

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER NO CO/387/FII/11/2002

IN THE MATTER OF APPLICATION FOR RENEWAL OF REGISTRATION SUBMITTED BY M/S CREDIT SUISSE FIRST BOSTON

- 1.0 M/s Credit Suisse First Boston (hereinafter referred to as "the applicant") is a Public Limited Company incorporated in Zurich, Switzerland and operating as a commercial and investment bank. The applicant is registered with the Securities and Exchange Board of India (hereinafter referred to as "SEBI") as a Foreign Institutional Investor under SEBI (Foreign Institutional Investors) Regulations, 1995 vide Registration No. IN-CH-FA-0463-97. The registration granted to the applicant was valid until June 25, 2002. The applicant have now sought renewal of registration vide application dated March 25, 2002.
- 2.0 The application for renewal of registration submitted by the applicant was considered by SEBI in accordance with the provisions of the SEBI (Foreign Institutional Investors) Regulations, 1995 (hereinafter referred to as "the said regulations") and it was prima-facie felt that renewal of registration should not be granted to the applicant. Consequently, in accordance with the requirement of Regulation 11(1) of the said regulations, a show cause notice dated September 03, 2002 was issued to the applicant mentioning inter alia that Credit Suisse First Boston (I) Securities Pvt Limited, their affiliate in India has been suspended for a period of 2 years and that due to the suspension of the said stock broker, they are not fulfilling the requirements of Regulation 6 (1) (f) of the said regulations. They were also advised to explain within 30 days from receipt of the said notice as to why the application for renewal of registration should not be rejected. Further, at their request, an opportunity to be heard in person before me was granted to the applicant on October 28, 2002.
- 3.0 In their reply dated September 17, 2002 to the show cause notice and in the course of personal hearing before me, the applicant has made the following submissions:
- (i) There is no relevance or nexus between the suspension of CSFB India and the applications – the matters are entirely separate and there is no justification (as a matter of law) for concluding that the suspension of CSFB India is a valid reason for rejecting the applications.
 - (ii) There is no justification for preventing the applicant from carrying on its business as an FII solely as a result of the suspension of CSFB India. CSFB India has already been subject to a very severe sanction by SEBI.
 - (iii) None of the equity dealing staff of CSFB India held any management or other responsibilities at CSFB. All equity dealing staff of CSFB India has either left or is in the process of leaving. None of them will be involved in the activities contemplated by the application.
 - (iv) The applicant and its subsidiaries operate in 78 locations and 37 countries. In most of these jurisdictions, regulators require financial institutions such as the applicant to be fit and proper to conduct their business. The Swiss Banking Commission and other regulators in jurisdictions in which the applicant operates have not held that the applicant is not a fit and proper person.
- 4.0 I have carefully considered the application, facts and circumstances of the case , the reply and submissions made by the applicant.
- 4.1 In this regard, I note that Regulation 9 of the said regulations provides for the renewal of certificate of registration. Regulation 9 provides as under:
- "Application for renewal of certificate
9. (1) Three months before the expiry of the period of certificate, the Foreign Institutional Investor, if he so desires may make an application for renewal in Form A:
- Provided ...**
- (2) The application for renewal under sub-regulation (1) shall, as far as may be, be dealt with in the same manner as if it were an application made under sub-regulation (2) of regulation 3 for grant of a certificate
 - (3) The Board shall, on such application, if satisfied that the applicant fulfils the requirements specified in regulation 6, grant a certificate in Form B, subject to the payment of fees in accordance with the Second Schedule.
- 4.2 Regulation 6 of the said regulations provides that:
- "6 (1) For the purpose of grant of certificate, the Board shall take into account all matters which are relevant to the grant of a certificate and in particular the following namely:-
- (a) the applicant's track record, professional competence, financial soundness, experience, general reputation of fairness and integrity;
 - (b) ...
 - (c) ...
 - (d) ...
 - (e) whether the grant of certificate to the applicant is in the interest of the development of the securities market

(f) whether the applicant is a fit and proper person..."

- 4.3 I note that Credit Suisse First Boston (India) Limited (hereinafter referred to as "the broker"), is a subsidiary of the applicant in which the applicant holds 75% of paid up capital. The broker is a corporate member of the Stock Exchange, Mumbai and the National Stock exchange of India Limited and registered with SEBI as a Stock broker. I also note that vide order dated April 18, 2001, the broker had been prohibited from carrying out fresh broking activity pending investigation / enquiry. Further, vide order dated June 13, 2002, the registration of the broker was suspended for a period of 2 years from April 18, 2001. The above restraint order and the suspension of registration were on account of the broker having violated the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations,1995 and SEBI (Stock Brokers and Sub-Brokers) Regulations,1992.
- 4.4 As mentioned above, the applicant has a shareholding of 75% in the broker and by virtue of the said shareholding, the applicant does exercise substantial control over the management and functioning of the broker and as such cannot contend that they were unaware of the irregularities committed by the broker. The submission of the applicant that none of the equity dealing staff of the broker held any management or other responsibilities at the applicant is not relevant since being the dominant shareholder, the applicant did have control over the functioning of the broker, but failed to ensure that the broker acted in accordance with the act and rules and regulations framed therein and not in a fraudulent and manipulative manner.
- 4.5 In view of the above, I am of the opinion that the applicant being inextricably linked to the activities of the broker, is not a fit and proper person as required under Regulation 6(1) (f) of the said regulations and that their track record and general reputation of fairness and integrity are not above reproach. I am also of the opinion that granting renewal of registration to the applicant will not be in the interest of the development of the securities market.
- 4.6 For the reasons stated above, the applications submitted by M/s Credit Suisse First Boston on March 25, 2002 for renewal of its FII registration and also renewal/registration of its sub-accounts viz. Kallar Kahar Investments Limited, Credit Suisse First Boston (Cyprus) Limited and Credit Suisse First Boston, Singapore Branch are hereby rejected.
- 4.7 A copy of this order shall be communicated to the applicant.

G.N. BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA

Place : Mumbai

Date : November 27th, 2002