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**SECURITIES AND EXCHANGE BOARD OF INDIA**

**NOTIFICATION**

**Mumbai, the 30<sup>th</sup> January, 2012**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**(ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS)**

**(AMENDMENT) REGULATIONS, 2012**

**No. LAD-NRO/GN/2011-12/34/2499**—In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to further amend the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, namely:—

**1.** These Regulations may be called the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2012.

**2.** They shall come into force on the date of their publication in the Official Gazette.

**3.** In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 —

**(i)** in regulation 4, after sub-regulation (2), a new sub-regulation (3) shall be inserted, namely:—

“(3) Warrants may be issued along with public issue or rights issue of specified securities subject to the following:

(a) the tenure of such warrants shall not exceed twelve months from their date of allotment in the public/rights issue;

(b) not more than one warrant shall be attached to one specified security.”

**(ii)** in regulation 8, in sub-regulation (1), clause (a) shall be substituted with the following, namely:—

“(a) a certificate, confirming that an agreement has been entered into between the issuer and the lead merchant bankers as per the format specified in **Schedule II.**”

(iii) in regulation 8, in sub-regulation (1), clause (b) shall be omitted;

(iv) in regulation 13, sub-regulation (6) shall be omitted;

(v) in regulation 58, in proviso to sub-regulation (5), the word “issue” shall be substituted with the word “issuer”;

(vi) in regulation 71, the following Explanation shall be inserted, namely:—

“**Explanation:** Where the relevant date falls on a Weekend/Holiday, the day preceding the Weekend/Holiday will be reckoned to be the relevant date.”

(vii) in regulation 76, the words “six months” wherever appearing shall be substituted with the words “twenty six weeks”;

(viii) in regulation 84, sub-regulation (5) shall be omitted;

(ix) after Chapter VIII, the following new Chapter VIII-A shall be inserted, namely:—

**“CHAPTER VIII-A  
INSTITUTIONAL PLACEMENT PROGRAMME**

**Applicability.**

**91A.** (1) The provisions of this Chapter shall apply to issuance of fresh shares and or offer for sale of shares in a listed issuer for the purpose of achieving minimum public shareholding in terms of Rule 19(2)(b) and 19A of the Securities Contracts (Regulation) Rules, 1957.

(2) Unless otherwise specified, no provisions of these regulations shall be applicable to the institutional placement programme except for the following:-

- (a) regulations 2, 5, 12, 18, 19, 47, 48, 51, 59, 60, 61, 64, 65, 66 and 68;
- (b) clauses (a) and (b) of sub-regulation (2) of regulation 4;
- (c) clause (b) of regulation 7.

**Definitions.**

**91B.** For the purpose of this Chapter:

- (a) “eligible securities” shall mean equity shares of same class listed and traded in the stock exchange(s);
- (b) “eligible seller” include listed issuer, promoter/promoter group of listed issuer;

(c) “institutional placement programme” means a further public offer of eligible securities by an eligible seller, in which the offer, allocation and allotment of such securities is made only to qualified institutional buyers in terms of this Chapter.

**Conditions for institutional placement programme.**

**91C.** (1) An institutional placement programme may be made only after a special resolution approving the institutional placement programme has been passed by the shareholders of the issuer in terms of section 81(1A) of the Companies Act, 1956.

(2) No partly paid-up securities shall be offered.

(3) The issuer shall obtain an in-principle approval from the stock exchange(s).

**Appointment of merchant banker.**

**91D.** An institutional placement programme shall be managed by merchant banker(s) registered with the Board who shall exercise due diligence.

**Offer Document.**

**91E.** (1) The institutional placement programme shall be made on the basis of the offer document which shall contain all material information, including those specified in **Schedule XVIII**.

(2) The issuer shall, simultaneously while registering the offer document with the Registrar of Companies, file a copy thereof with the Board and with the stock exchange(s) through the lead merchant banker.

(3) The issuer shall file the soft copy of the offer document with the Board as specified in **Schedule V**, along with the fee as specified in **Schedule IV**.

(4) The offer document shall also be placed on the website of the concerned stock exchange and of the issuer clearly stating that it is in connection with institutional placement programme and that the offer is being made only to the qualified institutional buyers.

(5) The merchant banker shall submit to the Board a due diligence certificate as per Form A of **Schedule VI**, stating that the eligible securities are being issued under institutional placement programme and that the issuer complies with requirements of this Chapter.

**Pricing and allocation/allotment.**

**91F.** (1) The eligible seller shall announce a floor price or price band at least one day prior to the opening of institutional placement programme.

(2) The eligible seller shall have the option to make allocation/allotment as per any of the following methods –

(a) proportionate basis;

(b) price priority basis; or

(c) criteria as mentioned in the offer document.

(3) The method chosen shall be disclosed in the offer document.

(4) Allocation/allotment shall be overseen by stock exchange before final allotment.

**Restrictions.**

**91G.** (1) The promoter or promoter group who are offering their eligible securities should not have purchased and/ or sold the eligible securities of the company in the twelve weeks period prior to the offer and they should undertake not to purchase and / or sell eligible securities of the company in the twelve weeks period after the offer.

(2) Allocation/allotment under the institutional placement programme shall be made subject to the following conditions:

(a) Minimum of twenty five per cent. of eligible securities shall be allotted to mutual funds and insurance companies:

Provided that if the mutual funds and insurance companies do not subscribe to said minimum percentage or any part thereof, such minimum portion or part thereof may be allotted to other qualified institutional buyers;

(b) No allocation/allotment shall be made, either directly or indirectly, to any qualified institutional buyer who is a promoter or any person related to promoters of the issuer:

Provided that a qualified institutional buyer who does not hold any shares in the issuer and who has acquired the rights in the capacity of a lender shall not be deemed to be a person related to promoters.

(3) The issuer shall accept bids using ASBA facility only.

(4) The bids made by the applicants in institutional placement programme shall not be revised downwards or withdrawn.

**Explanation:** For the purpose of clause (b) of sub-regulation (2), a qualified institutional buyer who has any of the following rights shall be deemed to be a person related to the promoters of the issuer:-

(a) rights under a shareholders' agreement or voting agreement entered into with promoters or persons related to the promoters;

(b) veto rights; or

(c) right to appoint any nominee director on the board of the issuer.

**Minimum number of allottees.**

**91H.** (1) The minimum number of allottees for each offer of eligible securities made under institutional placement programme shall not be less than ten:

Provided that no single allottee shall be allotted more than twenty five per cent. of the offer size.

(2) The qualified institutional buyers belonging to the same group or who are under same control shall be deemed to be a single allottee.

**Explanation:** For the purpose of sub-regulation (2), the expression “qualified institutional buyers belonging to the same group” shall have the same meaning as derived from sub-section (11) of section 372 of the Companies Act, 1956;

**Restrictions on size of the offer.**

**91-I.** (1) The aggregate of all the tranches of institutional placement programme made by the eligible seller shall not result in increase in public shareholding by more than ten per cent. or such lesser per cent. as is required to reach minimum public shareholding.

(2) Where the issue has been oversubscribed, an allotment of not more than ten per cent. of the offer size shall be made by the eligible seller.

**Period of Subscription and display of demand.**

**91J.** (1) The issue shall be kept open for a minimum of one day or maximum of two days.

(2) The aggregate demand schedule shall be displayed by stock exchange(s) without disclosing the price.

**Withdrawal of offer.**

**91K.** The eligible seller shall have the right to withdraw the offer in case it is not fully subscribed.

**Transferability of eligible securities.**

**91L.** The eligible securities allotted under institutional placement programme shall not be sold by the allottee for a period of one year from the date of allocation/allotment, except on a recognised stock exchange.”

(x) In Chapter XB, the following heading shall be inserted, namely:—

**“ISSUE OF SPECIFIED SECURITIES BY SMALL AND MEDIUM ENTERPRISES”**

(xi) in Schedule IV, in the reference title, the word, numbers and symbol “and 11(4)” shall be substituted with the symbols, numbers and word “, 11(4) and 91E(3)”;

(xii) in Schedule V, in the reference title, the word, number and symbol “and 101(4)” shall be substituted with the symbol, word and number “, 101(4) and 91E(3)”;

(xiii) in Schedule VI, in Form A, in the reference title, the word, number and symbol “and 106O(2)” shall be substituted with the symbol, word and number “, 106O(2) and 91E(5)”;

(xiv) in Schedule VIII,

(1) in Part A, in para 2-

(I) in item VII, in sub-item A, after clause (5), the following new clause (6) shall be inserted, namely:—

“(6) Full disclosures in the draft offer document or offer document as the case may be, shall be made for warrants issued along with public issue or rights issue, regarding the objects towards which the funds from conversions of warrants are proposed to be used. In such cases, the provisions of this Part dealing with Objects of the Issue shall apply, mutatis mutandis.”

(II) in item VIII, in sub-item F, after clause (2), the following new clause (2A) shall be inserted, namely:—

“(2A) Where the shares for lock-in towards minimum promoters contribution is offered by principal shareholders such as Venture Capital Funds or Foreign Venture Capital Investors registered with SEBI:

- (a) Details of Fund Manager;
- (b) Generic details of the Fund which is the investor in the issuer company;
- (c) Details such as total number of investors in the Fund, distribution of investors category - wise (institutional, corporate, individual etc.) and percentage stake held by each investor category;
- (d) Details of companies funded by the Funds, namely:-
  - (i) Total number of companies funded;
  - (ii) Distribution of such companies- country wise, holding period wise, sector wise;
  - (iii) Number of companies under the control of the Fund, directly or indirectly;
  - (iv) In respect of companies where such Funds have offered their shares for lock-in as part of minimum promoter’s contribution:-
    - Name of the company
    - Date of listing on each stock exchange
    - Fund’s shareholding in the company as on the date of listing

- Fund's shareholding in the company as on the date of filing of the DRHP of the company that now seeks to get listed

(e) Average holding period of the Fund's investments;

(f) Sector focus/core specialization of the Fund, if applicable.”

(2) in Part E, after para 6, the following new para (7) shall be inserted, namely:—

“(7) Full disclosures in the draft letter of offer or letter of offer as the case may be shall be made for warrants issued along with rights issues, regarding the objects towards which the funds from conversions of warrants are proposed to be used. In such cases, the provisions of this Part dealing with Objects of the Issue shall apply, mutatis mutandis.”

(xv) in Schedule XI, in Part A, in para (10), clause (b) shall be substituted with the following, namely:—

“(b) Allocation to Anchor Investors shall be on a discretionary basis and subject to the following:-

(i) Maximum of 2 such investors shall be permitted for allocation upto Rs. 10 crore;

(ii) Minimum of 2 and maximum of 15 such investors shall be permitted for allocation above Rs. 10 crore and upto Rs. 250 crore, subject to minimum allotment of Rs. 5 crore per such investor;

(iii) Minimum of 5 and maximum of 25 such investors shall be permitted for allocation above Rs. 250 crore, subject to minimum allotment of Rs. 5 crore per such investor.”

(xvi) in Schedule XVIII, in reference title, the word, number and symbol “regulation 84(1)” shall be substituted with the word, number and symbol “regulations 84(1) and 91E(1)”.

**U.K. SINHA**

**CHAIRMAN**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**Footnote:**

1. The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 were published in the Gazette of India on 26<sup>th</sup> August, 2009 vide No. LAD-NRO/GN/2009-10/15/174471.
2. The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 were subsequently amended on:-
  - (a) 11<sup>th</sup> December, 2009 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2009 vide No. LAD-NRO/GN/2009-10/23/186926.
  - (b) 1<sup>st</sup> January, 2010 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2010 vide No. LAD-NRO/GN/2009-2010/25/189240.
  - (c) 8<sup>th</sup> January, 2010 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2010 vide No. LAD-NRO/GN/2009-10/26/190146.
  - (d) 13<sup>th</sup> April, 2010 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2010 vide No. LAD-NRO/GN/2010-11/03/1104
  - (e) 12<sup>th</sup> November, 2010 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2010 vide No. LAD-NRO/GN/2010-11/19/26456.
  - (f) 29<sup>th</sup> April, 2011 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2011 vide F. No. LAD-NRO/GN/2011-12/05/13907.
  - (g) 23<sup>rd</sup> September, 2011 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2011 vide F. No. LAD-NRO/GN/2011-12/25/30309.