that the control section was separated from the manufacturing section by a distance of around 25 feet. He also observed that electrical wiring on the wall was at a safe distance from the machinery and stock.*

*Among other documents, the insurance company called for copies of bank statements, invoice, books of accounts and electricity bills from the inception of the policy as available. Though the purchase (raw material) and sales (finished goods) submitted were for sizeable amounts, the bank statements showed that the average monthly transactions for payments and receipts did not exceed `5 lakh. As per the electricity bills, the average consumption of power was negligible.*