

PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY

NOTIFICATION

New Delhi, the 14th May, 2015

PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY (CUSTODIAN OF SECURITIES) REGULATIONS, 2015

No. PFRDA/12/RGL/10.—In exercise of the powers conferred by sub-section (1) of Section 52 read with clauses (e), (n), (o), (p) and (w) of sub-section (2) thereof of the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013), the Pension Fund Regulatory and Development Authority hereby makes the following regulations, namely: —

CHAPTER I

PRELIMINARY

1. **Short title and commencement.**—(1) These regulations may be called the Pension Fund Regulatory and Development Authority (Custodian of Securities) Regulations, 2015.
- (2) They shall come into force on the date of their publication in the Official Gazette.

The objective of the Regulations is to standardize the framework for monitoring, supervision and internal control for Custodian of Securities to enable them to establish high standards for internal control and operational conduct, with the aim of protecting the NPS assets and ensuring proper management of risk.

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

- (a) "Act" means the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013);

- (b) “account” means the custody accounts of the National Pension System Trust and that of any other pension scheme referred to in clause (b) of sub-section (1) of section 12 of the Act and are maintained by the custodian;
- (c) “any other pension scheme” means a pension scheme referred to in clause (b) of sub-section (1) of section 12 of the Act;
- (d) “assets” means the securities held under the National Pension System on behalf of the subscribers and that of any other pension scheme referred to in clause (b) of sub-section (1) of section 12 of the Act;
- (e) "custodial services" means safekeeping of securities or assets held under the National Pension System or any other pension scheme and providing services incidental thereto and includes-
- (i) maintaining accounts of securities or assets held;
 - (ii) undertaking activities as a Domestic Depository in terms of the Depositories Act, 1996 (22 of 1996) or as permitted by the Securities and Exchange Board of India;
 - (iii) collecting the benefits or rights accruing on the securities or assets;
 - (iv) informing about the actions taken or to be taken by the issuer of the securities, having a bearing on the benefits or rights accruing on the securities or assets held; and
 - (v) maintaining and reconciling records of the services referred to in sub-clauses (i) to (iv);
- (f) “Custodian of Securities” means an entity which has been granted a certificate of registration under sub-section (3) of section 27 of the Act by the Authority as a custodian of securities for the purpose of providing custodial and depository participant services for the pension schemes regulated by the Authority;
- (g) "Form" means any of the forms set out in the First Schedule;
- (h) “Schedule” means a schedule annexed to these regulations;
- (i) “securities” shall have the same meaning as assigned to it under the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and includes such other instruments, permitted for investment by the Authority from time to time.
- (2) Words and expressions used and not defined in these regulations but defined in the Act, shall have the meanings respectively assigned to them in the Act.

CHAPTER II

REGISTRATION OF CUSTODIAN

- 3. Certificate of Registration.-** (1) The Authority shall register and grant an entity a certificate of registration as a custodian of securities.
- (2) The Authority may, if deemed necessary in the interest of the subscribers’ select one or more custodian of securities.
- (3) No custodian of securities shall commence any activity relating to a National Pension System or any other pension scheme under the Act except under and in accordance with the conditions of a certificate of registration granted by the Authority in conformity with the provisions of the Act, rules and these regulations.
- (4) Any custodian of securities, which had been associated with a pension scheme and appointed to act as such by the Interim Pension Fund Regulatory and Development Authority prior to the establishment of the Authority under the Act may continue to so act for a period of ninety days from the date of notification of these regulations, if it has made an application for grant of certificate of registration within the said period of ninety days, till the disposal of such application in the manner specified in regulation 15:
- (5) Where any existing custodian fails to make an application for grant of certificate of registration within

the period specified in sub-regulation (3) or fails to comply with these regulations, shall cease to carry on an activity as custodian of securities and shall be subject to the directions of the Authority with regard to the transfer of records, documents or securities relating to its activities.

4. Application for grant of certificate of registrations and application fee.- (1) The Authority may, as and when deemed fit, invite applications, for the selection of one or more custodians of securities

(2) On and from the date of publication of notice of the selection process in a newspaper and on the website of the Authority, any entity which fulfils the eligibility conditions specified in regulation 8 and desirous to undertake the business of custodian of securities may make an application accompanied by non-refundable application fee as specified in Part A of the Second Schedule and to be paid in the manner specified in Part B thereof.

5. Application to conform to requirements.- (1) Any application for grant of certificate of registration is liable to be rejected, inter alia on the following grounds, namely:—

- (a) it is not complete in all respects and does not conform to the requirements specified in these regulations;
- (b) it does not contain such additional information as required by the Authority;
- (c) it is incorrect, false or misleading;
- (d) the applicant is not in compliance with the minimum eligibility requirements as specified in these regulations;
- (e) it, in the opinion of the Authority, is not in the interest of subscribers or the objective of orderly development of pension sector or both, or is not in the interest of the National Pension System or any other pension scheme.

(2) Before rejecting an application on the grounds under sub-regulation (1), the applicant shall be given an opportunity to remove the objection, within time as may be specified by the Authority:

Provided that where an application is rejected for the reason that it contains false or misleading information, no such opportunity shall be given and the applicant shall not make any application for grant of certificate of registration under these regulations or any other regulations for a period of six years from the date of such rejection.

6. Furnishing of information and clarification.-(1)The Authority may require the applicant to furnish any further information or clarification, for the purpose of disposal of the application, and, thereafter, in regard to any other matter as may be deemed necessary by the Authority

(2) The applicant shall furnish such information and clarification to the satisfaction of the Authority, within the time specified in this regard by the Authority.

7. Verification of information.- (1) While considering the application, the information furnished by the applicant and its eligibility, the Authority may, if it so desires, verify the information in any manner it deems necessary, which may include physical verification of documents, office space, and inspect the availability of office space, infrastructure, and technological support which the applicant is required to have.

(2) For the purpose of verification of information, the Authority may appoint any person including any of its officers or an external auditor.

8. Eligibility criteria.- (1) For the purpose of grant of a certificate of registration, an applicant satisfying the following minimum eligibility criteria may submit its application for grant of certificate of registration:-

- (a) the applicant must be registered with the Securities and Exchange Board of India as a custodian of securities for the past five years on the date of application;
- (b) direct or indirect cross holding by any pension fund or its sponsor, Trustee Bank or central record keeping agency in the custodian of securities should be less than fifty per cent.;

(c) the applicant's holding of assets under custody on the date of application must be at least equal to the total assets under management of the National Pension System as on 31st March of the preceding financial year.

(2) For the purpose of grant of a certificate of registration, the Authority shall take into account any or all matters which are relevant to the activities of a custodian of securities as also all matters which it deems relevant to the pension sector and National Pension System or any other pension scheme, including but not limited to the following particulars, whether-

(a) the applicant has the necessary infrastructure, including adequate office space, requisite information technology and information security systems with inbuilt flexibility and scaling up capability, required to effectively discharge its activities as custodian of securities;

(b) the applicant has the ability to segregate activities of the National Pension System or any other pension schemes from its other custodial clients and maintain firewall;

(c) the applicant has the requisite approvals under any applicable law in force in connection with providing custodial services in respect of permissible securities under National Pension System or any other pension scheme;

(d) the applicant has in its employment adequate and competent persons who have the experience, capacity and ability of managing the business of the custodian of securities;

(e) the applicant has prepared a complete manual, setting out the systems and procedures to be followed by it for the effective and efficient discharge of its functions and the arm's length relationships to be maintained with the other businesses, if any, of the applicant;

(f) the applicant or any of its associates have in the past been refused certificate of registration or renewal of registration certificate by any of the financial sector regulators in India including, the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority and the Authority and if so, the ground for such refusal;

(g) the applicant have in the past five years been imposed with any penalty by any of the financial regulators referred to in clause(f) or by a court of law or tribunal, on the matters concerning violation of regulations, directions, guidelines and circulars of the regulator and if so, the ground for such refusal;

(h) the applicant is or, is not, a 'fit and proper entity', as stated in the Third Schedule;

(i) the grant of certificate of registration is in the interest of subscribers.

(3) Notwithstanding anything contained in sub-regulations (1) and (2), the Authority shall not consider an application made under these regulations unless the applicant is a body corporate.

9. Exemptions in certain cases from eligibility criteria.—(1) Every applicant must mandatorily meet the minimum eligibility criteria specified in sub-regulation(1) of regulation 8.

(2) If any entity does not fulfil some of the other criteria specified in sub-regulation (2) of regulation 8, it may, request the Authority by making an application seeking exemption from such criteria.

(3) Nothing contained in sub-regulation (2), confers the applicant any right to claim exemption.

(4) The Authority, if feels, that the non-fulfilment of the conditions under sub-regulation (2) of regulation 8, of which relaxation is sought would not prejudicially affect the interest of the subscriber, it may grant exemption from some of the criteria to such entity for reasons to be recorded in writing. The Authority may in such circumstances impose such additional conditions as it may deem fit for grant of certificate of registration.

10. Procedure for grant of certificate of registration and payment of registration fee.—(1) Any application received in response to the Authority's invitation under regulation 4, shall be evaluated in accordance with these regulations and the selection process and evaluation under such selection process as may be specified at the time of inviting application.

(2) The best value proposal shall be given an opportunity to accept the asset service charges as determined under regulation 16.

(3) On receipt of an intimation from the Authority under sub-regulation (2), the applicant shall pay to the Authority the non-refundable registration fee specified in Part A of the Second Schedule, in the manner specified in Part B thereof.

(4) Upon acceptance of the registration fee from the Applicant, the Authority may, subject to such terms and conditions as it may specify, grant a certificate of registration in Form A..

(5) No existing custodian of securities shall be entitled to claim any priority or privilege for grant of certificate of registration under the selection process.

11. Terms and conditions of registration.-The certificate of registration granted to the applicant or the custodian of securities shall be subject to the following conditions, namely:-

- (a) it shall pay the registration fees and annual fee as specified in Part A of the Second Schedule, which shall be paid in the manner specified in part B thereof;
- (b) it shall provide all custodial and depository services related to all securities, permitted to be held under pension schemes regulated by the Authority;
- (c) it fulfills and complies with the minimum eligibility conditions as specified by the Authority at all times;
- (d) all representations, warranties, information, disclosures, reports, documents and statements relating to or after registration as custodian are true, complete, accurate and correct in all respects and do not contain any untrue statement of any material fact or omit to state any material fact and shall inform the Authority of any material change in the information or particulars previously furnished, which have a bearing on its registration;
- (e) it has taken all necessary actions and steps to accept the registration as custodian of the assets regulated by the Authority and binds itself for the due performance of its obligations and shall discharge its obligations under them;
- (f) it executes such agreements with the parties as directed by the Authority or as specified under these regulations and shall comply with the terms of the agreements executed;
- (g) it shall maintain confidentiality with respect to all transactions records, data and information received while discharging its obligations and shall not, without the prior permission of the Authority, produce or share such data or information as an evidence or for any other purpose except as required under the process of law;
- (h) it shall comply with the provisions of the Act, rules or the regulations made or, clarifications or directions issued by the Authority;
- (i) it shall submit statements to the Authority or the National Pension System Trust or to such other intermediaries at such intervals as may be specified by the Authority or the National Pension System Trust from time to time or as specified in the agreements;
- (j) it shall comply with the 'code of conduct' as specified in the Fourth Schedule, and it shall not assign or delegate or outsource any part of its functions as a custodian of securities to any other entity without the prior permission of the Authority.

12. Documentation with intermediaries- (1) Before commencement of business, the custodian shall execute the following agreements:-

- (a) tripartite agreement with the pension fund and the National Pension System Trust;
- (b) any other agreement which is required for the efficient and orderly conduct of activities as custodian of pension schemes regulated by the Authority, as may be specified by it from time to time.

(2) Besides the above mentioned agreements, the custodian of securities shall obtain necessary approvals from other sectorial regulators or any other authorities and it shall comply with the requirements of the intermediaries, depositories, clearing houses, exchanges with regards to opening of accounts, authorizing signatories, obtaining digital signatures, providing connectivity and software installation.

13. Commencement of business.- (1) Upon completion of documentation by the custodian of securities and other related formalities for undertaking its operations for which it has been granted registration, the custodian of securities shall seek issuance of "certificate for commencement of business" from the Authority.

(2) The Authority upon being satisfied that the custodian of securities is fully equipped to commence its operations may issue a "certificate for commencement of business for the National Pension System or other pension schemes" to the custodian of securities, in Form B set out in the First Schedule, after which the custodian of securities can undertake the operations and activities envisaged.

14. Period of validity.- (1) Every certificate of registration granted under these regulations shall be valid for a period of five years from the date of grant of certificate of registration.

(2) The Authority may, however extend the tenure of the Certificate of Registration, for such period as it may determine in the interest of the subscribers. Such extension shall be granted for reasons to be recorded in writing. Any extension granted to the Custodian of Securities upon expiry of tenure of registration shall be binding on the custodian of securities and the custodian of securities shall discharge its functions in accordance with the terms and conditions of the certificate of registration during the extension period as well.

(3) During the validity of certificate of registration under sub-regulations (1) and (2), the certificate of registration granted to the custodian of securities shall be reviewed annually or at any other period or point of time as notified by the Authority and its continuity as such custodian of securities shall be decided thereupon by the Authority.

(4) The custodian of securities shall be liable to Annual pay fee as specified in Part A and in the manner specified in Part B of the Second Schedule, on pro rata basis for the extended period.

15. Transitory provisions for registration of existing custodian of securities appointed by Interim PFRDA. -

(1) An existing custodian of securities, after notification of these regulations, shall make an application for continuation of its activities, within ninety days of such notification and the application shall be accompanied by-

- (a) the original certificate of registration or letter of appointment;
- (b) an undertaking supported by documentary evidence by the principal officer of the applicant certifying that all eligibility criteria as specified under these regulations have been satisfied;
- (c) fee as specified in the Second Schedule;
- (d) any other information as may be required by the Authority during the processing of the application for registration.

(2) The Authority may, consequent upon its satisfaction that the existing custodian of securities fulfills the conditions specified in these regulations and further that the grant of registration to such existing intermediary is in subscribers interest, register or re-register such intermediary for a period of one year only or till the selection of the custodian of securities is made in accordance with the selection process, whichever is earlier.

(3) Any existing custodian of securities specified under sub-regulation (1) shall not be entitled to claim any priority or privilege for grant of certificate of registration under the selection process which may be undertaken under these regulations.

16. Asset servicing charges.- (1) The asset servicing charges that can be levied by the custodian of securities on the asset held under the pension schemes regulated by the Authority shall be determined as per procedure laid down by the Authority.

(2) The assets servicing charges shall be calculated on the basis of daily closing balance of assets held by the custodian of securities under the pension schemes regulated by the Authority on face value of debt instruments and of purchase price of equity instruments.

17. Annual Fee

Every Custodian of Securities shall deposit with Authority an Annual Fee as detailed in Second Schedule before the 15th of April each year or within 15 days of the issuance or extension of Certificate of registration .

CHAPTER III

GENERAL OBLIGATIONS AND RESPONSIBILITIES OF CUSTODIANS

18. Code of conduct.-Every custodian of securities shall abide by the Code of conduct as stated in the Fourth Schedule.

19. General obligations of custodian of securities.- (1) The custodian of securities shall exercise at all times reasonable care, prudence, professional skill and diligence while discharging its duties in the best interest of the subscribers.

(2) The custodian of securities shall facilitate adequate infrastructure information technology, systems and procedures that are required for enabling it to co-ordinate with other intermediaries and entities and adapt to future changes including changes on account of technology advancements, changes in system specifications and services and undertake functional obligations specified by the Authority.

(3) The custodian of securities shall take all necessary precautions to ensure that continuity of the record keeping is not lost or destroyed and that sufficient back up of records are available.

(4) The custodian of securities shall ensure at all times that transactions in the pension schemes accounts are put through according to the instructions of the pension fund or the National Pension System Trust and the securities held in such accounts are used only for transactions explicitly authorised by the pension fund or the National Pension System Trust.

(5) The custodian of securities shall ensure at all times that, the securities held on behalf of the National Pension System Trust are separate and clearly segregated in its books from its own holdings, other client accounts and separated from all other activities. The custodian of securities shall open a separate custody account for pension schemes regulated by the Authority and in accordance with the manner specified for registration of securities.

(6) The custodian of securities shall ensure that all the rights or entitlements on the securities held in its custody for pension schemes or the National Pension System Trust are received on time and in the manner specified by the Authority or the National Pension System Trust.

(7) The custodian of securities shall ensure that the individual holdings of securities in the pension scheme accounts are reconciled with the depository holdings and Constituents' Subsidiary General Ledger (CSGL) account at the end of the day.

(8) The custodian of securities shall be continuously accountable for the movement of securities in and out of the pension scheme accounts and shall provide complete audit trail whenever called for by the Authority or the National Pension System Trust.

(9) The custodian of securities shall create and maintain the records of securities held in its custody in such manner that the tracing of securities or obtaining duplicate of the documents is facilitated, in the event of loss of original records for any reason.

(10) The custodian of securities shall ensure that the securities handled by it under the National Pension System or any pension scheme regulated by the Authority are adequately insured.

(11) The custodian of securities shall have adequate systems for internal controls to prevent any manipulation of records and documents including audits for securities and rights or entitlements arising from the securities held under this agreement. The custodian of securities shall have appropriate safekeeping measures to ensure that such securities (assets or documents) are protected from theft or natural hazard.

(12) The custodian of securities shall not be entitled to setting off securities held in the pension scheme accounts regulated by the Authority or otherwise deal with them to extinguish partly or fully any amounts due to it from the pension fund or the National Pension System Trust without the prior consent in writing from the Authority or the National Pension System Trust.

(13) The custodian of securities shall not encumber the securities in any manner including by an act of pledging, hypothecating or creating any charge or lien on the said securities. The custodian of securities shall not convert the securities in any manner without the approval of the Authority or the National Pension System Trust.

(14) The custodian of securities shall transmit such reports and statements to the pension fund or the National Pension System Trust or the Authority or to such other intermediaries at such periodic intervals as may be

specified by the Authority from time to time or as specified in the agreements.

(15) The custodian of securities shall maintain proper books of accounts, registers, records, documents and have adequate mechanisms for the purposes of reviewing, monitoring and evaluating the custodian's controls, systems, procedures and safeguards.

(16) The custodian of securities shall have its books of accounts audited quarterly by an internal auditor and submit an extract thereof relating to the assets or business of the pension funds to the Authority or the National Pension System Trust, as specified, within thirty days from the date of audit.

(17) The custodian of securities shall adhere to all applicable rules, regulations, circulars or guidelines framed, recommended, mandated by any regulator, authority, clearing corporation, exchange or depository for various functions or services offerings to the National Pension System Trust.

20. Monitoring, review and evaluating systems and controls.- (1) Every custodian of securities shall have adequate mechanisms for the purposes of reviewing, monitoring and evaluating the custodian's controls, systems, procedures and safeguards.

(2) The custodian of securities shall cause to be audited annually or at any other periodicity as may be specified by the Authority through the mechanism referred to in sub-regulation (1), by an expert appointed in accordance with the Authority's guidelines and forward the audit report to the National Pension System Trust within thirty days from the date of audit.

(3) The National Pension System Trust shall be the nodal agency for monitoring, reviewing and evaluating of the operations of the custodian of securities..

21. Appointment of compliance officer.-(1) Every custodian of securities shall appoint a compliance officer who shall be responsible for monitoring the compliance of provisions of the Act or the rules or the regulations made or notifications, guidelines, instructions, issued by the Authority or National Pension System Trust or the Central Government.

(2) The compliance officer shall immediately and independently report to the Authority and the National Pension System Trust of any non-compliance observed by him or her.

CHAPTER IV

INSPECTION AND AUDIT

22. Inspection and audit.- (1) The Authority may, if it considers necessary at any time, undertake directly or through its authorized representative, or an auditor, an inspection and audit of the books, accounts, records including the telephone records and electronic records and documents of the custodian of securities for any purpose, including the purposes as specified under this regulation.

(2) The purposes referred to in sub-regulation (1) may include,-

(a) to ascertain the infrastructural capabilities, systems and procedures;

(b) to ensure that the books of account, records including telephone records and electronic records and documents are being maintained in the manner required under these regulations;

(c) to ensure that the affairs of the custodian of securities, in relation to the activities entrusted with, are conducted in a manner which is in the interest of the subscriber;

(d) to ascertain whether the provisions of the Act or rules or the regulations made thereunder or circulars, guidelines or notifications issued by the Authority are being complied with;

(e) to inquire into the complaints received from pension fund or any intermediary on any matter having a bearing on the activities entrusted to the custodian of securities by the Authority.;

(f) to inquire suo motu into such matters as may be deemed fit in the interest of subscribers.

(3) The Authority may appoint one or more authorized representatives or, appoint a qualified auditor to undertake the inspection or audit referred to in sub-regulation (1).

Explanation.- For the purpose of this sub-regulation, the expression “qualified auditor” shall have the meaning derived from section 226 of the Companies Act, 1956 (1 of 1956).

23. Notice before inspection or audit.—(1) Before undertaking an inspection or audit under regulation 22s, the Authority or its authorised representative or the auditor shall give ten working days’ notice to the custodian of securities:

Provided that no notice shall be required if the Authority is satisfied that an inspection or audit is required for immediate safeguarding of the interest of the subscribers.

(2) During the course of an inspection or audit, the custodian of securities against which the inspection or audit is being carried out shall be bound to discharge its obligations as provided in these regulations.

24. Obligations on inspection and audit.— (1) It shall be the duty of the custodian of securities, the affairs of which is being inspected or audited, and of every director, officer and employee thereof, to produce to the Authority, or its authorized representative or auditor, such books, accounts, records and other documents in its custody or control and furnish to the Authority or its authorised representative or auditor with such statements and information relating to the activities entrusted to it by the Authority, as it or he may require, within such reasonable period as may be specified.

(2) The custodian of securities shall allow the Authority or its authorized representative or the auditor to have a reasonable access to the premises occupied by it or by any other person on its behalf and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the custodian of securities or such other person and also provide copies of documents or other materials which in the opinion of the Authority or its authorized representative or auditor are relevant for the purpose of the inspection or audit.

(3) It shall be the duty of the custodian of securities to give to the Authority, or its authorized representative or audit or all assistance in connection with the inspection and audit which the Authority or its authorized representative, National Pension System Trust or its authorized representative or auditor may reasonably require.

25. Submission of report.—(1) On completion of the inspection or audit, a report shall be submitted to the Authority, which after consideration of the report, may take such action as it may deem fit and appropriate in the interest of the subscribers.

(2) The Authority may *suo motu* or after consideration of the inspection or audit report, as the case may be, order an investigation or inquiry to be conducted in the matter.

26. Payment of inspection and audit fees.—The Authority shall be entitled to recover from the custodian of such expenses incurred by it for the purposes of inspection or audit undertaken directly or through its authorized representative under sub-regulation (1) of regulation 22.

27. Inspection and audit by National Pension System Trust.— (1) The National Pension System Trust shall undertake directly or through its authorized representative, inspection or audit or both of the custodian of securities, on an annual basis or at such other period as may be specified by the Authority in relation to operational Service Level Agreements in accordance with the provisions of Pension Fund Regulatory and Development Authority (National Pension System Trust) Regulations, 2015. The custodian of securities shall allow the National Pension System Trust, or its authorized representative to have a reasonable access to the premises occupied by it, books of accounts, records, technology infrastructure, and provide necessary information as may be required by it for the purpose of such inspection or audit, as the case may be.

CHAPTER V

SUSPENSION OR CANCELLATION OF CERTIFICATE AND ACTION IN CASE OF DEFAULT

28. Cancellation or suspension of certificate of registration.— (1) The registration granted by the Authority to act as a custodian of securities is liable to be cancelled, suspended or withdrawn, if the—

- (a) existing custodian of securities fails to apply or obtain afresh the certificate of registration upon expiry of tenure;
- (b) fails to comply with any of the terms and conditions of certificate of registration or Contravenes any of the provisions of the Act or the rules or the regulations made or any guidelines or notifications, directions, instructions or circulars issued thereunder;
- (c) indulges in unfair trade practices or conducts its activities in a manner prejudicial to the interests of the subscribers;
- (d) fails to furnish any information, periodical returns as required under the Act or by the Authority;
- (e) ceases to carry on business or goes into liquidation (other than for the purposes of a reconstruction or amalgamation on terms previously approved in writing by the Authority) or a receiver, manager, or administrator or similar person is appointed with respect to the assets and undertakings of the custodian of securities;
- (f) in the opinion of the Authority, the custodian of securities has engaged in corrupt or fraudulent practices in obtaining the certificate of registration or has been blacklisted by any regulator or submits to the Authority a false statement or information which has a material effect on the rights, obligations or interests of the Authority or the subscribers;
- (g) any other reason which in the opinion of the Authority warrants for suspension or cancellation of the certificate of registration granted;

(2) The Authority may without prejudice to the powers under sub-regulation (1), instead of cancelling, suspending or withdrawing the certificate of registration, direct for varying or modifying the terms and conditions of the certificate of registration as it may deem fit, or pass any other order, as may be deemed beneficial in the interest of the subscribers, for reason to be recorded in writing.

(3) The custodian of securities once registered shall have to ensure that the eligibility conditions as mentioned in these regulations are strictly adhered to during the entire currency of the registration period and any extension thereto. Certificate evidencing compliance with the eligibility condition shall have to be furnished by the registered custodian of securities to the Authority on annual basis within thirty days of closure of accounts for the financial year.

29. Surrender of any certificate of registration.— (1) Any custodian of securities, which has been granted a certificate of registration under the Act or the regulations made thereunder, desirous of giving up its activity and surrendering the certificate, may make a request for such surrender to the Authority.

(2) While disposing of a request under these regulations, the Authority may require the concerned custodian of securities to satisfy the Authority of the factors as it deems fit, including but not limited to the following: –

- (a) the arrangements made by the custodian of securities at its own costs and expenses for maintenance and preservation of records and other documents required to be maintained under the Act, rules, regulations and guidelines;
- (b) redressal of subscriber grievances as per the provision of Pension Fund Regulatory and Development Authority (Redressal of Subscriber Grievance) Regulations, 2015;
- (c) transfer of records, regulated assets at its own cost and expense;
- (d) the arrangements made by it for ensuring continuity of service to the subscribers;
- (e) defaults or pending actions, if any.

(3) While accepting the surrender request, the Authority may impose such conditions upon the custodian of securities as it deems fit for the protection of interest of the subscribers of the National Pension System and the custodian concerned shall comply with such conditions.

30. Effect of suspension, cancellation or withdrawal of certificate of registration.— (1) Any custodian of securities which has not applied for or which has failed to obtain a certificate of registration afresh upon expiry of tenure or certificate of registration, or certificate of registration of which has been cancelled, withdrawn or suspended shall, on and from the date specified by the Authority cease to carry on any activity as custodian of securities.

(2) On and from the date of suspension, cancellation or withdrawal of the certificate of registration, the custodian of securities shall—

(a) take such actions in respect of the assets, records documents or information that are in the custody or control of the custodian of securities, within such time and in the manner, as may be required under the relevant regulations or as may be directed by the Authority, while passing the order under these regulations or otherwise;

(b) not represent itself as a custodian of securities for carrying out the activities for which the certificate of registration had been granted and return the certificate of registration to the Authority if so directed;

(c) transfer the assets, records, documents or information that are in its control to another custodian of securities, if so directed by the Authority, at its own cost;

(d) be subject to the direction of the Authority till all such transfers or actions are completed or till the time the certificate of registration remains suspended.

31. Appointment of designated authority.— (1) Where it appears to the designated member that any custodian of securities which has been granted certificate of registration under the Act, these regulations or any other concerned person has committed any default of the nature specified in regulation 28, he may appoint an officer not below the rank of a Chief General Manager, or any other officer of an equivalent rank, as a designated authority.

(2) No officer who has conducted investigation or inspection in respect of the alleged violation shall be appointed as a designated authority.

32. Issuance of notice.- (1) The designated authority shall, if it finds reasonable grounds to do so, issue a notice to the custodian of securities or any other concerned person requiring it to show cause as to why the certificate of registration granted to it, should not be suspended or cancelled or why any other action provided herein should not be taken.

(2) Every notice under sub-regulation (1) shall specify the contravention alleged to have been committed by the noticee indicating the provisions of the Act, rules, regulations, directions or circulars in respect of which the contravention is alleged to have taken place.

(3) There shall be annexed to the notice issued under sub-regulation (1) copies of documents relied on in making of the imputations and extracts of relevant portions of documents, reports containing the findings arrived at in an investigation or inspection carried out, if any .

(4) The noticee shall be called upon to submit within a period to be specified in the notice, not exceeding twenty-one days from the date of service thereof, a written representation to the designated authority.

33. Reply by noticee.—(1) The noticee shall submit to the designated authority its written representation within the period specified in the notice along with documentary evidence, if any, in support thereof:

Provided that the designated authority may extend the time specified in the notice for sufficient grounds shown by the noticee and after recording reasons of extension in writing.

(2) If the noticee does not reply to the show-cause notice, within the time granted for the purpose, the designated authority may proceed with the matter exparte recording the reasons for doing so and make recommendation as the case may be on the basis of material facts available before him.

34. Action in case of default.-After considering the representations, if any, of the noticee, the facts and circumstances of the case and applicable provisions of the Act, regulations, directions or circulars administered by the Authority, the designated authority shall submit a report, where the facts so warrant, recommending,—

(a) suspension of certificate of registration for a specified period;

- (b) cancellation of certificate of registration;
- (c) prohibiting the noticee to take up any new assignment or contract or launch new scheme for the period specified in the order;
- (d) debarring a principal officer of the noticee from being employed or associated with any registered intermediary or other registered person for the period specified in the order;
- (e) debarring a branch or an office of the noticee from carrying out activities for the specified period;
- (f) warning the noticee.

35. Procedure for action on recommendation.—(1) On receipt of the report recommending measures from the designated authority, the designated member shall consider the same and issue a show-cause notice to the noticee enclosing a copy of the report submitted by the designated authority calling upon the noticee to submit its written representation as to why the action, including passing of appropriate direction, should not be taken.

(2) The noticee may, within twenty -one days of receipt of the notice send a reply to the designated member who may pass appropriate order after considering the reply, if any received from the noticee and providing the person with an opportunity of being heard, as expeditiously as possible and endeavor shall be made to pass the order within one hundred and twenty days from the date of receipt of reply of the notice or hearing.

(3) The designated member may pass a common order in respect of a number of noticees where the subject matter in question is substantially the same or similar in nature.

36. Intimation of order.— (1) Every report made by a designated authority and every order passed by the designated member under these regulations shall be dated and signed.

(2) A copy of the order passed under these regulations shall be sent to the custodian of securities or any person concerned and also placed on the website of the Authority.

37. Penalty and adjudication.—The imposition of penalty, if any, on the custodian of securities or any person concerned shall be in accordance with the provisions of the Act and the Pension Fund Regulatory and Development Authority(Procedure for Inquiry by Adjudicating Officer) Regulations, 2015.

38. Appeal to Securities Appellate Tribunal.— The custodian of securities or any person concerned, aggrieved by an order under these regulations may, prefer an appeal to the Securities Appellate Tribunal against such order in accordance with the provisions of sub-section (1) of section 36 of the Act.

Explanation.— For the purposes of this Chapter,—

“designated authority” means an officer of the Authority appointed under sub-regulation (1) of regulation 30;

“designated member” means the Chairperson or a whole-time member of the Authority designated for the purpose;

“noticee” means the person to whom a notice has been issued under this Chapter.

CHAPTER VI

MISCELLANEOUS

39. Power of Authority to issue clarifications.— In order to remove any difficulties in the application or interpretation of these regulations, the Authority may issue clarifications and guidelines in the form of notes or circulars which shall be binding on the custodian of securities.

40. Directions.—Without prejudice to any order under the Act, the regulations and directions, guidelines, and circulars as may be issued by the Authority, including order under Chapter V, may, in the interest of the subscribers or for the purpose of securing the proper management of custodian of securities, issue, necessary direction:

Provided that before issuing any directions, the Authority shall give a reasonable opportunity of being heard to the persons concerned:

Provided further that if the circumstances warrant any interim direction is required to be passed immediately, the Authority may give a reasonable opportunity of hearing to the persons concerned after passing the direction, without any undue delay.

FIRST SCHEDULE**FORMS**

[See regulation 2 (1) (g)]

FORM A**PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY (CUSTODIAN OF SECURITIES)****REGULATIONS, 2015**

[See regulation 10 (4)]

CERTIFICATE OF REGISTRATION AS CUSTODIAN OF SECURITIES**PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY****CERTIFICATE OF REGISTRATION AS CUSTODIAN OF SECURITIES**

In exercise of powers conferred by sub-section (3) of section 27 of the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013), read with regulations made thereunder, the Authority hereby grants this certificate of registration to _____ as a custodian of securities for the pension Schemes (indicate name of Schemes) regulated by the Pension Fund Regulatory and Development Authority, until..... subject to the terms and conditions specified in the Act and regulations made thereunder.

The Registration Code for the Custodian is _____.

Date : _____

Place : _____

By order

For and on behalf of the Pension Fund Regulatory and Development Authority

FORM B**PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY (CUSTODIAN OF SECURITIES) REGULATIONS, 2015**

[See regulation 13 (2)]

CERTIFICATE FOR COMMENCEMENT OF BUSINESS**PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY****CERTIFICATE FOR COMMENCEMENT OF BUSINESS AS CUSTODIAN OF SECURITIES**

_____ who has been granted a certificate of registration as custodian of securities vide _____ on _____ is hereby allowed to commence the activities as custodian of securities for the pension Schemes(Name of Scheme) regulated by the Pension Fund Regulatory and Development Authority on this ____ day of ____ 20

Place : _____

By order

For and on behalf of Pension Fund Regulatory and Development Authority

SECOND SCHEDULE

PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY (CUSTODIAN OF SECURITIES) REGULATIONS, 2015

[See regulations 4(2), 10 (3), 11(a), 14 (4) 15 (1) (c) and 17]

FEES PAYABLE UNDER THE REGULATIONS

PART A

AMOUNT TO BE PAID AS FEES

1	Application fee	Rs 5,00,000	Non Refundable	At the time of submission of application for grant of Certificate of Registration
2	Registration fee	Rs 25,00,000	Non Refundable	At the time of grant of registration certificate for the tenor of appointment
3	Annual fee	0.0005% of Assets under custody or Rs 10,00,000, Whichever is higher	Assets under custody shall be considered as on 31st March of preceding financial year.	Payable by 15th of April of every financial year or within fifteen days of grant of certificate of registration.

PART B

For the purpose of this Part,-

- I. The fees specified above shall be payable by demand draft or bankers cheque in favour of "The Pension Fund Regulatory and Development Authority" at New Delhi.
- II. The expression "assets under custody" shall mean the value of the assets calculated on face value of debt instruments and of purchase value of equity instruments held by the custodian of securities as disclosed by him under sub-paragraph VI of Part B below; The payment of annual fee shall be accompanied by a statement of assets under custody which shall be in such format as may be specified by the Authority and shall be certified to be true and complete by the functional head of the custody services of the custodian of securities.
- III. It is clarified that no registration fee or application fee (as shown against item 2 above) shall be payable in case of extension of the Certificate of registration A custodian of securities shall pay pro rata annual fee on quarterly basis, if the extension of certificate of registration is granted - Ref Regulation 14 (4)
- IV. No registration fee shall be payable by the custodian of securities who is granted certificate of registration under regulation 15.
- V. A custodian of securities which has been granted registration under regulations 15 shall pay proportionate annual fee for the period of transition under regulation 15
- VI. The Authority reserves the right to amend all or any of the fees from time to time.

THIRD SCHEDULE

PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY
(CUSTODIAN OF SECURITIES) REGULATIONS, 2015

[See regulation 8 (2) (h)]

Criteria for determining a 'fit and proper person'

(1) For the purpose of determining as to whether an applicant is a 'fit and proper person', the Authority may take into account of any consideration as it deems fit, including but not limited to the following criteria in relation to it or him:-

- (i) financial integrity;
- (ii) absence of convictions or civil liabilities;
- (iii) competence,
- (iv) good reputation and character;
- (v) efficiency and honesty; and

An applicant shall not be considered as a 'fit and proper person' for the purpose of grant of certificate of registration under these regulations, if it or he incurs any of the following disqualifications, namely:-

- (a) the applicant or custodian of securities or its whole time director or principal officer or managing partner has been convicted by a court for any offence involving moral turpitude, economic offence, violation of any securities law or fraud;
- (b) an order for winding up has been passed against the applicant;
- (c) the applicant or its whole time director, or managing partner has been declared insolvent and has not been discharged;
- (d) an order, other than an order of suspension of appointment as an intermediary, restraining, prohibiting or debaring the applicant or its whole time director or principal officer or managing partner from dealing in securities in the capital market or from accessing the capital market has been passed by any regulatory authority or court. and a period of three years from the date of the expiry of the period specified in the order has not elapsed;
- (e) an order cancelling the appointment of the applicant has been passed by the Authority or other concerned financial sector regulator on the ground of its indulging in insider trading, fraudulent and unfair trade practices or market manipulation and a period of three years from the date of the order has not elapsed;
- (f) an order withdrawing or refusing to grant any license or approval to the applicant or its whole time director or managing partner which has a bearing on the capital market, has been passed by concerned financial sector regulator or any other regulatory authority and a period of three years from the date of the order has not elapsed:

Provided that the Authority may for reasons to be recorded in writing, allow the applicant to seek appointment before the lapse of three Years referred to in clauses (d), (e) and (f) above;

- (g) the applicant is financially not sound;
- (h) there is a notice of any action or investigation or other proceedings of any nature whatsoever, against the applicant, or its chief executive officer, any of its directors or employees, or a related group concern, by any governmental or statutory authority which would restrain, prohibit or otherwise challenge or impede the performance of obligations as custodian of the assets regulated by the Authority, and that there is adverse proceedings against it from any financial sector regulator including the Reserve Bank of India, Insurance Regulatory and Development Authority or the Securities and Exchange Board of India, of a nature that could adversely affect the ability to provide the services as custodian for the assets regulated by the Authority;
- (i) any other reason, to be recorded in writing by the Authority, which in its opinion renders such applicant custodian of securities or its whole time director, principal officer or managing partner unfit to operate in the capital market.

Explanation.-For the purpose of clause (g), the Authority may take into consideration the capital adequacy or net worth of the applicant, wherever it has been so specified in the relevant application for certificate of registration.

FOURTH SCHEDULE**PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY****(CUSTODIAN OF SECURITIES) REGULATIONS, 2015**

[See regulations 11 (j) and 18]

CODE OF CONDUCT**1. SUBSCRIBER PROTECTION****1.1 Subscribers or Authority or National Pension System Trusts-**

A custodian of securities shall make all efforts to protect the interests of subscribers and shall render the best possible service to the Authority or National Pension System Trusts having regard to the subscriber's needs and the environments and his own professional skills.

1.2 High standards of service.- A custodian of securities shall ensure that it and its key management personnel, employees, contractors and agents, shall in the conduct of their business, observe high standards of integrity, dignity, fairness, ethics and professionalism and all professional dealings shall be affected in a prompt, effective and efficient manner. A custodian of securities shall be responsible for the acts or omissions of its employees and agents in respect to the conduct of its business.

1.3 Exercise of due diligence and no collusion.-A custodian of securities shall at all times render high standards of service, exercise due skill and diligence over persons employed or appointed by it, ensure proper care and exercise independent professional judgment and shall not at any time act in collusion with other custodians of securities or other intermediaries in a manner that is detrimental to the subscribers.

1.4 Fees. -A custodian of securities shall levy charges or fees for the services rendered as determined by the Authority

II DISBURSAL OF AMOUNTS

2.1 Disbursal of Amounts.-A custodian of securities shall be prompt in disbursing dividends, interests or any such accrual income received or collected by it on behalf of the Authority or National Pension System Trusts or subscribers.

III DISCLOSURE OF INFORMATION

3.1 A custodian of securities shall ensure that adequate disclosures are made to the Authority, National Pension System Trust or pension fund in a comprehensible and timely manner so as to enable them to make a balanced and informed decision.

3.2 A custodian of securities shall not make any misrepresentation and ensure that the information provided to the Authority, National Pension System Trust or pension fund is not misleading.

3.3 A custodian of securities shall not make any exaggerated statement whether oral or written to the Authority, National Pension System Trust or subscribers, either about its qualification or capability to render certain services or its achievements in regard to services rendered to other Authority, National Pension System Trusts or subscribers.

3.4 A custodian of securities shall not divulge to anybody, either orally or in writing, directly or indirectly, any confidential information about the Authority, National Pension System Trusts or subscribers, which has come to its knowledge, without taking prior permission of the Authority or National Pension System Trusts except where such disclosures are required to be made in compliance with any law for the time being in force.

IV. CONFLICT OF INTEREST

4.1 A custodian of securities shall avoid conflict of interest and make adequate disclosure of its interest and shall put in place a mechanism to resolve any conflict of interest situation that may arise in the conduct of its

business or where any conflict of interest arises, shall take reasonable steps to resolve the same in an equitable manner. A custodian of securities shall make appropriate disclosure to the Authority or National Pension System Trust of its possible source or potential areas of conflict of duties and interest while acting as a custodian of securities which would impair its ability to render fair, objective and unbiased services.

4.2 A custodian of securities or any of its directors, or employee having the management of the whole or substantially the whole of affairs of the business, or an associate of the custodian of securities shall not, either through its account or their respective accounts or through their family members, relatives or friends indulge in any insider trading.

V. COMPLIANCE AND CORPORATE GOVERNANCE

5.1 A custodian of securities shall ensure that good corporate policies and corporate governance is in place. It shall not engage in fraudulent and manipulative transactions in the securities listed on any stock exchange in India and shall not indulge in any unfair competition (including resorting to unfair means for inducing other intermediaries, Authority or National Pension System Trust) which is likely to harm the interests of other custodians of securities or subscribers or is likely to place such other intermediaries in a disadvantageous position while competing for or executing any assignment.

5.2 A custodian of securities shall take adequate and necessary steps to ensure that continuity in data and record keeping is maintained and that the data or records are not lost or destroyed. It shall also ensure that for electronic records and data, up-to-date back up is always available with it. In case of physical securities, the records to be maintained to facilitate obtaining duplicate title deeds.

5.3 A custodian of securities shall co-operate with the Authority, or any intermediary designated by the Authority, as and when required and shall not make any untrue statement or suppress any material fact in any documents, reports, papers or information furnished to the Authority or neglect or fail or refuse to submit to the Authority or other agencies with which it is registered, such books, documents, correspondence and papers or any part thereof as may be demanded or requested from time to time.

5.4 A custodian of securities shall ensure that any change in registration status, any penal action taken by any Authority or any material change in financials which may adversely affect the interests of the Authority or National Pension System Trust or subscribers is promptly informed to the Authority or National Pension System Trust

5.5 A custodian of securities shall maintain an appropriate level of knowledge and competency and abide by the provisions of any Act, regulations, circulars and guidelines of the Central Government, the Reserve Bank of India, the Securities and Exchange Board of India, the Authority, the stock exchange or any other applicable statutory or self regulatory or other body, as the case may be, and as may be applicable to the custodian of securities in respect of the business carried on by such custodian of securities. A custodian of securities shall also comply with the award of the Ombudsman passed under the Pension Fund Regulatory and Development Authority (Redressal of Subscriber Grievance) Regulations, 2015.

5.6 A custodian of securities shall ensure that the Authority is promptly informed about any action or legal proceedings, initiated against it in respect of any material breach or non-compliance by it, of any law, rules, regulations, and directions of the Authority or of any other regulatory body.

VI. CUSTODIAN OF SECURITIES INFRASTRUCTURE REQUIREMENTS

6.1 A custodian of securities shall have internal control procedures and financial and operational capabilities which can be reasonably expected to protect its operations, the Authority, National Pension System Trust, subscribers and other registered entities from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions.

6.2 A custodian of securities also registered with the Authority in any other capacity or category shall endeavour to ensure that arms length relationship is maintained in terms of both manpower and infrastructure between the activities carried out as a custodian of securities and other permitted activities.

6.3 A custodian of securities shall establish and maintain adequate infrastructural facility to be able to

discharge its services as such custodian of securities to the satisfaction of the Authority or National Pension System Trusts, and the operating procedures and systems of the intermediaries/custodians of securities shall be well documented and backed by operations manuals.

6.4 A custodian of securities shall create and maintain the records of all documents and data in their in custody in such manner that the tracing of such document or data is facilitated in the event of loss of original records or documents for any reason.

6.5 (a) any of the employees of Custodian who are involved directly or indirectly shall not render, directly or indirectly any investment advice about any security in the publicly accessible media, whether real-time or non-real-time, , while rendering such advice;

(b) in case an employee of the custodian of securities is rendering such advice, he shall also disclose the interest of his dependent family members and employer including their long or short position in the said security, while rendering such advice.

HEMANT G. CONTRACTOR, Chairperson

[ADVT.-III/4/Exty./203/15(53)]