SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

*In exercise of the powers conferred by clause (*hd*) of sub-section (2) of section 30 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Central Government hereby makes the following rules for holding inquiry for the purpose of imposing penalty under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G and 23H of the Act, namely :—*

Short title and commencement

1. (1) These rules may be called the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005.

(2) They shall come into force on the date of their publication in the Official Gazette.

Definitions

2. (1) In these rules, unless the context otherwise requires,—

(*a*) "Act" means the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(*b*) "adjudicating officer" means the officer appointed by the Securities and Exchange Board of India as adjudicating officer under section 23-I of the Act;

(*c*) "inquiry" means the inquiry referred in section 23-I.

(2) Words and expressions used herein and not defined in these rules but defined in the Securities Contracts (Regulation) Act, 1956 shall have the same meanings respectively assigned to them under that Act.

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Appointment of adjudicating officer for holding inquiry

3. Whenever the Securities and Exchange Board of India is of the opinion that there are grounds for adjudging under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G and 23H of the Act, it may appoint any of its officer not below the rank of Division Chief to be an adjudicating officer for holding an inquiry for the said purpose.

Holding of inquiry

4. (1) In holding an inquiry for the purpose of adjudging under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G and 23H whether any person has committed contraventions as specified in any of sections 23A, 23B, 23C, 23D, 23E, 23F, 23G and 23H, the adjudicating officer shall, in the first instance, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than fourteen days from the date of service thereof) why an inquiry should not be held against him.

(2) Every notice under sub-rule (1) to any such person shall indicate the nature of offence alleged to have been committed by him.

(3) If after considering the cause, if any, shown by such person, the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his lawyer or other authorised representative.

(4) On the date fixed, the adjudicating officer shall explain to the person proceeded against or his lawyer or authorised representative, the offence, alleged to have been committed by such person indicating the provisions of the Act, rules or regulations in respect of which contravention is alleged to have taken place.

(5) The adjudicating officer shall then give an opportunity to such person to produce such documents or

evidence as he may consider relevant to the inquiry and if necessary the hearing may be adjourned to a future date and in taking such evidence the adjudicating officer shall not be bound to observe the provisions of the Evidence Act, 1872 (11 of 1872) :

Provided that the notice referred to in sub-rule (3), and the personal hearing referred to in sub-rules (3), (4) and (5) may, at the request of the person concerned, be waived.

(6) While holding an inquiry under this rule the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer may be useful for or relevant to the subject matter of the inquiry.

(7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the adjudicating officer, the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

Order of the adjudicating officer

5. (1) If, upon consideration of the evidence produced before the adjudicating officer, the adjudicating officer is satisfied that the person has become liable to penalty under any of the sections specified in sub-section (1) of section 23-I of the Act, he may, by order in writing, impose such penalty as he thinks fit in accordance with the provisions of the relevant section or sections specified in section 23-I of the Act.

(2) While adjudging the quantum of penalty under section 23-I of the Act, the adjudicating officer shall have due regard to the following factors, namely :—

(*a*) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(*b*) the amount of loss caused to an investor or group of investors as a result of the default;

(*c*) the repetitive nature of the default.

(3) Every order made under sub-rule (1) shall specify the provisions of the Act in respect of which default has taken place and shall contain brief reasons for such decisions.

(4) Every such order shall be dated and signed by the adjudicating officer.

Copy of the order

6. The adjudicating officer shall send a copy of every order made under rules by it to the person concerned and to the Securities and Exchange Board of India.

Service of notices and orders

7. A notice or an order issued under these rules shall be served on the person in the following manner, that is to say,—

(*a*) by delivering or tendering it to that person or his duly authorised agent;

(*b*) by sending it to the person by [1]**[***fax or electronic mail or by courier or speed post with acknowledgement due or***]** registered post with acknowledgement due to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works, or last worked, for gain; or:

[2] **[Provided** *that a notice sent by fax shall bear a note that the same is being sent by fax and in case the document contains annexure, the number of pages being sent shall also be mentioned:*

Provided further *that a notice sent through electronic mail shall be digitally signed by the competent authority and bouncing of the electronic mail shall not constitute*

valid service. **]**

(*c*) if it cannot be served under clause (*a*) or clause (*b*), by affixing it on the outer door or some other conspicuous part of the premises in which that person resides or is known to have last resided, or carried on business or personally works or last worked for gain and that written report thereof should be witnessed by two persons;

[3] **[** *(d) if it cannot be affixed on the outer door as per clause (c), by publishing the notice in atleast two newspapers, one in a English daily newspaper having nationwide circulation, and another in a newspaper having wide circulation published in the language of the region where that person was last known to have resided or carried on business or personally worked for gain*.**]**

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1. Inserted by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Amendment Rules, 2015, w.e.f. **19-8-2015**.
2. Provisos inserted by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Amendment Rules, 2015, w.e.f. **19-8-2015**.
3. Clause (*d*) inserted by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Amendment Rules, 2015, w.e.f. **19-8-2015**.

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