

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

IN THE MATTER OF APPLICATION FOR CERTIFICATE OF REGISTRATION OF WEALTH MANAGEMENT ADVISORY SERVICES LIMITED AS A PORTFOLIO MANAGER.

WTMN/8/IMD/6/04

1. Wealth Management Advisory Services Ltd., a company having its registered office at Kolkata (hereinafter referred to as 'the applicant company') submitted an application dated August 18, 2003 to Securities and Exchange Board of India (hereinafter referred to as 'SEBI') for grant of certificate of registration for the purpose of carrying on the activities as a portfolio manager under Securities and Exchange Board of India (Portfolio Mangers) Regulations 1993 (hereinafter referred to as 'the said regulations'). As per the said application, the promoters of the applicant company are Shri R Sreesankar, Shri Mayank Khemka, Shri Kishore Shah and Land Lease Company (India) Ltd.
- 2.1 While processing the application, it transpired that among others SMIFS Securities Ltd., a broker and depository participant registered with SEBI and SMIFS Capital Markets Ltd., underwriter and merchant banker registered with SEBI, and SMIFS Capital Services Ltd. are the associates of the applicant company. It is was noted that SEBI had initiated regulatory proceedings against SMIFS Securities Ltd. and SMIFS Capital Markets Ltd.
- 2.2 An enquiry initiated (under SEBI order dated November 8, 2002) against SMIFS Securities Ltd. in the matter of DSQ Software Ltd. for the alleged violation of Securities and Exchange Board of India Act, 1992, SEBI

(Stock Brokers and Sub-Broker) Rules & Regulations, 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 1995 is in progress.

2.3 SEBI has also initiated an enquiry vide order dated March 31, 2004 against SMIFS Securities Ltd., to enquire into its certain alleged regulatory violations like irregularities in issuance of Contract Notes, discrepancies in client registration forms, non-segregation of client/ own funds, non exercise of due skill and care and funding of the clients.

2.4 SEBI has initiated an enquiry against SMIFS Securities Ltd. vide order dated April 08, 2004 in the case of South East Asia Marine Engineering and Constructions Ltd. for the alleged violation of the provisions of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 1995.

2.5 Pursuant to adjudication proceedings in the matter of BSL Ltd., SMIFS Capital Markets Ltd. and three other persons vide order dated April 15, 2004, have been imposed a consolidated penalty of Rs.3 crores for violation of the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

2.6 An administrative warning has been issued against SMIFS Capital Markets Ltd. in the matter of KHSL Industries Ltd.

3. In view of the above, SEBI formed a prima facie view that the certificate of registration to the applicant company cannot be granted and the applicant company was advised accordingly by SEBI vide letter dated May 12, 2004. The applicant company vide letter dated May 28, 2004 *inter alia* submitted to the effect that: no order by SEBI has been passed in the aforesaid enquiry proceedings against SMIFS Securities Ltd; the

adjudication orders passed against SMIFS Capital Markets Ltd. and SMIFS Capital Services Ltd. are appealed before the Hon'ble Securities Appellate Tribunal; even after administrative warning issued to SMIFS Capital Markets Ltd. in the month of March 2000 in the case of KHSL Industries Ltd., the registration certificate granted to the entity has been renewed; and the enquiry proceeding is pending only against the associate company of one of the promoters and the said promoter can be asked to dispose of his holding or not to involve himself in the management of the applicant company till the disposal of the enquiry proceedings.

4. An opportunity of hearing was granted to the applicant company on June 01, 2004 and Shri Kishor Shah, director of the applicant company appeared before me and made submissions on behalf of the applicant company. The representative of the applicant company reiterated the submissions made in its letter dated May 28, 2004.
- 5.1 I have perused the material available on record, reply of the applicant company dated May 28, 2004 and the submissions made by Shri Kishor Shah at the time of the hearing.
- 5.2 In terms of Regulation 6 of the SEBI (Portfolio Manager) Regulation 1993, SEBI, while considering the grant of certificate of registration to the applicant to carry on the activities of portfolio manager, shall consider, interalia, whether any disciplinary action has been taken by SEBI against a person directly or indirectly connected with the applicant and whether grant of certificate will be in the interest of the investors. For this purpose, an associate, a subsidiary, an inter-connected company or a company under the same management is to be considered as a connected person. Admittedly, SMIFS Securities Ltd, SMIFS Capital Markets Ltd. and SMIFS Capital Services Ltd are the group/ associate companies. It is also noted that Shri Kishore Shah, promoter-director of the applicant company is the

Whole Time Director of SMIFS Capital Markets Ltd. as well as SMIFS Capital Services Ltd. A number of enquiries are in progress against one of the connected entity – viz. SMIFS Securities Ltd., while pursuant to adjudication proceedings taken by SEBI, monetary penalty has been imposed on two other associate companies viz. – SMIFS Capital Markets Ltd. and SMIFS Capital Services Ltd.

- 5.3 I find that the allegations against SMIFS Securities Ltd. are serious in nature, *interalia* involving the violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 1995.
- 5.4 As for the other two associate companies against whom monetary penalty has been imposed by SEBI pursuant to adjudication proceedings, the applicant company has argued that the adjudication order has been appealed against. It is noted that the appeal is pending. The mere pendency of appeal against the adjudication order shall not go to mitigate the inhibiting factor.
- 5.5 Registration of an entity as a security market intermediary enables the entity to enter the securities market to operate as an intermediary. A security market intermediary, if not a fit and proper person, may act to the detriment of the interest of the investors. Due care, therefore, needs to be taken before granting such certificate of registration. In the light of the disciplinary action taken/ pending against the companies connected with the applicant, grant of certification of registration to the applicant company to operate, as a portfolio manager may prove to be detrimental to the interest of the investors.

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6. In view of the foregoing, pursuant to the powers conferred upon me under regulation 10 of SEBI (Portfolio Managers) Regulations, 1993, read with section 19 of Securities and Exchange Board of India Act, 1992, I hereby reject the application submitted by Wealth Management Advisory Services Ltd., for certificate of registration as a portfolio manager.

Place: MUMBAI

Date: June 18, 2004

T. M. NAGARAJAN

WHOLE TIME MEMBER

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