

## UNDERWRITERS AS SHAREHOLDERS\*

*The current article by Dr. Balkrishnan poses an important issue with bearings on company law, management practices and role of underwriters. Articles analysing these and kindred aspects of the problem are invited for publication in the Business Analyst.*

Ed.

### UNDERWRITERS—THE NEWLY EMERGING CLASS OF INVESTORS

**O**F LATE, under-writing of capital issues offered for public subscription by bodies corporate has become extremely popular in the country and almost all of them, be they equity shares or preference shares or debentures, are under-written almost to the entire extent by well-known under-writers like the Life Insurance Corporation, Unit Trust of India, Industrial Development Bank, Industrial Credit and Investment Corporation of India Ltd., State Financial Corporations etc. Another important peculiarity that is noted in capital issues is that a considerable part of the under-written amount is taken up by the underwriters either in their capacity as investors or in their capacity as underwriters. Thus, during the period of  $4\frac{1}{2}$  years from 1st April, 1964 a total capital of Rs. 169 crores was issued to the public by the public limited companies of which as high as Rs. 162 crores was under-written by various financial institutions and of the latter as high as Rs. 95 crores forming nearly 53 per cent was subscribed to by them. \*All these details can be seen in Table-I. It is also generally known that some under-writers subscribed to a considerable part of the amount under-written by them not by virtue of the underwriting agreement but as investors. Although data regarding the amount subscribed by

\*Statistical assistance for the preparation of this article has been rendered by Shri G. C. Banga, M.A.(Econ.):

underwriters in their capacity as investors and as underwrites is not available for a long period, such data are available for six months from 1st April 1968. The data are presented in Table-II.

TABLE I  
Capital Issues during the period from 1-4-1964 to 30-9-68

	Shares	Debentures	Total
	(Amount in Rs. Lakhs)		
1. Total amount offered to Public	10,423·9	6,456·0	16,879·9
2. Total amount underwritten	9,751·7	6,446·5	16,198·2
Out of which underwritten by :—			
(a) Life Insurance Corporation	1,680·0	1,680·0	3,360·0
(b) Industrial Credit and Investment Corporation of India.	1,040·0	970·0	2,010·0
(c) Industrial Finance Corporation	850·0	390·0	1,240·0
(d) Unit Trust of India	470·0	1,320·0	1,790·0
(e) Industrial Development Bank of India	1,180·0	90·0	1,270·0
(f) Others	4,531·7	1,996·5	6,528·2
3. Total amount subscribed by underwriters.	6,124·4	3,417·7	9,542·1
4. Total amount subscribed by public.	4,087·6	3,034·0	7,121·6
5. Amount left unsubscribed	211·9	4·3	216·2
6. 3 as % of 2	62·8	53·0	52·7

TABLE II  
Amount subscribed by underwriters during 1-4-1968 to 30-9-1968

	Shares	Debentures	Total
	(In Rs. lakhs)		
1. Total amount offered to public	728·0	637·5	1,365·5
2. Amount subscribed by underwriters	522·6	591·6	1,114·2
(a) as investors	308·7	244·4	553·1
(b) as underwriters	213·9	347·2	561·1
3. Subscribed by public	201·5	45·9	247·4
4. Amount left unsubscribed :	3·9	—	3·9

It would be seen from Table II that of the Rs. 11·14 crores subscribed by the underwriters during the six months, almost half i.e., Rs. 5·53 crores was taken up by them in their capacity as investors. Since the Research and Statistics Division of the Department of Company Affairs has commenced, for the first time, to publish data regarding the amount subscribed by the underwriters in their capacity as investors and as underwriters, such data are likely to be available

for the future on a continuous basis. However, from the available data for the last six months, the tendency of underwriters to emerge as important investors in this country is getting clearly noticeable. This is mainly due to the fact that the savings of the community are now being channelled through financial intermediaries to industrial undertakings. Although this development is seen in other countries also and it is having certain implications, the point that is considered here is the extent to which an important class of shareholders is growing in this country with certain powers that have not been provided even under the Companies Act. The powers enjoyed by the new class of underwriters may have to be analysed in relation to the various ways by which they are able to influence the management of the companies. It is not proposed here to go into all these aspects for that would take considerable amount of research. Perhaps at a later stage it may be possible to bring out a study on this aspect. All that is attempted at present is to bring to light the powers enjoyed by this new class of shareholders because they happen to be underwriters also. They are stated in all the underwriting agreements concluded by this class of shareholders and some of the important ones are the following :—

#### SPECIAL POWERS OF UNDERWRITER SHAREHOLDERS

- (a) the prospectus should be approved by the underwriters/prospective shareholder ;
- (b) prospectus or a shorter announcement shall be advertised in newspapers after it has been delivered to the Registrar of Companies according to a programme to be agreed with the underwriters. Unless otherwise agreed, this programme shall provide for a minimum of 10 days between the date of publication and opening of the list for public subscription. The list of newspapers in which either the prospectus or a shorter announcement is to be advertised shall be agreed with the underwriters.
- (c) prospectus shall provide for the receipt of applications by the bankers of the company at such of their offices in India as may be agreed with the underwriters. The company shall make arrangements as may be necessary which would permit the underwriters to pay in cities where their principal

place of business is located, the amounts required of them in respect of application money, allotment money, or subscription calls on equity shares which may be taken up by them pursuant to the underwriting arrangement ;

- (d) the company should keep underwriters informed of the progress of the public issue from day to day while public subscription list is open ;
- (e) underwriters will be entitled to arrange sub-underwriting of their respective commitments on their own account on terms to be agreed at their discretion with their sub-underwriters ;
- (f) the underwriters will have to subscribe to the shares only after their liability has been decided which would involve a time lag as compared to other shareholders ;
- (g) the company should allot the shares for which applications have been received as soon as possible after the closing of the subscription list but not later than six weeks from the date of the closing of the list provided, however, that this period of six weeks may be postponed with underwriters' consent. If it should prove impossible to complete the necessary preparatory work in time the underwriters can get a commission of  $2\frac{1}{2}\%$  on the nominal value of the shares underwritten and subscribed by them. In addition to the underwriting commission of  $2\frac{1}{2}\%$  underwriters will also get 1% of the brokerage in respect of the amount subscribed by them ;
- (h) the company will obtain loans from certain institutions on terms and conditions satisfactory to the underwriters ;
- (i) the directors should agree to bring in a minimum of certain amount as unsecured loans or deposits from distributors and also give an undertaking to bring in additional unsecured loans or deposits to finance any shortfall that may arise in building the project ;
- (j) the company should give an undertaking that so long as the underwriters are required to take up equity shares in the company as a result of underwriting agreement, the company will not undertake any new project or expansion without the prior approval of the underwriters ;
- (k) the underwriter, irrespective of the amount of shares subs-

cribed by him will have the right to appoint his nominee as a director who shall not be liable to retire by rotation nor required to hold any share qualification ;

- (l) so long as the underwriter has to subscribe to the shares, the company shall furnish quarterly/half-yearly/annual reports relating to the progress in the project as may be required by the underwriter and also pay all out-of-pocket expenses of any officer of the underwriter for inspecting the company's site, works, plant etc., for examining the books and papers and accounts ; and
- (m) the company shall take steps to get the shares quoted in the stock exchange and for that purpose submit the articles of association and the particulars of issue to the Stock Exchange.

In the above paragraphs some of the powers enjoyed by underwriters/shareholders have been given. As stated already, it cannot be said that these are the only powers enjoyed by the new class of shareholders. Depending on the extent of their shareholdings, it may be possible for the underwriters to bring in additional influence on the company. A comprehensive study is needed on this aspect of the problem. For that, it may be necessary, to collect data regarding the working of the new class of shareholders. All these data are not readily available and it may take sometime for such a study to be completed. All the same there is no doubt that a new powerful class of shareholders is emerging in this country. As to how exactly they should exercise their powers and functions etc. might very well form part of a more extensive research and analysis of the subject.