BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: DR. K. M. ABRAHAM, WHOLE TIME MEMBER

ORDER

UNDER REGULATION 28(2) OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 IN THE MATTER OF CANARA BANK IN THE SCRIP OF FINE AGROMATICS LIMITED

1. On the basis of certain complaints alleging public issue irregularities in respect of the public issue of Fine Agromatics Limited (hereinafter referred to as the company), the Securities and Exchange Board of India (hereinafter referred to as SEBI), initiated an investigation to find out the possible violations of securities laws. It was found that the company had came out with a public issue of 30,00,000 equity shares of Rs.10/- each for cash at par aggregating to Rs.3,00,000,00/-. The said issue opened on November 27, 1995 and closed on November 30, 1995 and was over subscribed by about five times. The Bankers to the issue were Canara Bank, State Bank of India and Corporation Bank and the registrar to the issue was SPS International Limited. The investigation also observed that there were numerous instances of late acceptance of applications by the Share Processing Cell of Canara Bank (hereinafter referred to as the Bank) and that a total of 1,375 applications involving 70,56,000 shares were rejected. The said bank received valid applications in respect of 1,49,00,000 shares and that as many as 268 applications in respect of 13,60,000 shares were withdrawn on the request of the applicants. In view of the irregularities, it was alleged that the Bank had violated Clauses 2,4,6(b) and 7 of the Code of Conduct specified under Schedule III of Securities and Exchange Board of India (Bankers to the Issue) Regulations, 1994 (hereinafter referred to as the said Regulations). Thereafter, an enquiry proceeding was initiated by SEBI against the Bank in respect of the alleged violations. The Enquiry Officer, while finding the Bank guilty of the charges leveled against, vide Report dated July 26, 2005 recommended the penalty of debarring

the branch of the Bank at Jeevan Bharti Building, Parliament Street, New Delhi from undertaking assignments as Banker to an issue for a period of one month. Thereafter, SEBI issued a notice dated September 14, 2005 to the Bank advising it to show cause as to why the penalty as recommended by the Enquiry Officer should not be imposed against it. A copy of Enquiry Report was also forwarded to the Bank along with the said show cause notice. The Bank, vide letter dated October 6, 2005 and October 15, 2005 *inter alia* stated that the alleged delay could have been due to various reasons beyond its control and arising out of other than normal situation. It further stated that alleged violation was possibly owing to bunching of public issues. According to the Bank, the Share Processing Cell was part of the general banking branch which also could have disturbed focused attention to collection work. The Bank further submitted that due to passage of time and closure of the then Share Processing Cell, it is unable to identify the exact reasons for delayed collection of the instruments resulting in violation of the guidelines. The Bank further claimed to have taken steps to avoid such instances which included opening of exclusive capital market service branches.

2. Thereafter, an opportunity of hearing was granted to the Bank on December 11, 2008. Mr. N. Seshadry (General Manager) appeared on behalf of the Bank and made submissions before me. Mr. C.R. Kansal (Senior Manger) and Mrs. Vijay Laxmi (Deputy Manager) were also present during the hearing. Thereafter, the Bank vide letter dated December 16, 2008 *inter alia* stated that during the year 1995, its Share Processing Cell which handled the public issue of the company, was part of its Parliament Street Branch, New Delhi and thus not a Specialised Branch, dedicated to Merchant banking activity alone. It further stated that the said Branch is located in a prime area and caters to the general banking needs of several Public Sector Undertakings, Corporate Houses, Government Departments in additional to the general banking like, retail depositors/borrowers etc and the share processing activity at that time was an additional facility within the said branch. It also submitted that during November 2005, the said Branch handled

about 35 issues. It is further stated that the Bank had taken various steps to ensure that the Regulatory Guidelines are scrupulously followed/complied, which included the following:

a. Bankers to issue Assignments were taken away from the purview of its Parliament Street Branch since 1997, so that Capital Market related assignments are not clubbed with General Banking.

b. Opening of specialized Capital Market Services branches at Delhi, Ahmedabad and Mumbai with dedicated staff/infrastructure to handle only capital market related work. These specialized Capital Market Services branches handle Capital Market related assignments exclusively and do not handle general related matters to ensure focus on banker to issue assignments. The staffs posted to these branches/Sections are given intensive training in the subject and their expertise is used for longer tenures.

e. The controlling offices/controlling branches of the issue send detailed instructions to the collecting branches for handling the assignments effectively and systematically.

f. They have also been imparting specialized training to the concerned staff at its in house Staff Training Colleges situated at various places of the country including New Delhi, Mumbai, Bangalore, Kolkata ,etc. and also at the Indian Institute of Capital Markets and Bombay Stock Exchanges Limited. The Bank also stated that even various communications/circulars received from SEBI from time to time are being conveyed to related branches immediately, to ensure compliance.

3. I have considered the Enquiry Report, the show cause notice issued to the Bank, its oral as well as written submissions and other materials available on record. I note that the Enquiry Officer found the Bank guilty of violating the provisions of Clause 2, 4, 6(b) and 7 of the Code of Conduct as specified under the said Regulations. The allegation against the Bank is that it had accepted late applications in the public issue of the company. The said allegation is not denied before me. In this regard, in the Enquiry Report, it was *inter alia* observed "*Canara bank has tacitly admitted the alleged violations and their only explanation during the course of personal hearing was that the delay in sending the cheques may have been caused due to 'bunching' of issues at that time".* The contention of the Bank is that the alleged violation was related to 1995, when the bankers to issue

assignments were at peak stage resulting in bunching of public issues. It further stated that the delay in collection of instruments from the drawee Banks could not be attributed as intentional/deliberate on the part of the Collecting Branch. According to the Bank, it had subsequently taken various steps to avoid such instances. As the Bank has not disputed the fact that it had accepted late applications in the public issue of the company, I do not consider it necessary to reproduce the instances of late applications. Besides, such instances were specified in the show cause notice (during the proceedings before the Enquiry Officer) and were also explained in detail in the Enquiry Report. As observed by the Enquiry Officer, the late applications amounted to 51.47% of the total number of applications received in the public issue of the company. It was also noted that in as much as 86 instances, the cheques attached with the public issue applications of the company were cleared between January 6, 1996 and January 12, 1996 whereas the public issue was closed on November 30, 1995.

4. In terms of Clause 7 of the Code of Conduct specified under Schedule III of the said Regulations, the Bank shall not accept applications after the closure of the public issue, as stated there. In the present case, it is established that the Bank accepted the late applications, which it was not supposed to do, in terms of the above provisions. Thus, the Bank, not only failed to exercise due diligence but also failed in ensuring that its professional dealings are effected in a prompt and efficient manner. Needless to say, by doing so, the Bank failed to observe high standards of integrity and fairness in the conduct of its business. The act of the Bank was detrimental to the genuine investors and the securities market. The Bank claimed that, it had taken steps to avoid such instances, which included opening of exclusive Capital Market Services Branches at New Delhi and Mumbai. According to the Bank, its specialized capital market service branches at key centers handle capital market related assignments and are provided with dedicated staff/other infrastructure. The said specialized branches do not handle general banking related matters to ensure focus on Banker to Issue assignments

and the controlling offices/controlling branches of the issue send detailed instructions to the collecting branches for handling the assignments effectively and systematically. The Bank further claimed that due to effective steps taken by it there is no major irregularity pointed out for the assignments handled since 1996 to 2005. According to the Bank, the then share processing cell was part of the general banking branch, which also could have led to the poor attention to collection work without sufficient focus due to other priorities. The said plea is not acceptable. The Bankers to an Issue has a prominent role to play in the public issue process. It deals with the public in general. The Bank should not loose focus on the statutory duties prescribed under the said Regulations while functioning as a Banker to an Issue. The fact that the Bank is a public sector bank and as such, it should have been all the more careful and diligent in its duties. The said duty has to be exercised within the parameters of the said Regulations. Therefore, the plea of the Bank in this regard is rejected. The Bank was expected to observe high standards of integrity and fairness in all its dealings with its clients and investors. A banker to an issue shall always endeavour to ensure that all its professional dealings are done in a prompt, efficient manner, as laid down in Clause 6(b) of the Code of Conduct. In view of the above, it is established that the Bank had contravened the provisions of Clauses 2, 4, 6(b) and 7 of the Code of Conduct prescribed for bankers to an issue in Schedule III of the said Regulations. The violations committed by the Bank in its role as a banker to an issue in the rights issue of the company calls for a penalty. During the course of hearing, the representatives of the Bank submitted that the public issue of the company was oversubscribed by five times. Thus, according to the Bank, even excluding the late applications received by it, the public issue would have obtained he required minimum subscription. Therefore, according to the Bank, no malafides can be attributable to its action. I cannot accept the said argument. Once it is found that the Bank violated the statutory provisions of law, it cannot escape from the consequences. The Enquiry Officer had recommended the penalty of debarring the branch of the Bank at Jeevan Bharti Building, Parliament Street, New Delhi

from undertaking Banker to the issue assignments for a period of one month. The officials of the Bank during the course of hearing had submitted that the Banker to Issue assignments have been taken away from the Parliament Street Branch. Taking into account, the facts and circumstances of the present case, in its entirety, I, dispose of the present proceedings, as ordered hereinunder.

5. I note that the Enquiry Report was submitted in terms of the provisions of the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002. Subsequently, in 2008, the aforesaid Regulations were repealed by the Securities and Exchange Board of India (Intermediaries) Regulations, 2008. Accordingly, the present proceeding is disposed of in terms of Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

6. In view of the foregoing, in exercise of the powers conferred upon me under 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, Canara Bank (Bankers to an Issue) is hereby warned for the aforesaid violations committed by it.

DR. K. M. ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

PLACE: NEW DELHI
DATE: DECEMBER 18, 2009