

## The Securities and Exchange Board of India Act, 1992 & SEBI (ICDR) Regulations, 2009

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### 1. Introduction

The Securities and Exchange Board of India was established in 1988. It got legal character in 1992. SEBI was primarily set up to regulate the activities of the merchant banks, to control the operations of mutual funds, to work as a regulator of the stock exchange activities and to act as a regulatory authority of new issue activities of companies. The reason the SEBI was constituted was because before the SEBI the law relating to the securities market in India was contained in different enactments like Companies Act, 1956, Securities Contract (Regulation) Act, 1956, and the Capital Issues (Control) Act, 1947. Then, at times when the capital market witnessed tremendous growth, it was found, that the legislation was scattered in different laws and administrative agencies did not have proper manpower or expertise to deal with the investors. Even there was no monitoring or prosecuting machinery to check malpractices, insider trading, etc. Then, Government of India decided to set up an agency or regulatory body known as Securities Exchange Board of India (SEBI). It was constituted on 12th April 1988 as an interim administrative body under the Finance Ministry. In April, 1988 the SEBI was constituted as the regulator of capital markets in India under a resolution of the Government of India.

In the year of 1995, the SEBI was given additional statutory power by the Government of India through an amendment to the Securities and Exchange Board of India Act, 1992.

The prime objective of the SEBI Act, 1992 are:

1. Protecting the interests of the investors in securities;
2. Promoting the development of, and;
3. Regulating, the securities market and for matters connected therewith or incidental thereto.

SEBI as the watchdog of the industry has an important and crucial role in the market participants and crucial role in the market participants perform three duties in accordance with the regulatory norms. The preamble of the SEBI describes the basic functions of the SEBI

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as '*...to protect the interest of investors in the securities and to promote the development of, and to regulate the securities market and for matters connected therewith*'.

This SEBI Act deemed to have come into force on the 30<sup>th</sup> day of January, 1992 and extended to whole of India as per section 1 of the SEBI Act, 1992.

### 2. Important Definitions

According to section 2 of the SEBI Act, 1992, following are some of the important definitions of terms used in the Act-

**Board** means the Securities and Exchange Board of India established under section 3; [Section 2(1) (a)]

**Collective investment scheme** means any scheme or arrangement which satisfies the conditions specified in section 11AA [Section 2(1)(ba)]

<sup>1</sup>**Judicial Member** means a Member of the Securities Appellate Tribunal appointed under sub-section (1) of section 15MA and includes the Presiding Officer; [Section 2(1)(db)]

**Member** means a member of the Board and includes the Chairman; [Section 2(1)(e)]

**Regulations** means the regulations made by the Board under this Act; [Section 2(1)(h)]

**Reserve Bank** means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934 [Section 2(1)(ha)]

**Securities** has the meaning assigned to it in section 2 of the Securities Contracts (Regulation) Act, 1956 [Section 2(1)(i)]

<sup>2</sup>**Technical Member** means a Technical Member appointed under sub-section (1) of section 15MB. [Section 2(1)(j)]

(2) Words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 or the Depositories Act, 1996, shall have the meanings respectively assigned to them in that Act.

### 3. Establishment of the Securities and Exchange Board of India

#### Establishment and incorporation of Board [Section 3]

SEBI (hereinafter called 'the Board') has been established as-

- a body corporate
- having perpetual succession and a common seal,
- with powers to acquire, hold and dispose of property, both movable and immovable, and

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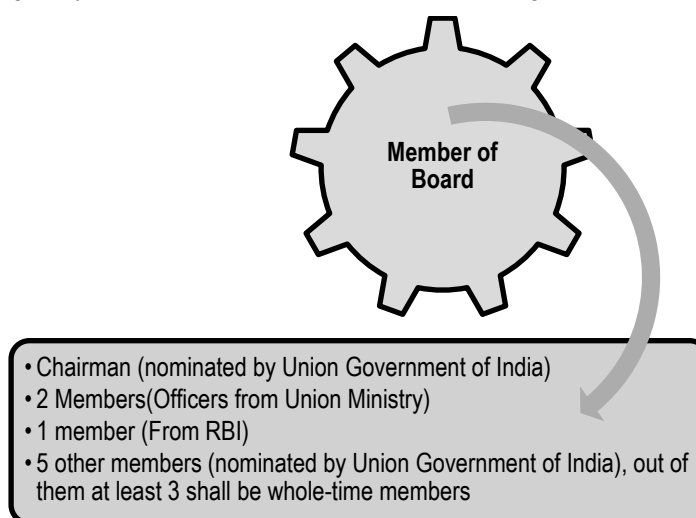
<sup>1</sup> Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Prt II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.

<sup>2</sup> Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Prt II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.

- to contract as also to sue or be sued by the name of SEBI.
- The head office of the Board shall be at Mumbai.
- Further the Board may establish offices at other places in India.

#### **Management of the Board [Section 4]**

The SEBI board is managed by its members, which consists of following:



The Chairman and the five other members as referred in the section, shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to securities market or have special knowledge or experience of law, finance; economics, accountancy, administration or in any other discipline which, in the opinion of the Central Government, shall be useful to the Board [Section 4(5)].

The general superintendence, direction and management of the affairs of the Board shall vest in a Board of Members, which may exercise all powers and do all acts and things, which may be exercised or done by the Board. [Section 4(2)]

#### **Term of office and conditions of service of Chairman and members of the Board [Section 5]**

The term of office and other conditions of service of Chairman and other Members of the Board as appointed in section 4(1)(d) shall be such as may be prescribed by rules made under the Act.

The Central Government will have the right to terminate the services of the Chairman or other members appointed to the Board (other than its own officials or of the Reserve Bank on the Board) at any time before the expiry of their tenure-

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- by giving not less than three months' notice in writing, or
- three months' salary and allowance in lieu thereof.

The Chairman and other members shall have the right to relinquish office at any time before the expiry of their tenure by giving a notice of three months in writing to the Central Government.

As per the rules framed in this regard, the Chairman and Whole time Members may hold office for a period of three years subject to the maximum age limit of 65 years and can be re-appointed by the Central Government.

A part-time member may also hold office for a maximum of three years but there is no age limit.

### Removal of Members of the Board [Section 6]

The Central Government shall have the power to remove a **member or the Chairman** appointed to the Board, if he:

- at any time has been adjudicated as insolvent;
- has been declared by a competent court to be of unsound mind;
- has been convicted of an offence which in the opinion of the Central Government, involves a moral turpitude.
- has in the opinion of the Central Government so abused his position as to render his continuance in office detrimental to the public interest.

Before removing a member or the Chairman, he will be given a reasonable opportunity of being heard in the matter.

### Meetings of the Board [Section 7]

The Board shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations made under Section 30 of the Act.

**In the absence of the Chairman**, if for any reason, he is unable to attend a meeting, any member chosen by the members present from amongst themselves shall preside over the meeting.

**Decision by majority vote:** All questions which come up before any meeting shall be decided by majority vote of the members present and the Chairman or the presiding member will have

a second or casting vote, in the event of equality of votes.

**Member not to participate in meetings in certain cases [Section 7A]**

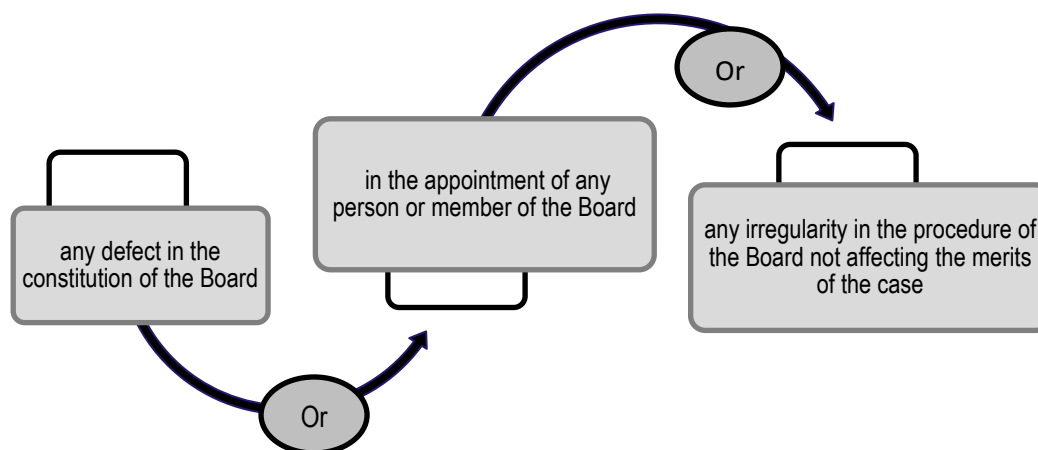
Any member-

- who is a director of a company, and
- who as such director has any indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board,

-shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Board, and the member shall not take any part in any deliberation or decision of the Board with respect to that matter.

**Vacancies, etc., not to invalidate proceedings of the Board [Section 8]**

- Any vacancy in the Board shall not invalidate any of the acts or proceeding of the Board. Similarly, the following reason shall not invalidate any act or proceeding of the Board-



**4. Powers and Functions of SEBI [Section 11]**

Subject to the provisions of this Act, it shall be the duty of the Board to protect the interest of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

The measures may provide for:

- (a) regulating the business in stock exchanges and any other securities markets;
- (b) registering and regulating the working of stock brokers, sub - brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be; associated with securities markets in any manner;

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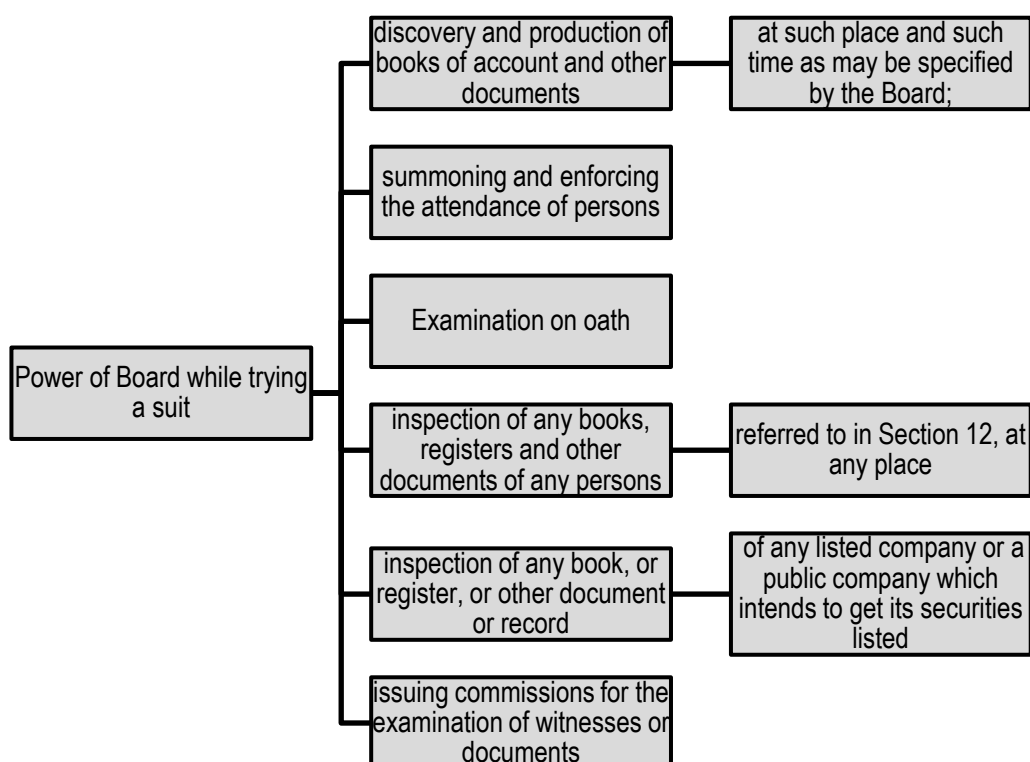
- (ba) registering and regulating the working of the depositories, participants, custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf.
- (c) registering and regulating the working of venture capital funds and collective investment schemes, including mutual funds;
- (d) promoting and regulating self-regulatory organisations;
- (e) prohibiting fraudulent and unfair trade practices relating to securities markets;
- (f) promoting investors' education and training of intermediaries' of securities markets;
- (g) prohibiting insider trading in securities;
- (h) regulating substantial acquisition of shares and take-over of companies;
- (i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with securities market, intermediaries and self-regulatory organizations in the securities market
- (ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;
- (ib) calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard:  

Provided that the Board, for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the prior approval of the Central Government;
- (j) performing such functions and exercising such powers under the provisions of the Securities Contracts (Regulation) Act, 1956, as may be delegated to it by the Central Government.
- (k) levying fees or other charges for carrying out the purposes of this section.
- (l) conducting research for the above purposes;
- (la) calling from or furnishing to any such agencies, as may be specified by the Board, such information as may be considered necessary by it for the efficient discharge of its functions.
- (m) performing such other functions as may be prescribed.

**Power with respect to inspection of books and Documents:** Further, the Board may take measures to undertake inspection of any book, or register, or other document or record of any listed public company or a public company which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such

company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market.

**Board are vested with same power as that of civil court:** The Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:



**Passing of an order by an Board:** The Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

- (a) suspend the trading of any security in a recognised stock exchange;
- (b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;
- (c) suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position;
- (d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;
- (e) attach, after passing of an order on an application made for approval by the Judicial

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Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

However only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;

- (f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation.[Section 11(4)]

**Provided that** the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market :

**Provided further** that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.

**Utilization of disgorged amount:** The amount disgorged, pursuant to a direction issued, under the SEBI Act or the Securities Contracts (Regulation) Act, 1956 or the Depositories Act, 1996, as the case may be-

- shall be credited to the Investor Protection and Education Fund (IPEF) established by the Board, and
- such amount shall be utilised by the Board in accordance with the regulations made under this Act.” [Section 11(5)]

**Additional functions of SEBI under the Securities Contracts (Regulation) Act, 1956:** The Securities Contracts (Regulation) Act, 1956 which was enacted to prevent undesirable transactions in securities and to regulate the business of securities had given certain powers to the Central Government, under the provisions of that Act. The functions of the Central Government under that Act have been granted to SEBI. These functions are:

- (a) **Power to call for periodical returns or direct enquiries to be made (Section 6 of SCRA):** SEBI will receive from every recognised Stock Exchange such periodical returns relating to its affairs as may be prescribed by SCRA rules.

Description of Powers	Powers of SEBI
Power to inspect	It shall be open to SEBI to inspect at all reasonable times books of accounts and other documents to be maintained by the Stock Exchanges <b>for periods not exceeding five years</b> as may be prescribed in the public interest and in the interest of trade by the Central Government.



Power of SEBI to call for information/ explanation relating to affairs of the stock exchange	It shall also be open to SEBI to call upon recognised stock exchanges or any member thereof to furnish in writing such information or explanation relating to the affairs of the Stock Exchange or of the member in relation to the stock exchange as may be required by SEBI in the interest of trade or in the public interest.
SEBI to appoint persons to make an inquiry	It shall also be open to SEBI to appoint, by order in writing, one or more persons to make an inquiry in the prescribed manner in relation to the affairs of the governing body of stock exchange or the affairs of any of the members of the stock exchange in relation to the stock exchange and submit a report of the result of such enquiry to SEBI within the time as, specified in the order. In the case of affairs of any of the members/ of a stock exchange, SEBI can direct the governing body of such stock exchange to make an inquiry and submit its report.
SEBI will bound the concerned persons to produce documents before himself /other enquiry officer	Every director, manager, secretary or other officer of such stock exchange, every member of such stock exchange and every constituent or agent of such member if it is a firm and every other person or body of persons having dealings with any of these persons whether directly or indirectly shall be bound to produce before SEBI or other enquiry officer, all books of accounts and other documents in his custody or power relating to the subject matter of the enquiry. This has to be done within the time specified and as may be required by the enquiry authority.

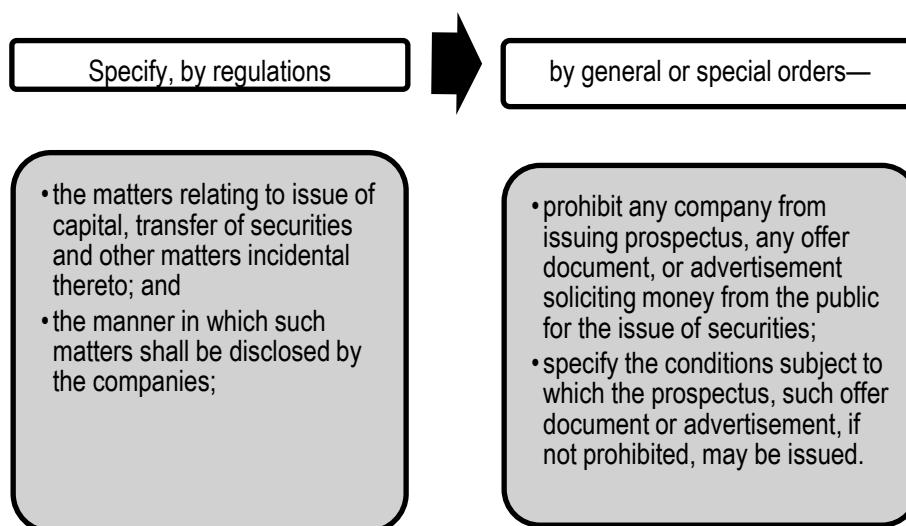
- (b) **Power to approve the bye-laws of stock exchanges:** Section 9 of SCRA provides that any recognised stock exchange may make bye-laws for the regulation and control of contracts with the previous approval of SEBI. Such bye- laws may provide for submission of periodical settlements carried out by clearing houses to SEBI or publication of such particulars by clearing houses subject to SEBI's directions. Such bye-laws have to be published for public comments and after approval by SEBI shall have to be published in the Gazette of India and also in the Official Gazette of the State unless SEBI, by written order with reasons dispense with the condition of previous publication.
- (c) **Power of SEBI to make or amend bye-laws of recognised stock exchanges (Section 10, SCRA):** SEBI may either on a request in writing received by it in this behalf from the governing body of a recognised stock exchange or on its own motion make bye-laws on matters specified in Section 9 of SCRA or amend any bye-laws made by such stock exchange. SEBI will have to be satisfied, after consultation with the governing body of the stock exchange, that it is necessary or expedient to make or amend the bye-laws and record its reasons also.

- (d) **Licensing of dealers in securities in certain areas (Section 17 SCRA):** SEBI has been empowered to grant a license to any person for the business of dealing in securities in any State or area to which Section 13 of SCRA has not been declared to apply. Section 13 of SCRA deals with contracts in notified areas to be illegal in certain circumstances.
- (e) **Public Issue and listing of securities referred to in section 2 (h) (ie) of SCRA:** As per section 17A, securities of the nature referred to in section 2 (h) (ie) shall be offered to the public or listed on any stock exchange unless the issuer fulfills eligibility criteria and complies with other requirements as may be specified by SEBI by regulations.
- (f) **Power to delegate:** Section 29A of SCRA provides that the Central Government may, by order published in the Official Gazette, direct that the powers exercisable by it under any provision of the SCRA shall, in relation to such matters and subject to such conditions, if any as may be specified in the order, be exercisable also by SEBI or the Reserve Bank of India.

**More Powers for SEBI:** Certain additional powers with regard to certain provisions under the Companies Act, 2013, related to issue and transfer of securities and non-payment of dividend, in the case of listed public companies intending to get their securities listed on any recognised stock exchange, shall be administered by SEBI.

### 5. Board to regulate or prohibit issue of prospectus, offer document or advertisement soliciting money for issue of securities [Section 11A]

- (1) As per the section, the Board may, for the protection of investors,—



- (2) The Board may specify the requirements for listing and transfer of securities and other matters incidental thereto.

## **6. Collective investment scheme [Section 11AA]**

Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) or sub-section (2A) shall be a collective investment scheme.

**Provided** that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme.

**Requisite conditions:** Any scheme or arrangement made or offered by any person under which, -

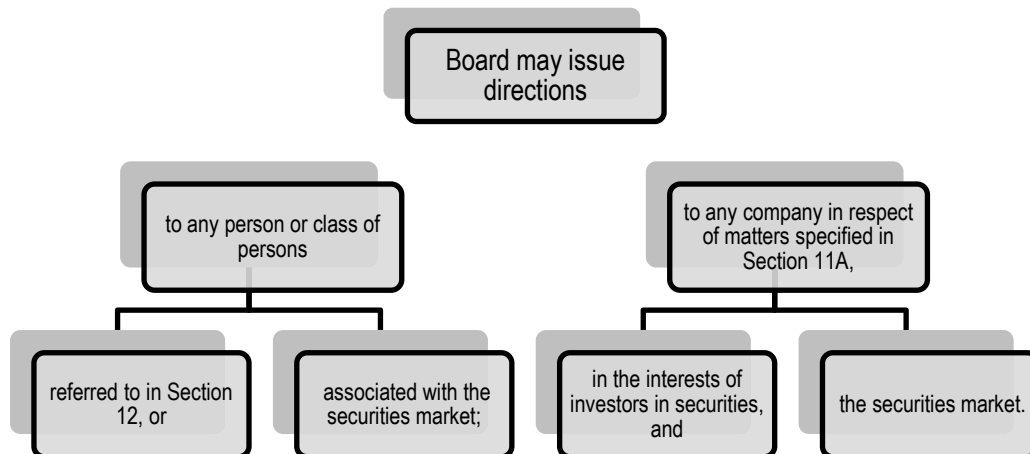
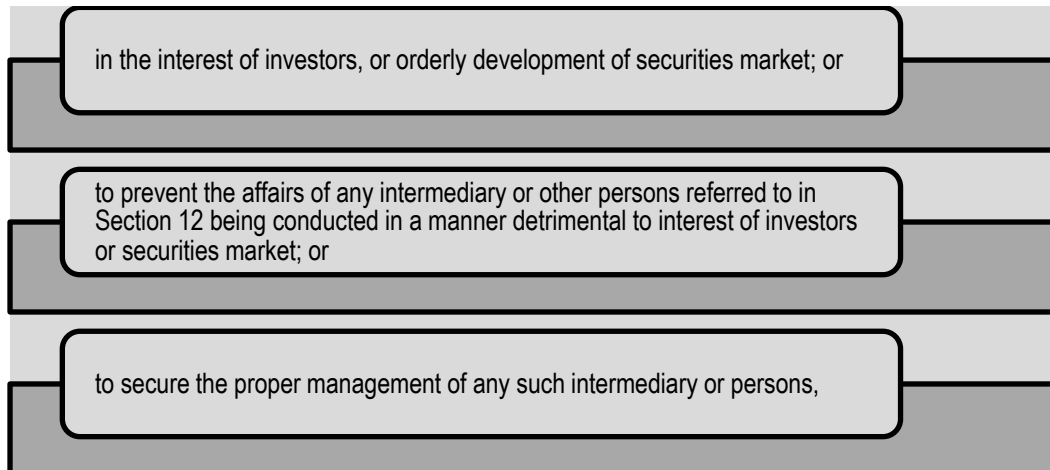
- (i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement;
- (ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable, from such scheme or arrangement;
- (iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;
- (iv) the investors do not have day-to-day control over the management and operation of the scheme or arrangement.[Sub-section 2]
- (v) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act [sub-section (2A)].

**Exceptions:** Any scheme or arrangement -

- (i) made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;
  - (ii) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934;
  - (iii) being a contract of insurance to which the Insurance Act, 1938 applies;
  - (iv) providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
  - (v) under which deposits are accepted under the Companies Act, 2013
  - (vi) under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under the Companies Act, 2013;
  - (vii) falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982;
  - (viii) under which contributions made are in the nature of subscription to a mutual fund;
  - (ix) such other scheme or arrangement which the Central Government may, in consultation with the Board, notify,
- shall not be a collective investment scheme.

## 7. Power to issue directions [Section 11B]

Save as otherwise provided in Section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary:



*Explanation.*—For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

## 8. Investigation [Section 11C]

(1) **Grounds for issue of an order of investigation:** Where the Board has reasonable ground to believe that—

- (a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or

- (b) any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Board there under.

It may, at any time by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the Board.

- (2) Furnishing of relevant documents to the investigating authority :** It shall be the duty of-

- every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12, or
- every person associated with the securities market to preserve, and
- to produce to the Investigating Authority or any person authorised by it in this behalf,

-all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

- (3) Period of custody :** The Investigating Authority may keep in its custody any books, registers, other documents and record produced for six months and thereafter shall return the same to any intermediary or any person associated with securities market by whom or on whose behalf the books, registers, other documents and record are produced :

The Investigating Authority may call for any book, register, other document and record if they are needed again.

If the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents and record produced before the Investigating Authority, it shall give certified copies of such books, registers, other documents and record to such person or on whose behalf the books, registers, other documents and record were produced.

- (4) Examination on oath:** Any person, directed to make an investigation, may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.

- (5) On failure:** If any person fails without reasonable cause or refuses—

Failure in compliance	Punishment
(a) to produce to the Investigating Authority or any person authorised	Person shall be punishable with- <ul style="list-style-type: none"> <li>• imprisonment for a term which may</li> </ul>

<p>by it in this behalf any book, register, other document and record which is his duty to produce; or</p> <p>(b) to furnish any information which is his duty to furnish; or</p> <p>(c) to appear before the Investigating Authority personally or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or</p> <p>(d) to sign the notes of any examination,</p>	<p>extend to one year, or</p> <ul style="list-style-type: none"> <li>• with fine, which may extend to one crore rupees, or</li> <li>• with both, and</li> <li>• also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.</li> </ul>
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- (6) **Notes of examination to be used as examination:** Notes of any examination shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.
- (7) **Impounding of documents :** Where in the course of investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to, any intermediary or any person associated with securities market in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the Magistrate or Judge of such designated court in Mumbai, as may be notified by the Central Government for an order for the seizure of such books, registers, other documents and record.
- (8) **Demand of services of other officers:** The authorized officer may requisition the services of any police officer or any officer of the Central Government, or of both, to assist him for all or any of the purposes as specified above with respect to impounding of documents and it shall be the duty of every such officer to comply with such requisition.
- (9) **Order of court:** After considering the application and hearing the Investigating Authority, if necessary, the Magistrate or Judge of the Designated Court may, by order, authorise the Investigating Authority –

to enter, with such assistance, as may be required, the place or places where such books, registers, other documents and record are kept;

to search that place or those places in the manner specified in the order; and

to seize books, registers, other documents and record, it considers necessary for the purposes of the investigation:

**Exemptions:** Provided that the Magistrate or Judge of the Designated Court shall not authorise seizure of books, registers, other documents and record, of any listed public company or a public company (not being the intermediaries specified under section 12) which intends to get its securities listed on any recognised stock exchange unless such company indulges in insider trading or market manipulation.

- (10) **Impounded documents will remain in the custody of investigating authority:** The Investigating Authority shall keep in its custody the books, registers, other documents and record seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate or Judge of the Designated Court of such return:

Provided that the Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof.

- (11) Every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code.

## **9. Cease and desist proceedings [Section 11D]**

If the Board finds, after causing an inquiry to be made, that any person has violated, or is likely to violate, any provisions of this Act, or any rules or regulations made thereunder, it may pass an order requiring such person to cease and desist from committing or causing such violation:

**Provided** that the Board shall not pass such order in respect of any listed public company or a public company (other than the intermediaries specified under section 12) which intends to get its securities listed on any recognised stock exchange unless the Board has reasonable grounds to believe that such company has indulged in insider trading or market manipulation.”

## **10. Registration Certificate [Section 12]**

<b>Provision related to</b>	<b>It states</b>
Persons who are authorized to buy, sell or deal in securities	Stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act

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Board may by notification specify the persons who shall buy or sell or deal in securities	Depository, participant, custodian of securities, foreign institutional investor, credit rating agency, or any other intermediary associated with the securities market as the Board may by notification in this behalf specify, shall buy or sell or deal in securities in accordance with the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act;
Person who shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds and collective investment scheme including mutual funds	Shall be, who obtains certificate of registration from the Board in accordance with the regulations.

**Manner of application for registration:** Every application for registration shall be in such manner and on payment of such fees as may be determined by regulations.

**Suspension /cancellation of a certificate of registration:** The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations; Provided that no order under this sub-section shall be made unless the person concerned has been -given a reasonable opportunity of being heard.

### 11. Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control [12A]

Persons who is prohibited	From performing following activities
No person shall directly or indirectly	use or employ in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, <ul style="list-style-type: none"> <li>• any manipulative or deceptive device or</li> <li>• contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;</li> </ul>
	employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;
	engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the



	rules or the regulations made thereunder;
	engage in insider trading;
	<ul style="list-style-type: none"> <li>• deal in securities while in possession of material or non-public information or</li> <li>• communicate such material or non-public information to any other person,</li> </ul> -in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;
	<ul style="list-style-type: none"> <li>• acquire control of any company or securities more than the percentage of equity share capital of a company</li> </ul> -whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act.

## **12. Finance, Accounts and Audit [SECTION 13- 15]**

### **Grants by the Central Government [Section 13]**

The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Board grants of such sums of money as that Government may think fit for being utilized for the purposes of this Act.

### **Fund [Section 14]**

- (1) There shall be constituted a Fund to be called the Securities and Exchange Board of India General Fund and there shall be credited thereto-
  - all grants, fees and charges received by the Board under this Act;
  - all sums received by the Board from such other sources as may be decided upon by the Central Government.
- (2) The Fund shall be applied for meeting—
  - the salaries, allowances and other remuneration of the members, officers and other employees of the Board;
  - the expenses of the Board in the discharge of its functions under section 11;
  - the expenses on objects and for purposes authorised by this Act.

### **Accounts and audit [Section15]**

- (1) **Preparation of annual financial statement of Board in consultation with CAG of India:** The Board shall maintain proper accounts and other relevant records and prepare

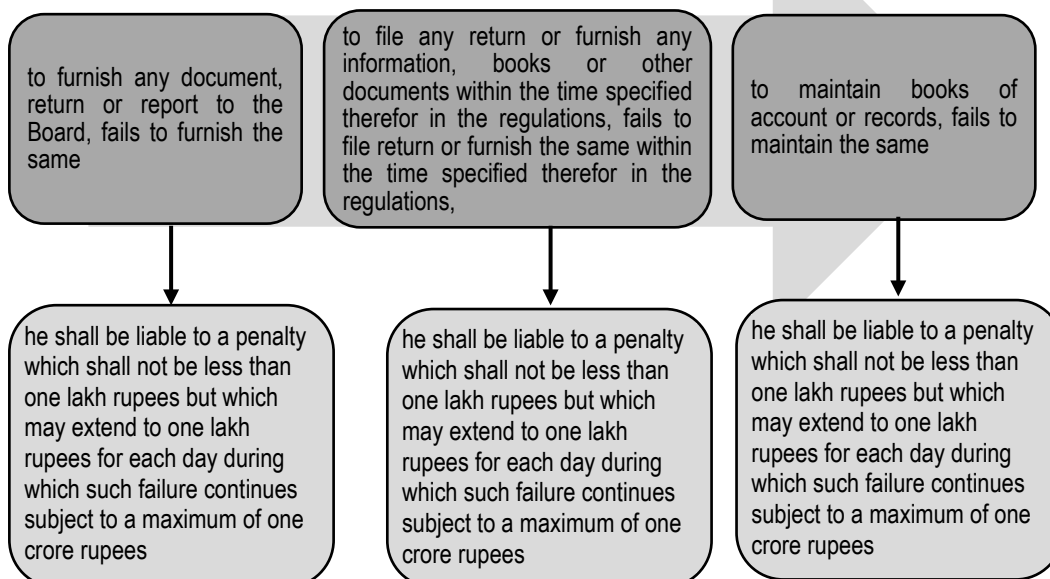
an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

- (2) **Audit of accounts of Board:** The accounts of the Board shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.
- (3) **Right and Privileges:** The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Board shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board.
- (4) **Certified Accounts and Audit reports to be forwarded to the Central Government:** The accounts of the Board as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

### 13. Penalties and Adjudication

#### Penalty for failure to furnish information, return, etc. [Section 15A]

If any person, who is required under this Act or any rules or regulations made thereunder,—



**Penalty for failure by any person to enter into agreement with clients [Section 15B]**

If any person, who is registered as an intermediary and is required under this Act or any rules or regulations made thereunder to enter into an agreement with his client, fails to enter into such agreement,

- he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

**Penalty for failure to redress investors' grievances [Section 15C]**

If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board,

- such company or intermediary shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

**Penalty for certain defaults in case of mutual funds [Section 15D]**

Person liable	Defaults	Punishments
If any person, who is—	required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration	he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of one crore rupees;
	registered with the Board as a collective investment scheme, including mutual funds, for sponsoring or carrying on any investment scheme, fails to comply with the terms and conditions of certificate of registration	he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;
	registered with the Board as a collective investment	he shall be liable to a penalty which shall not be less than one

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	scheme, including mutual funds, fails to make an application for listing of its schemes as provided for in the regulations governing such listing	lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;
	registered as a collective investment scheme, including mutual funds, fails to despatch unit certificates of any scheme in the manner provided in the regulation governing such despatch	he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;
	registered as a collective investment scheme, including mutual funds, fails to refund the application monies paid by the investors within the period specified in the regulations	he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees
	registered as a collective investment scheme, including mutual funds, fails to invest money collected by such collective investment schemes in the manner or within the period specified in the regulations	he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

### **Penalty for failure to observe rules and regulations by an asset management company [Section 15E]**

Where any asset management company of a mutual fund registered under this Act, fails to comply with any of the regulations providing for restrictions on the activities of the asset management companies,

- such asset management company shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees

**Penalty for default in case of stock brokers [Section 15 F]**

Person, registered as a stock broker	fails to issue	contract notes in the form and manner specified by the stock exchange of which such broker is a member,	he shall be liable to a penalty of more than 1 lakh but which may extend to for which the contract note was required to be issued by that broker
	fails to deliver	any security or fails to make payment of the amount due to the investor in the manner within the period specified in the regulations	he shall be liable to a penalty of more than 1 lakh but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of one crore rupees
	charges	an amount of brokerage which is in excess of the brokerage specified in the regulations	he shall be liable for more than 1 lakh but which may extend to five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher

**Penalty for insider trading [Section 15G]**

Any insider shall be liable to a penalty of more than ten lakh rupees extending upto twenty-five crore rupees / three times the amount of profits made out of insider trading, whichever is higher, who-

either on his own behalf or on behalf of any other person

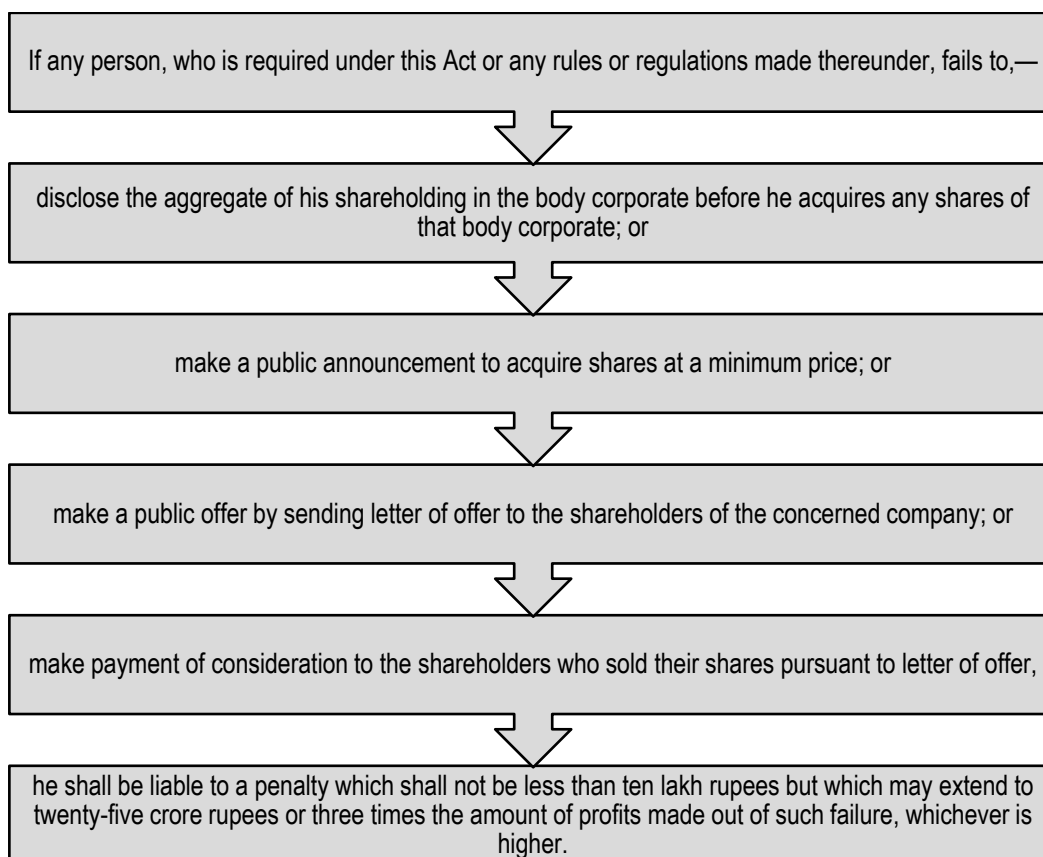
communicates any unpublished price-sensitive information to any person, with or without his request for such information

counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information

deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or

except as required in the ordinary course of business or under any law, or

**Penalty for non-disclosure of acquisition of shares and takeovers [Section 15 H]**



**Penalty for fraudulent and unfair trade practices [Section 15HA]**

If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall –

- not be less than five lakh rupees but
  - which may extend to twenty-five crore rupees or
  - three times the amount of profits made out of such practices,.
- { Which ever is higher }

**Penalty for contravention where no separate penalty has been provided [Section 15HB]**

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

**Power to adjudicate [Section 15-I]**

On the matters related to	Power to adjudicate
For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15HA and 15HB	Board shall appoint any officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.
On holding of an inquiry	The adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in subsection (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.
Order passed by adjudicating officer is not justified	<p>The Board may call for and examine the record of any proceedings and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify:</p> <p>Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter:</p> <p><b>Limitation period:</b> Provided further that nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 15T, whichever is earlier.</p>

**Factors to be taken into account by the adjudicating officer [Section 15J]**

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely :—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to an investor or group of investors as a result of the default;
- (c) the repetitive nature of the default.

the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the Provisions of this section.

**Crediting sums realised by way of penalties to Consolidated Fund of India [Section 15JA]**

All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

**Settlement of administrative and civil proceedings [Section 15 JB]**

- (1) **Filing of an application:** Any person, against whom any proceedings have been initiated or may be initiated under section 11, section 11B, section 11D, sub-section (3) of section 12 or section 15-I, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.
- (2) **Board may consider for settlement of defaults:** The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under this Act.
- (3) **Mode of settlement proceedings:** The settlement proceedings under this section shall be conducted in accordance with the procedure specified in the regulations made under this Act.
- (4) **No appeal preferred:** No appeal shall lie under section 15T against any order passed by the Board or adjudicating officer, as the case may be, under this section.]

**14. Establishment, Jurisdiction, Authority and Procedure of Securities Appellate Tribunal (SAT)**

**Establishment of Securities Appellate Tribunals [Section 15K]**

- (1) The Central Government shall, by notification, establish a Tribunal to be known as the Securities Appellate Tribunal to exercise the jurisdiction, powers and authority conferred on it by or under this Act or any other law for the time being in force.



- (2) The Central Government shall also specify in the notification referred to in sub-section (1), the matters and places in relation to which the Securities Appellate Tribunal may exercise jurisdiction.

**Composition of Securities Appellate Tribunal [Section 15L]**

- (1) The Securities Appellate Tribunal shall consist of a Presiding Officer and such number of Judicial Members and Technical Members as the Central Government may determine, by notification, to exercise the powers and discharge the functions conferred on the Securities Appellate Tribunal under this Act or any other law for the time being in force.
- (2) Subject to the provisions of this Act,—
- (a) the jurisdiction of the Securities Appellate Tribunal may be exercised by Benches thereof;
  - (b) a Bench may be constituted by the Presiding Officer of the Securities Appellate Tribunal with two or more Judicial or Technical Members as he may deem fit:  
Provided that every Bench constituted shall include at least one Judicial Member and one Technical Member;
  - (c) the Benches of the Securities Appellate Tribunal shall ordinarily sit at Mumbai and may also sit at such other places as the Central Government may, in consultation with the Presiding Officer, notify.
- (3) The Presiding Officer may transfer a Judicial Member or a Technical Member of the Securities Appellate Tribunal from one Bench to another Bench.

**Qualification for appointment as Presiding Officer or Member of Securities Appellate Tribunal [Section 15M]**

A person shall not be qualified for appointment as the Presiding Officer or a Judicial Member or a Technical Member of the Securities Appellate Tribunal, unless he—

- (a) is, or has been, a Judge of the Supreme Court or a Chief Justice of a High Court or a Judge of High Court for at least seven years, in the case of the Presiding Officer; and
- (b) is, or has been, a Judge of High Court for at least five years, in the case of a Judicial Member; or
- (c) in the case of a Technical Member—
  - (i) is, or has been, a Secretary or an Additional Secretary in the Ministry or Department of the Central Government or any equivalent post in the Central Government or a State Government; or

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- (ii) is a person of proven ability, integrity and standing having special knowledge and professional experience, of not less than fifteen years, in financial sector including securities market or pension funds or commodity derivatives or insurance.

### **Appointment of judicial member [Section 15MA]**

The Presiding Officer and Judicial Members of the Securities Appellate Tribunal shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee.

### **Appointment of technical member [15MB]**

- (1) The Technical Members of the Securities Appellate Tribunal shall be appointed by the Central Government on the recommendation of a Search-cum-Selection Committee consisting of the following, namely:—
  - (a) Presiding Officer, Securities Appellate Tribunal—Chairperson;
  - (b) Secretary, Department of Economic Affairs—Member;
  - (c) Secretary, Department of Financial Services—Member; and
  - (d) Secretary, Legislative Department or Secretary, Department of Legal Affairs—Member.
- (2) The Secretary, Department of Economic Affairs shall be the Convener of the Search-cum-Selection Committee.
- (3) The Search-cum-Selection Committee shall determine its procedure for recommending the names of persons to be appointed under sub-section (1).

### **Validity of appointment of Presiding officer and members of SAT [15MC]**

- (1) No appointment of the Presiding Officer, a Judicial Member or a Technical Member of the Securities Appellate Tribunal shall be invalid merely by reason of any vacancy or any defect in the constitution of the Search cum- Selection Committee.
- (2) **Disqualification of members:** A member or part time member of the Board or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, or any person at senior management level equivalent to the Executive Director in the Board or in such Authorities, shall not be appointed as Presiding Officer or Member of the Securities Appellate Tribunal, during his service or tenure as such with the Board or with such Authorities, as the case may be, or within two years from the date on which he ceases to hold office as such in the Board or in such Authorities.
- (3) **Effect of holding of office by officer or members on commencement of Finance Act, 2017:** The Presiding Officer or such other member of the Securities Appellate Tribunal, holding office on the date of commencement of Part VIII of Chapter VI of the Finance Act, 2017 shall continue to hold office for such term as he was appointed and the other provisions of this Act shall apply to such Presiding Officer or such other member, as if Part VIII of Chapter VI of the Finance Act, 2017 had not been enacted.

**Tenure of office of Presiding Officer and other Members of Securities Appellate Tribunal [Section 15N]**

The Presiding Officer or every Judicial or Technical Member of the Securities Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office, and shall be eligible for reappointment for another term of maximum five years:

Provided that no Presiding Officer or the Judicial or Technical Member shall hold office after he has attained the age of seventy years.

**Salary and allowances and other terms and conditions of service of Presiding Officers [Section 15-O]**

The salary and allowances payable to and the other terms and conditions of service including pension, gratuity and other retirement benefits of the Presiding Officer and other Members of a Securities Appellate Tribunal shall be such as may be prescribed.

Provided that neither the salary and allowances nor the other terms and conditions of service of the Presiding Officer and other Members of a Securities Appellate Tribunal shall be varied to their disadvantage after appointment.

**Filling up of vacancies [Section 15P]**

If, for reason other than temporary absence, any vacancy occurs in the office of the Presiding Officer or any other Member of a Securities Appellate Tribunal-

- then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy, and
- the proceedings may be continued before the Securities Appellate Tribunal from the stage at which the vacancy is filled.

In the event of occurrence of any vacancy in the office of the Presiding Officer of the Securities Appellate Tribunal by reason of his death, resignation or otherwise, the senior-most Judicial Member of the Securities Appellate Tribunal shall act as the Presiding Officer until the date on which a new Presiding Officer is appointed in accordance with the provisions of this Act. [Section 15PA]

**Resignation and removal [section 15Q]**

(1) **Resignation by notice in writing:** The Presiding Officer or any other Member of a Securities Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office.

Provided that the Presiding Officer or any other Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office-

- until the expiry of three months from the date of receipt of such notice or
  - until a person duly appointed as his successor enters upon his office or
  - until the expiry of his term of office,
- ⇒ ( Whichever is the earliest )

- (2) **Removal of Presiding officer/Judicial member/ Technical member:** The Central Government may, after an inquiry made by the Judge of the Supreme Court, remove the Presiding Officer or Judicial Member or Technical Member of the Securities Appellate Tribunal, if he—
- (a) is, or at any time has been adjudged as an insolvent;
  - (b) has become physically or mentally incapable of acting as the Presiding Officer, Judicial or Technical Member;
  - (c) has been convicted of any offence which, in the opinion of the Central Government, involves moral turpitude;
  - (d) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest; or
  - (e) has acquired such financial interest or other interest as is likely to affect prejudicially his functions as the Presiding Officer or Judicial or Technical Member:

Provided that he shall not be removed from office under clauses (d) and (e), unless he has been given a reasonable opportunity of being heard in the matter.

- (3) **Central Government authorized to regulate the procedure of investigation:** The Central Government may, by rules, regulate the procedure for the investigation of misbehavior or incapacity of the Presiding Officer or any other Member.

**Appointment, qualification and the other terms and conditions of service of the Presiding Officer and other Members of the Appellate Tribunal to be governed by Finance Act, 2017 [15QA]**

- (i) **Where the qualification, appointment etc. is after the commencement of Finance Act, 2017:** Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Presiding Officer and other Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act.
- (ii) **Where the qualification, appointment etc. is before the commencement of Finance Act, 2017:** Provided that the Presiding Officer and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force.

**Orders constituting Appellate Tribunal to be final and not to invalidate its proceedings [15R]**

No order of the Central Government appointing any person as the Presiding Officer or a Member of a Securities Appellate Tribunal shall be called in question in any manner, and no act or proceeding before a Securities Appellate Tribunal shall be called in question in any manner on the ground merely of any defect in the constitution of a Securities Appellate Tribunal.

**Staff of the Securities Appellate Tribunal [Section 15S]**

- (1) The Central Government shall provide the Securities Appellate Tribunal with such officers and employees as that Government may think fit.
- (2) The officers and employees of the Securities Appellate Tribunal shall discharge their functions under general superintendence of the Presiding Officer.
- (3) The salaries and allowances and other conditions of service of the officers and employees of the Securities Appellate Tribunal shall be such as may be prescribed.

**Appeal to the Securities Appellate Tribunal [Section 15T]**

- (1) any person aggrieved,—
  - (a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or
  - (b) by an order made by an adjudicating officer under this Act; or
  - (c) by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.
- (2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board or the Adjudicating Officer or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be, is received by him and it shall be in such form and be accompanied by such fee as may be prescribed :

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.
- (3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
- (4) The Securities Appellate Tribunal shall send a copy of every order made by it to the Board, or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be the parties to the appeal and to the concerned Adjudicating Officer.
- (5) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

**Procedure and powers of the Securities Appellate Tribunal [ Section 15U]**

- (1) The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, and of any rules, the Securities

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Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

- (2) The Securities Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—
  - (a) summoning and enforcing the attendance of any person and examining him on oath;
  - (b) requiring the discovery and production of documents;
  - (c) receiving evidence on affidavits;
  - (d) issuing commissions for the examination of witnesses or documents;
  - (e) reviewing its decisions;
  - (f) dismissing an application for default or deciding it *ex parte*;
  - (g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;
  - (h) any other matter which may be prescribed.
- (3) Every proceeding before the Securities Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860), and the Securities Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).
- (4) Where Benches are constituted, the Presiding Officer of the Securities Appellate Tribunal may, from time to time make provisions as to the distribution of the business of the Securities Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with, by each Bench.
- (5) On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Presiding Officer of the Securities Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.
- (6) If a Bench of the Securities Appellate Tribunal consisting of two members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Presiding Officer of the Securities Appellate Tribunal who shall either hear the point or points himself or refer the case for hearing only on such point or points by one or more of the other members of the Securities Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the members of the Securities Appellate Tribunal who have heard the case, including those who first heard it.

### **Right to legal representation [Section 15V]**

The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present

his or its case before the Securities Appellate Tribunal.

**Limitation [Section 15W]**

The provisions of the Limitation Act, 1963 shall, as far as may be, apply to an appeal made to a Securities Appellate Tribunal.

**Presiding Officer, Members and staff of Securities Appellate Tribunals to be public servants [Section 15X]**

The Presiding Officer, Members and other officers and employees of a Securities Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

**Civil Court not to have jurisdiction [Section 15Y]**

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or a Securities Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

**Appeal to Supreme Court [Section 15Z]**

Any person aggrieved by any decision or order of the Securities Appellate Tribunal may-

- file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order :

Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

## **15. Miscellaneous**

**Power of Central Government to issue directions [Section 16]**

- (1) Without prejudice to the foregoing provisions of this Act or the Depositories Act, 1996, the Board shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time.

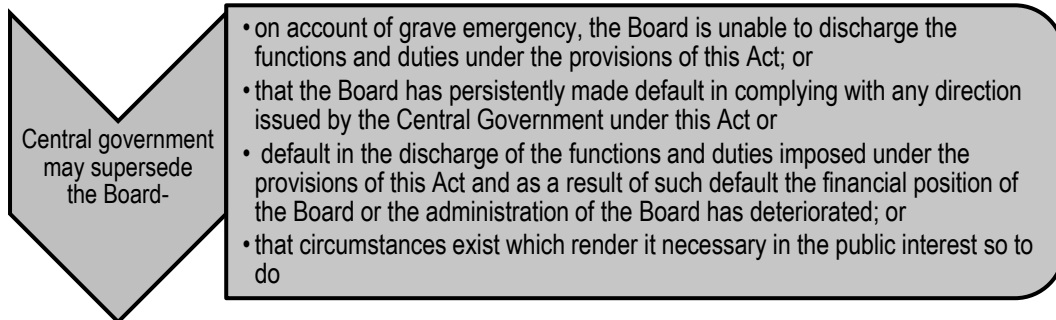
Provided that the Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

- (2) The decision of the Central Government whether a question is one of policy or not shall be final.

**Power of Central Government to supersede the Board [Section 17]**

If at any time the Central Government is of opinion that Board unable to perform its functions, it may by notification, supersede the Board for such period, not exceeding six months.

**Reasons to supersede the Board-**



**Effect of publication of notification of superseding the Board:**

Upon the publication of a notification of superseding the Board,—

- (a) all the members shall, as from the date of supersession, vacate their offices as such;
- (b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Board, shall until the Board is reconstituted, be exercised and discharged by such person or persons as the Central Government may direct; and
- (c) all property owned or controlled by the Board shall, until the Board is reconstituted vest in the Central Government.

**Reconstitution of Board on the expiration of the period of supersession:**

On the expiration of the period of supersession specified in the notification, the Central Government may reconstitute the Board by a fresh appointment and in such case any person or persons who vacated their offices, shall not be deemed disqualified for appointment :

Provided that the Central Government may, at any time, before the expiration of the period of supersession, take action.

**Complete reports and action taken to be laid before the Parliament:** The Central Government shall cause a notification issued and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

**Returns and reports [Section 18]**

- (1) **Furnishing of returns and reports by the Board to the Central Government:** The Board shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the securities market, as the Central Government may, from time to time, require.
- (2) **Report of previous financial year by the Board :** the Board shall, within ninety days



after the end of each financial year, submit to the Central Government a report in such form, as may be prescribed, giving a true and full account of its activities, policy and programmes during the previous financial year.

- (3) **Report to be presented before Parliament:** A copy of the report received under subsection (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

#### **Appeals [Section 20]**

- (1) **Appeal to Central Government:** Any person aggrieved by an order of the Board made, before the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder may prefer an appeal to the Central Government within such time as may be prescribed.

- (2) **No appeal after expiry of limitation:** No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor.

However it is admitted after the expiry of the period prescribed if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

- (3) **Appeal shall be made in prescribed form with a copy of an order:** Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.
- (4) **Procedure for disposal of an appeal:** The procedure for disposing of an appeal shall be such as may be prescribed. Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

#### **Bar of jurisdiction [Section 20A]**

No order passed by the Board or the Adjudicating Officer under this Act shall be appealable except as provided in section 15T or section 20, and

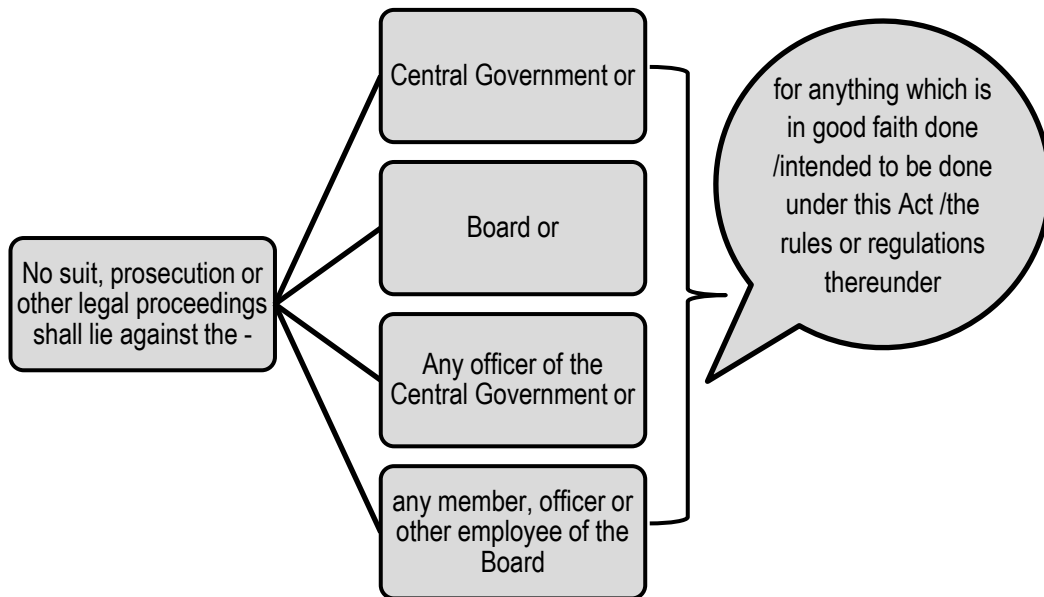
No civil court shall have jurisdiction in respect of any matter which the Board or the Adjudicating Officer is empowered by, or under, this Act to pass any order, and

No injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the Board or the Adjudicating Officer by, or under, this Act.

#### **Members, officers and employees of the Board to be public servants [Section 22]**

All members, officers and other employees of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

**Protection of action taken in good faith [Section 23]**



**Offences [Section 24]**

- (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.
- (2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

**Composition of certain offences [Section 24A]**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.

**Power to grant immunity [Section 24B]**

- (1) The Central Government may, on recommendation by the Board, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of the alleged violation,

- grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation.

**Exception:** Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity.

Provided further that recommendation of the Board under this sub-section shall not be binding upon the Central Government.

- (2) **Withdrawal of granted immunity by the Central Government:** An immunity granted to a person above may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

**Cognizance of offences by courts [Section 26]**

- (1) No court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder, save on a complaint made by the Board.

**Special Courts [Section 26A & 26B]**

Establishment of Special Courts [Section 26A]	Offences triable by Special Courts [Section 26 B]
<p>(1) <b>Establishment of Special Court:</b> The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.</p> <p>(2) <b>Composition:</b> A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.</p> <p>(3) <b>Qualification for appointment:</b> A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.</p>	<p>All offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Act, 2014 or on or after the date of such commencement, shall be taken cognizance of and tried by-</p> <ul style="list-style-type: none"> <li>• the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by</li> <li>• such one of them as may be specified in this behalf by the High Court concerned.</li> </ul>

**Appeal and revision [Section 26C]**

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

**Application of Code to proceedings before Special Court [Section 26D]**

- (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.
- (2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

**Transitional provisions [26E]**

Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code of Criminal Procedure, 1973 to transfer any case or class of cases taken cognizance by a Court of Session under this section.

**Offences by companies [Section 27]**

- (1) **Where an offence under this Act has been committed by a company** -every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

**Exemption:** This sub-section shall not render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

*Explanation:* For the purposes of this section,—

- (a) company means anybody corporate and includes a firm or other association of individuals; and
- (b) director, in relation to a firm, means a partner in the firm.

**Recovery of amounts [Section 28A]**

- (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes,—

- (a) attachment and sale of the person's movable property;
- (b) attachment of the person's bank accounts;
- (c) attachment and sale of the person's immovable property;
- (d) arrest of the person and his detention in prison;
- (e) appointing a receiver for the management of the person's movable and immovable properties,

and for this purpose, the provisions of sections 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules made thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

*Explanation 1*— For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

*Explanation 2*.— Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assesses shall be construed as a reference to the person specified in the certificate.

*Explanation 3*.— Any reference to appeal in Chapter XVIII and the Second Schedule to

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the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 15T of this Act.

- (2) The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).
- (3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 11B, shall have precedence over any other claim against such person.
- (4) For the purposes of sub-sections (1), (2) and (3), the expression "Recovery Officer" means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.

### **Power to make rules [Section 29]**

- (1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—
  - (a) the term of office and other conditions of service of the Chairman and the members under sub-section (1) of section 5;
  - (b) the additional functions that may be performed by the Board under section 11;
  - (c) Omitted
  - (d) the manner in which the accounts of the Board shall be maintained under section 15;
  - (da) the manner of inquiry under sub-section (1) of section 15-I;
  - (db) the salaries and allowances and other terms and conditions of service of the Presiding Officers, Members and other officers and employees of the Securities Appellate Tribunal under section 15-O and sub-section (3) of section 15S;
  - (dc) the procedure for the investigation of misbehaviour or incapacity of the Presiding Officers, or other Members of the Securities Appellate Tribunal under sub-section (3) of section 15Q;
  - (dd) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 15T and the fees payable in respect of such appeal;
  - (e) the form and the manner in which returns and report to be made to the Central Government under section 18;
  - (f) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.

### **Power to make regulations [Section 30]**

- (1) The Board may, by notification, make regulations consistent with this Act and the rules

made thereunder to carry out the purposes of this Act.

- (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely :—
- (a) the times and places of meetings of the Board and the procedure to be followed at such meetings under sub-section (1) of section 7 including quorum necessary for the transaction of business;
  - (b) the terms and other conditions of service of officers and employees of the Board under sub-section (2) of section 9;
  - (c) the matters relating to issue of capital, transfer of securities and other matters incidental thereto and the manner in which such matters shall be disclosed by the companies under section 11A;
  - (ca) the utilisation of the amount credited under sub-section (5) of section 11;
  - (cb) the fulfilment of other conditions relating to collective investment scheme under subsection (2A) of section 11AA;]
  - (d) the conditions subject to which certificate of registration is to be issued, the amount of fee to be paid for certificate of registration and the manner of suspension or cancellation of certificate of registration under section 12.
  - (da) the terms determined by the Board for settlement of proceedings under sub-section (2) and the procedure for conducting of settlement proceedings under sub-section (3) of section 15JB;
  - (db) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

#### **Rules and regulations to be laid before Parliament [Section 31]**

Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

#### **Application of other laws not barred [Section 32]**

The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

#### **Power to remove difficulties [Section 34]**

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not

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inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty :

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

### **Validation of certain acts [Section 34A]**

**34A.** Any act or thing done or purporting to have been done under the principal Act, in respect of calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board and in respect of settlement of administrative and civil proceedings, shall, for all purposes, be deemed to be valid and effective as if the amendments made to the principal Act had been in force at all material times.



**SECURITIES AND EXCHANGE BOARD OF INDIA  
(ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS)  
REGULATIONS, 2009**

CHAPTER / SCHEDULE NO.	NAME OF CHAPTER
Chapter I	Preliminary
Chapter II	Common Conditions for Public Issues and Rights Issues
Chapter III	Provisions as to Public Issue
Chapter IV	Rights Issue
Chapter V	Manner of Disclosures in the Offer Documents
Chapter VI	General Obligations of Issuer and Intermediaries with respect to Public Issue and Rights Issue
Chapter VI-A	Conditions and manner of providing exit opportunity to dissenting shareholders
Chapter VII	Preferential Issue
Chapter VIII	Qualified Institutions Placement
Chapter VIII A	Institutional Placement Programme
Chapter IX	Bonus Issue
Chapter X	Issue of Indian Depository Receipts
Chapter XA	Rights issue of Indian Depository Receipts
Chapter XB	Issue of specified securities by small and medium enterprises
Chapter XC	Listing on institutional trading platform
Chapter XI	Listing of securities on stock exchanges
Chapter XII	Miscellaneous

**SECURITIES AND EXCHANGE BOARD OF INDIA  
(ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS)  
REGULATIONS, 2009**

**1. Scope**

The SEBI (ICDR) Regulations, 2009 lays down guidelines relating to conditions for various kinds of issues including Public and Right Issue. The Regulations provide detailed provisions relating to Public issue such as conditions of an Initial Public Offer (IPO) and Further Public Offer (FPO), conditions relating to pricing in Public Offerings, conditions governing promoters

Contribution, restricting transfer of Promoter's Contribution, Minimum Offer to public reservations etc.

## 2. Introduction

The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 govern the public issues, rights issues, preferential allotments, etc. made by companies. These Guidelines were notified on 26<sup>th</sup> August, 2009.

### Relevant definitions [Regulation 2]

- (1) In these regulations, unless the context otherwise requires:
  - (a) **"Act"** means the Securities and Exchange Board of India Act, 1992 (15 of 1992);
  - (b) **"advertisement"** includes notices, brochures, pamphlets, show cards, catalogues, hoardings, placards, posters, insertions in newspaper, cover pages of offer documents, pictures and films in any print media or electronic media, radio, television programme;
  - (c) **"anchor investor"** means a qualified institutional buyer [who makes] an application for a value of ten crore rupees or more in a public issue made through the book building process in accordance with these regulations;
  - (d) **"Application Supported by Blocked Amount (ASBA)"** means an application for subscribing to a public issue or rights issue, along with an authorisation to Self Certified Syndicate Bank to block the application money in a bank account;
  - (e) **"Board"** means the Securities and Exchange Board of India established under section 3 of the Act;
  - (f) **"book building"** means a process undertaken to elicit demand and to assess the price for determination of the quantum or value of specified securities or Indian Depository Receipts, as the case may be, in accordance with these regulations;
  - (g) **"book runner"** means a merchant banker appointed by the issuer to undertake the book building process;
  - (h) **"composite issue"** means an issue of specified securities by a listed issuer on public cum-rights basis, wherein the allotment in both public issue and rights issue is proposed to be made simultaneously;
  - (i) **"control"** shall have the same meaning as assigned to it under clause (c) of sub regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisitions of Shares and Takeovers) Regulations, 1997;
  - (j) **"convertible debt instrument"** means an instrument which creates or acknowledges indebtedness and is convertible into equity shares of the issuer at a later date at or without the option of the holder of the instrument, whether constituting a charge on the assets of the issuer or not;

- (k) “**convertible security**” means a security which is convertible into or exchangeable with equity shares of the issuer at a later date, with or without the option of the holder of the security and includes convertible debt instrument and convertible preference shares;
- (l) “**designated stock exchange**” means a recognised stock exchange in which securities of an issuer are listed or proposed to be listed and which is chosen by the issuer as a designated stock exchange for the purpose of a particular issue of specified securities under these regulations:
- Provided** that where one or more of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange:
- Provided further that subject to the provisions of this clause, the issuer may choose a different recognised stock exchange as a designated stock exchange for any subsequent issue of specified securities under these regulations;
- (m) “**employee**” means a permanent and full-time employee, working in India or abroad, of the issuer or of the holding company or subsidiary company or of that material associate(s) of the issuer whose financial statements are consolidated with the issuer’s financial statements as per Accounting Standard 21, or a director of the issuer, whether whole time or part time and does not include promoters and an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of that person or of the spouse);
- (n) “**further public offer**” means an offer of specified securities by a listed issuer to the public for subscription and includes an offer for sale of specified securities to the public by any existing holders of such securities in a listed issuer;
- (na) “**General Corporate Purposes**” include such identified purposes for which no specific amount is allocated or any amount so specified towards General Corporate Purpose or any such purpose by whatever name called, in the draft offer document filed with the Board:
- Provided** that any issue related expenses shall not be considered as a part of General Corporate Purpose merely because no specific amount has been allocated for such expenses in the draft offer document filed with the Board.
- (o) “**green shoe option**” means an option of allotting equity shares in excess of the equity shares offered in the public issue as a post-listing price stabilizing mechanism;
- (p) “**initial public offer**” means an offer of specified securities by an unlisted issuer to the public for subscription and includes an offer for sale of specified securities to the public by any existing holders of such securities in an unlisted issuer;
- (q) “**issue size**” includes offer through offer document and promoters’ contribution;
- (r) “**issuer**” means any person making an offer of specified securities;

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- (s) “**key management personnel**” means the officers vested with executive powers and the officers at the level immediately below the board of directors of the issuer and includes any other person whom the issuer may declare as a key management personnel;
- (t) “**listed issuer**” means an issuer whose equity shares are listed in a recognised stock exchange;
- (u) “**net offer to public**” means an offer of specified securities to the public but does not include reservations;
- (v) “**net worth**” means the aggregate of the paid up share capital, share premium account, and reserves and surplus (excluding revaluation reserve) as reduced by the aggregate of miscellaneous expenditure (to the extent not adjusted or written off) and the debit balance of the profit and loss account;
- (w) “**non institutional investor**” means an investor other than a retail individual investor and qualified institutional buyer;
- (x) “**offer document**” means a red herring prospectus, prospectus or shelf prospectus and information memorandum in terms of section 60A of the Companies Act, 1956 in case of a public issue and letter of offer in case of a rights issue;
- (y) “**offer through offer document**” means net offer to public and reservations;
- (z) “**preferential issue**” means an issue of specified securities by a listed issuer to any select person or group of persons on a private placement basis and does not include an offer of specified securities made through a public issue, rights issue, bonus issue, employee stock option scheme, employee stock purchase scheme or qualified institutions placement or an issue of sweat equity shares or depository receipts issued in a country outside India or foreign securities;
- (za) “**promoter**” includes:
  - (i) the person or persons who are in control of the issuer;
  - (ii) the person or persons who are instrumental in the formulation of a plan or programme pursuant to which specified securities are offered to public;
  - (iii) the person or persons named in the offer document as promoters:

**Provided** that a director or officer of the issuer or a person, if acting as such merely in his professional capacity, shall not be deemed as a promoter:

**Provided further** that a financial institution, scheduled bank, foreign portfolio investor other than Category III foreign portfolio investor] and mutual fund shall not be deemed to be a promoter merely by virtue of the fact that ten per cent. or more of the equity share capital of the issuer is held by such person;

Provided further that such financial institution, scheduled bank and foreign portfolio investor other than Category III foreign portfolio investor shall be treated as

promoter for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them;

(zb) “**promoter group**” includes:

- (i) the promoter;
- (ii) an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse); and
- (iii) in case promoter is a body corporate:
  - (A) a subsidiary or holding company of such body corporate;
  - (B) any body corporate in which the promoter holds ten per cent. or more of the equity share capital or which holds ten per cent. or more of the equity share capital of the promoter;
  - (C) any body corporate in which a group of individuals or companies or combinations thereof which hold twenty per cent. or more of the equity share capital in that body corporate also holds twenty per cent. or more of the equity share capital of the issuer; and
- (iv) in case the promoter is an individual:
  - (A) any body corporate in which ten per cent. or more of the equity share capital is held by the promoter or an immediate relative of the promoter or a firm or Hindu Undivided Family in which the promoter or any one or more of his immediate relative is a member;
  - (B) any body corporate in which a body corporate as provided in (A) above holds ten per cent. or more, of the equity share capital;
  - (C) any Hindu Undivided Family or firm in which the aggregate shareholding of the promoter and his immediate relatives is equal to or more than ten per cent of the total; and
- (v) all persons whose shareholding is aggregated for the purpose of disclosing in the prospectus under the heading "shareholding of the promoter group":

**Provided** that a financial institution, scheduled bank, foreign portfolio investor other than Category III foreign portfolio investor and mutual fund shall not be deemed to be promoter group merely by virtue of the fact that ten per cent. or more of the equity share capital of the issuer is held by such person:

Provided further that such financial institution, scheduled bank and foreign portfolio investor other than Category III foreign portfolio investor] shall be treated as promoter group for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them;

(zc) “**public issue**” means an initial public offer or further public offer;

(zd) “**qualified institutional buyer**” means:

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- (i) a mutual fund, venture capital fund, Alternative Investment Fund and foreign venture capital investor registered with the Board;
- (ii) a foreign portfolio investor other than Category III foreign portfolio investor, registered with the Board;
- (iii) a public financial institution as defined in section 4A of the Companies Act, 1956;
- (iv) a scheduled commercial bank;
- (v) a multilateral and bilateral development financial institution;
- (vi) a state industrial development corporation;
- (vii) an insurance company registered with the Insurance Regulatory and Development Authority;
- (viii) a provident fund with minimum corpus of twenty five crore rupees;
- (ix) a pension fund with minimum corpus of twenty five crore rupees;
- (x) National Investment Fund set up by resolution no. F. No. 2/3/2005-DDII dated November 23, 2005 of the Government of India published in the Gazette of India;
- (xi) insurance funds set up and managed by army, navy or air force of the Union of India;
- (xii) insurance funds set up and managed by the Department of Posts, India;
- (xiii) systemically important non-banking financial companies.
- (ze) “**retail individual investor**” means an investor who applies or bids for specified securities for a value of not more than two lakhs rupees;
- (zf) “**retail individual shareholder**” means a shareholder of a listed issuer, who applies or bids for specified securities for a value of not more than two lakhs rupees;
- (zg) “**rights issue**” means an offer of specified securities by a listed issuer to the shareholders of the issuer as on the record date fixed for the said purpose;
- (zh) “**Schedule**” means schedule annexed to these regulations;
- (zi) “**Self Certified Syndicate Bank**” means a banker to an issue registered with the Board, which offers the facility of Application Supported by Blocked Amount;
- (zj) “**specified securities**” means equity shares and convertible securities;
- (zk) “**stabilising agent**” means a merchant banker who is responsible for stabilising the price of equity shares under a green shoe option, in terms of these regulations;
- (zl) “**syndicate member**” means an intermediary registered with the Board and who is permitted to carry on the activity as an underwriter;

- (zla) “**systemically important non-banking financial company**” means a non-banking financial company registered with the Reserve Bank of India and having a net-worth of more than five hundred crore rupees as per the last audited financial statements.
- (zm) “**unlisted issuer**” means an issuer which is not a listed issuer
- (zn) “**wilful defaulter**” means an issuer who is categorized as a wilful defaulter by any bank or financial institution or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the Reserve Bank of India and includes an issuer whose director or promoter is categorized as such.
- (2) All other words and expressions used but not defined in these regulations, but defined in the Act or the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and/or the rules and regulations made thereunder shall have the same meaning as respectively assigned to them in such Acts or rules or regulations or any statutory modification or re-enactment thereto, as the case may be.

### **Applicability of the regulations [Regulation 3]**

Unless otherwise provided, these regulations shall apply to the following:

- (a) a public issue;
- (b) a rights issue, where the aggregate value of specified securities offered is fifty lakh rupees or more;
- (c) a preferential issue;
- (d) an issue of bonus shares by a listed issuer;
- (e) a qualified institutions placement by a listed issuer;
- (f) an issue of Indian Depository Receipts

**Provided** that the provisions of these regulations shall not apply to issue of securities under clause (b), (d) and (e) of sub-regulation (1) of regulation 9 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

## **3. Common conditions for Public Issues and Rights Issues**

### **General Conditions [Regulation 4]**

- (1) Any issuer offering specified securities through a public issue or rights issue shall satisfy the conditions of this Chapter at the time of filing draft offer document with the Board (unless stated otherwise in this Chapter) and at the time of registering or filing the final offer document with the Registrar of Companies or designated stock exchange, as the case may be.
- (2) No issuer shall make a public issue or rights issue of specified securities:
- (a) if the issuer, any of its promoters, promoter group or directors or persons in control of the issuer are debarred from accessing the capital market by the Board;

- (b) if any of the promoters, directors or persons in control of the issuer was or also is a promoter, director or person in control of any other company which is debarred from accessing the capital market under any order or directions made by the Board;
  - (c) unless it has made an application to one or more recognised stock exchanges for listing of specified securities on such stock exchanges and has chosen one of them as the designated stock exchange:  
Provided that in case of an initial public offer, the issuer shall make an application for listing of the specified securities in at least one recognised stock exchange having nationwide trading terminals;
  - (d) unless it has entered into an agreement with a depository for dematerialisation of specified securities already issued or proposed to be issued;
  - (e) unless all existing partly paid-up equity shares of the issuer have either been fully paid up or forfeited;
  - (f) unless firm arrangements of finance through verifiable means towards seventy five per cent of the stated means of finance, excluding the amount to be raised through the proposed public issue or rights issue or through existing identifiable internal accruals, have been made.
- (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 eighteen months from their date of allotment in the public/rights issue;
  - (b) not more than one warrant shall be attached to one specified security
  - (c) the price or conversion formula of the warrants shall be determined upfront and at least 25% of the consideration amount shall also be received upfront;
  - (d) in case the warrant holder does not exercise the option to take equity shares against any of the warrants held by him, the consideration paid in respect of such warrant shall be forfeited by the issuer.
- (4) The amount for general corporate purposes, as mentioned in objects of the issue in the draft offer document filed with the Board, shall not exceed twenty five per cent of the amount raised by the issuer by issuance of specified securities.
- (5) No issuer shall make,
- (a) a public issue of equity securities, if the issuer or any of its promoters or directors is a wilful defaulter; or
  - (b) a public issue of convertible debt instruments if,
    - (i) the issuer or any of its promoters or directors is a wilful defaulter, or
    - (ii) it is in default of payment of interest or repayment of principal amount in respect of debt instruments issued by it to the public, if any, for a period of more than six months.



- (6) An issuer making a rights issue of specified securities, shall make disclosures as specified in Part G of Schedule VIII, in the offer document and abridged letter of offer, if the issuer or any of its promoters or directors is a wilful defaulter.
- (7) In case of a rights issue of specified securities referred to in sub -regulation (6) above, the promoters or promoter group of the issuer, shall not renounce their rights except to the extent of renunciation within the promoter group.

**Appointment of merchant banker and other intermediaries [Regulation 5]**

- (1) The issuer shall appoint one or more merchant bankers, at least one of whom shall be a lead merchant banker and shall also appoint other intermediaries, in consultation with the lead merchant banker, to carry out the obligations relating to the issue.
- (2) The issuer shall, in consultation with the lead merchant banker, appoint only those intermediaries which are registered with the Board.
- (3) Where the issue is managed by more than one merchant banker, the rights, obligations and responsibilities, relating inter alia to disclosures, allotment, refund and underwriting obligations, if any, of each merchant banker shall be predetermined and disclosed in the offer document as specified in Schedule I

**Provided** that where any of the merchant bankers is an associate of the issuer, it shall declare itself as a marketing lead manager and its role shall be limited to marketing of the issue.

- (4) The lead merchant banker shall, only after independently assessing the capability of other intermediaries to carry out their obligations, advise the issuer on their appointment.
- (5) The issuer shall enter into an agreement with the lead merchant banker in the format specified in Schedule II and with other intermediaries as required under the respective regulations applicable to the intermediary concerned:

Provided that such agreements may include such other clauses as the issuer and the intermediary may deem fit without diminishing or limiting in any way the liabilities and obligations of the merchant bankers, other intermediaries and the issuer under the Act, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the rules and regulations made thereunder or any statutory modification or statutory enactment thereof:

Provided further that in case of ASBA process, the issuer shall take cognisance of the deemed agreement of the issuer with Self Certified Syndicate Banks.

- (6) An issuer shall, in case of an issue made through the book building process, appoint syndicate members and in the case of any other issue, appoint bankers to issue, at all mandatory collection centres as specified in Schedule III and such other collection centres as it may deem fit.
- (7) The issuer shall appoint a registrar which has connectivity with all the depositories:

Provided that if issuer itself is a registrar to an issue registered with the Board, then another registrar to an issue shall be appointed as registrar to the issue:

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Provided further that the lead merchant banker shall not act as a registrar to the issue in which it is also handling the post issue responsibilities.

**Explanation:** For the purpose of this regulation, in case of a book built issue, the lead merchant banker appointed by the issuer shall act as the lead book runner.

### Filing of offer document [Regulation 6]

- (1) No issuer shall make,
  - (a) a public issue; or
  - (b) a rights issue, where the aggregate value of the specified securities offered is fifty lakh rupees or more,

unless a draft offer document, along with fees as specified in Schedule IV, has been filed with the Board through the lead merchant banker, at least thirty days prior to registering the prospectus, red herring prospectus or shelf prospectus with the Registrar of Companies or filing the letter of offer with the designated stock exchange, as the case may be.
- (2) The Board may specify changes or issue observations, if any, on the draft offer document within thirty days from the later of the following dates:
  - (a) the date of receipt of the draft offer document under sub-regulation (1); or
  - (b) the date of receipt of satisfactory reply from the lead merchant bankers, where the Board has sought any clarification or additional information from them; or
  - (c) the date of receipt of clarification or information from any regulator or agency, where the Board has sought any clarification or information from such regulator or agency; or
  - (d) the date of receipt of a copy of in-principle approval letter issued by the recognised stock exchanges.
- (3) If the Board specifies changes or issues observations on the draft offer document, the issuer and lead merchant banker shall carry out such changes in the draft offer document and comply with the observations issued by the Board before registering the prospectus, red-herring prospectus or shelf prospectus, as the case may be, with the Registrar of Companies or filing the letter of offer with the designated stock exchange.
- (4) The issuer shall, simultaneously while registering the prospectus, red herring prospectus or shelf prospectus with the Registrar of Companies or filing the letter of offer with the designated stock exchange or before the opening of the issue, file a copy thereof with the Board through the lead merchant banker.
- (5) The lead merchant banker shall, while filing the offer document with the Board in terms of sub regulation (1) and sub-regulation (4), file a copy of such document with the recognised stock exchanges where the specified securities are proposed to be listed.
- (6) The offer document filed with the Board under this regulation shall also be furnished to the Board in a soft copy in the manner specified in Schedule V.

**Security Deposit [Regulation 7]**

- (1) The issuer shall deposit, before the opening of subscription list, and keep deposited with the stock exchange(s), an amount calculated at the rate of one per cent. of the amount of securities offered for subscription to the public.
- (2) The amount specified in sub-regulation (1) shall be deposited in the manner specified by Board and/or stock exchange(s).
- (3) The amount specified in sub-regulation (1) shall be refundable or forfeitable in the manner specified by the Board.

**Documents to be submitted before opening of the issue [Regulation 8]**

- (1) The lead merchant bankers shall submit the following to the Board along with the draft offer document:
  - (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;
  - (b) due diligence certificate as per Form A of Schedule VI;
  - (c) in case of an issue of convertible debt instruments, a due diligence certificate from the debenture trustee as per Form B of Schedule VI;
  - (d) a certificate confirming compliance of the conditions specified in Part C of Schedule VIII.
- (2) The lead merchant bankers shall submit the following documents to the Board after issuance of observations by the Board or after expiry of the period stipulated in sub-regulation (2) of regulation if the Board has not issued observations:
  - (a) a statement certifying that all changes, suggestions and observations made by the Board have been incorporated in the offer document;
  - (b) a due diligence certificate as per Form C of Schedule VI, at the time of registering the prospectus with the Registrar of Companies;
  - (c) a copy of the resolution passed by the board of directors of the issuer for allotting specified securities to promoters towards amount received against promoters' contribution, before opening of the issue;
  - (d) a certificate from a Chartered Accountant, before opening of the issue, certifying that promoters' contribution has been received in accordance with these regulations, accompanying therewith the names and addresses of the promoters who have contributed to the promoters' contribution and the amount paid by each of them towards such contribution;
  - (e) a due diligence certificate as per Form D of Schedule VI, immediately before the opening of the issue, certifying that necessary corrective action, if any, has been taken;
  - (f) a due diligence certificate as per Form E of Schedule VI, after the issue has opened but before it closes for subscription.

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- (3) The issuer shall, at the time of filing draft offer document with the recognised stock exchange where the specified securities are proposed to be listed, submit the Permanent Account Number, bank account number and passport number of its promoters to such stock exchange.

### **Draft offer document to be made public [Regulation 9]**

- (1) The draft offer document filed with the Board shall be made public, for comments, if any, for a period of at least twenty one days from the date of such filing, by hosting it on the websites of the Board, recognised stock exchanges where specified securities are proposed to be listed and merchant bankers associated with the issue.
- (2) The lead merchant bankers shall, after expiry of the period stipulated in sub-regulation (1), file with the Board a statement giving information of the comments received by them or the issuer on the draft offer document during that period and the consequential changes, if any, to be made in the draft offer document.
- (3) The issuer either on the date of filing the draft offer document with the Board or on the next day shall make a public announcement in one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language newspaper with wide circulation at the place where the registered office of the issuer is situated, disclosing to the public the fact of filing of draft offer document with the Board and inviting the public to give their comments to the Board in respect of disclosures made in the draft offer document.

### **Fast Track Issue [Regulation 10]**

- (1) Nothing contained in sub-regulations (1), (2) and (3) of regulation 6 and regulations 7 and 8 shall apply to a public issue or rights issue if the issuer satisfies the following conditions:
  - (a) the equity shares of the issuer have been listed on any recognised stock exchange having nationwide trading terminals for a period of at least three years immediately preceding the reference date;
  - (b) the average market capitalisation of public shareholding of the issuer is at least one thousand crore rupees in case of public issue and two hundred and fifty crore rupees in case of rights issue;
  - (c) the annualised trading turnover of the equity shares of the issuer during six calendar months immediately preceding the month of the reference date has been at least two per cent. of the weighted average number of equity shares listed during such six months' period:

Provided that for issuers, whose public shareholding is less than fifteen per cent. of its issued equity capital, the annualised trading turnover of its equity shares has been at least two per cent. of the weighted average number of equity shares available as free float during such six months' period;

- (d) the issuer has redressed at least ninety five per cent. of the complaints received from the investors till the end of the quarter immediately preceding the month of the reference date;
- (e) the issuer has been in compliance with the equity listing agreement for a period of at least three years immediately preceding the reference date:

Provided that if the issuer has not complied with the provision of the equity listing agreement relating to composition of board of directors, for any quarter during the last three years immediately preceding the reference date, but is compliant with such provisions at the time of filing of offer document with the Registrar of Companies or designated stock exchange, as the case may be, and adequate disclosures are made in the offer document about such non-compliances during the three years immediately preceding the reference date, it shall be deemed as compliance with the condition]

Provided further that imposition of only monetary fines by stock exchanges on the issuer shall not be a ground for ineligibility for undertaking issuances under this regulation;

- (f) the impact of auditors' qualifications, if any, on the audited accounts of the issuer in respect of those financial years for which such accounts are disclosed in the offer document does not exceed five per cent. of the net profit or loss after tax of the issuer for the respective years;
- (g) no show-cause notices have been issued or prosecution proceedings initiated by the Board or pending against the issuer or its promoters or whole time directors as on the reference date;
- (ga) the issuer or promoter or promoter group or director of the issuer has not settled any alleged violation of securities laws through the consent or settlement mechanism with the Board during three years immediately preceding the reference date;
- (h) the entire shareholding of the promoter group of the issuer is held in dematerialised form on the reference date
- (i) in case of a rights issue, promoters and promoter group shall mandatorily subscribe to their rights entitlement and shall not renounce their rights, except to the extent of renunciation within the promoter group or for the purpose of complying with minimum public shareholding norms prescribed under Rule 19A of the Securities Contracts (Regulation) Rules, 1957;
- (j) the equity shares of the issuer have not been suspended from trading as a disciplinary measure during last three years immediately preceding the reference date;
- (k) the annualized delivery-based trading turnover of the equity shares during six calendar months immediately preceding the month of the reference date has been

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at least ten per cent of the weighted average number of equity shares listed during such six months' period;

- (l) there shall be no conflict of interest between the lead merchant banker(s) and the issuer or its group or associate company in accordance with applicable regulations.
- (2) The issuer shall file the offer document with the Board and the recognised stock exchanges in accordance with sub-regulations (4), (5) and (6) of regulation 6 and shall pay fees to the Board as specified in Schedule IV.
- (3) The lead merchant bankers shall submit to the Board, the following documents along with the offer document:
  - (a) a due diligence certificate as per Form A of Schedule VI including additional confirmations as specified in Form F of Schedule VI;
  - (b) in case of a fast track issue of convertible debt instruments, a due diligence certificate from the debenture trustee as per Form B of Schedule VI.

**Explanation:** For the purposes of this regulation:

- (I) "reference date" means:
  - (a) in case of a public issue by a listed issuer, the date of registering the red herring prospectus (in case of a book built issue) or prospectus (in case of a fixed price issue) with the Registrar of Companies; and
  - (b) in case of a rights issue by a listed issuer, the date of filing the letter of offer with the designated stock exchange.
- (II) "average market capitalisation of public shareholding" means the sum of daily market capitalisation of public shareholding for a period of one year up to the end of the quarter preceding the month in which the proposed issue was approved by the shareholders or the board of the issuer, as the case may be, divided by the number of trading days.
- (III) "public shareholding" shall have the same meaning as assigned to it in the equity listing agreement.

### **Opening of an issue [Regulation 11]**

- (1) Subject to the compliance with sub-section (4) of section 60 of the Companies Act, 1956, a public issue or rights issue may be opened:
  - (a) within twelve months from the date of issuance of the observations by the Board under regulation 6; or
  - (b) within three months of expiry of the period stipulated in sub-regulation (2) of regulation 6, if the Board has not issued observations:

Provided that in case of a fast track issue, the issue shall open within the period stipulated in sub-section (4) of section 60 of the Companies Act, 1956.

- (2) In case of shelf prospectus, the first issue may be opened within three months of issuance of observations by the Board.

- (3) The issuer shall, before registering the red herring prospectus (in case of a book built issue) or prospectus (in case of a fixed price issue) with the Registrar of Companies or filing the letter of offer with the designated stock exchange, as the case may be, file with the Board through the lead merchant bankers, an updated offer document highlighting all changes made in the offer document.
- (4) Notwithstanding anything contained in this regulation, if there are changes in the offer document in relation to the matters specified in Schedule VII, the updated offer document or new draft offer document, as the case may be, shall be filed with the Board along with fees specified in Schedule IV.
- (5) An issue shall be opened after at least three working days from the date of registering the red herring prospectus with the Registrar of Companies.

**Dispatch of issue material [Regulation 12]**

The lead merchant bankers shall dispatch the offer document and other issue material including forms for ASBA to the designated stock exchange, syndicate members, registrar to issue and share transfer agents, depository participants, stock brokers,] underwriters, bankers to the issue, investors' associations and Self Certified Syndicate Banks in advance.

**Underwriting [Regulation 13]**

- (1) Where the issuer making a public issue (other than through the book building process) or rights issue, desires to have the issue underwritten, it shall appoint the underwriters in accordance with Securities and Exchange Board of India (Underwriters) Regulations, 1993.
- (2) Where the issuer makes a public issue through the book building process, such issue shall be underwritten by book runners or syndicate members:  
  
Provided that at least seventy five per cent of the net offer to the public proposed to be compulsorily allotted to qualified institutional buyers for the purpose of compliance of the eligibility conditions specified in sub-regulation (2) of regulation 26 and regulation 27, cannot be underwritten.
- (3) The issuer shall enter into underwriting agreement with the book runner, who in turn shall enter into underwriting agreement with syndicate members, indicating therein the number of specified securities which they shall subscribe to at the predetermined price in the event of undersubscription in the issue.
- (4) If syndicate members fail to fulfil their underwriting obligations, the lead book runner shall fulfil the underwriting obligations.
- (5) The book runners and syndicate members shall not subscribe to the issue in any manner except for fulfilling their underwriting obligations.
- (6) In case of every underwritten issue, the lead merchant banker or the lead book runner shall undertake minimum underwriting obligations as specified in the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992.
- (7) Where hundred per cent. of the offer through offer document is underwritten, the

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underwriting obligations shall be for the entire hundred per cent. of the offer through offer document and shall not be restricted upto the minimum subscription level.

### **Minimum subscription [Regulation 14]**

- (1) The minimum subscription to be received in an issue shall not be less than ninety per cent of the offer through offer document

**Provided** that in the case of an initial public offer, the minimum subscription to be received shall be subject to allotment of minimum number of specified securities, as prescribed in sub-clause (b) of clause (2) of rule 19 of Securities Contracts (Regulation) Rules, 1957.

- (2) In the event of non-receipt of minimum subscription referred to in sub-regulation (1), all application moneys received shall be refunded to the applicants forthwith, but not later than:
- (a) fifteen days of the closure of the issue, in case of a non-underwritten issue; and
  - (b) seventy days of the closure of the issue, in the case of an underwritten issue where minimum subscription including devolvement obligations paid by the underwriters is not received within sixty days of the closure of the issue.
- (3) The offer document shall contain adequate disclosures regarding minimum subscription as specified in Part A of Schedule VIII.
- (4) Nothing contained in this regulation, except the requirement relating to allotment of minimum number of specified securities, shall apply to offer for sale of specified securities.

**Explanation:** For the purpose of clause (b) of sub-regulation (4), the term “infrastructure company” means, an enterprise wholly engaged in the business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility.

### **Oversubscription [Regulation 15]**

No allotment shall be made by the issuer in excess of the specified securities offered through the offer document:

Provided that in case of oversubscription, an allotment of not more than ten per cent. of the net offer to public may be made for the purpose of making allotment in minimum lots.

### **Monitoring agency [Regulation 16]**

- (1) If the issue size, excluding the size of offer for sale by selling shareholders exceeds one hundred crore rupees, the issuer shall make arrangements for the use of proceeds of the issue to be monitored by a public financial institution or by one of the scheduled commercial banks named in the offer document as bankers of the issuer:

Provided that nothing contained in this clause shall apply to an issue of specified securities made by a bank or public financial institution or an insurance company.



- (2) The monitoring agency shall submit its report to the issuer in the format specified in Schedule IX on a quarterly basis, till at least ninety five percent of the proceeds of the issue excluding the proceeds under offer for sale and amount raised for general corporate purposes, have been utilized.
- (3) The Board of Directors and the management of the company shall provide their comments on the findings of the monitoring agency as specified in Schedule IX.
- (4) The issuer shall, within forty five days from the end of each quarter, publically disseminate the report of the monitoring agency by uploading the same on its website as well as submitting the same to the stock exchange(s) on which its equity shares are listed.

**Manner of calls [Regulation 17]**

If the issuer proposes to receive subscription monies in calls, it shall ensure that the outstanding subscription money is called within twelve months from the date of allotment in the issue and if any

applicant fails to pay the call money within the said twelve months, the equity shares on which there are calls in arrear along with the subscription money already paid on such shares shall be forfeited:

Provided that it shall not be necessary to call the outstanding subscription money within twelve months, if the issuer has appointed a monitoring agency in terms of regulation 16.

**Allotment, refund and payment of interest [Regulation 18]**

- (1) The issuer and merchant bankers shall ensure that specified securities are allotted and/or application moneys are refunded within fifteen days from the date of closure of the issue.
- (2) Where specified securities are not allotted and/or application moneys are not refunded within the period stipulated in sub-regulation (1), the issuer shall undertake to pay interest at such rate and within such time as disclosed in the offer document.

**Restriction on further capital issues [Regulation 19]**

No issuer shall make any further issue of specified securities in any manner whether by way of public issue, rights issue, preferential issue, qualified institutions placement, issue of bonus shares or otherwise:

- (a) in case of a fast track issue, during the period between the date of registering the red herring prospectus (in case of a book built issue) or prospectus (in case of a fixed price issue) with the Registrar of Companies or filing the letter of offer with the designated stock exchange and the listing of the specified securities offered through the offer document or refund of application moneys; or
- (b) in case of other issues, during the period between the date of filing the draft offer document with the Board and the listing of the specified securities offered through the offer document or refund of application moneys; unless full disclosures regarding the total number of specified securities and amount proposed to be raised

from such further issue are made in such draft offer document or offer document, as the case may be.

**Additional requirements for issue of convertible debt instruments [Regulation 20]**

- (1) In addition to other requirements laid down in these regulations, an issuer making a public issue or rights issue of convertible debt instruments shall comply with the following conditions:
  - (a) it has obtained credit rating from one or more credit rating agencies;
  - (b) it has appointed one or more debenture trustees in accordance with the provisions of section 117B of the Companies Act, 1956 and Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993;
  - (c) it has created debenture redemption reserve in accordance with the provisions of section 117C of the Companies Act, 1956;
  - (d) if the issuer proposes to create a charge or security on its assets in respect of secured convertible debt instruments, it shall ensure that:
    - (i) such assets are sufficient to discharge the principal amount at all times;
    - (ii) such assets are free from any encumbrance;
    - (iii) where security is already created on such assets in favour of financial institutions or banks or the issue of convertible debt instruments is proposed to be secured by creation of security on a leasehold land, the consent of such financial institution, bank or lessor for a second or pari passu charge has been obtained and submitted to the debenture trustee before the opening of the issue;
    - (iv) the security/asset cover shall be arrived at after reduction of the liabilities having a first/prior charge, in case the convertible debt instruments are secured by a second or subsequent charge.
- (2) The issuer shall redeem the convertible debt instruments in terms of the offer document.

**Roll over of non convertible portion of partly convertible debt instruments [Regulation 21]**

- (1) The non-convertible portion of partly convertible debt instruments issued by a listed issuer, the value of which exceeds fifty lakh rupees, may be rolled over without change in the interest rate, subject to compliance with the provisions of section 121 of the Companies Act, 1956 and the following conditions:
  - (a) seventy five per cent. of the holders of the convertible debt instruments of the issuer have, through a resolution, approved the rollover through postal ballot;
  - (b) the issuer has, along with the notice for passing the resolution, sent to all holders of the convertible debt instruments, an auditors' certificate on the cash flow of the issuer and with comments on the liquidity position of the issuer;

- (c) the issuer has undertaken to redeem the non-convertible portion of the partly convertible debt instruments of all the holders of the convertible debt instruments who have not agreed to the resolution;
  - (d) credit rating has been obtained from at least one credit rating agency registered with the Board within a period of six months prior to the due date of redemption and has been communicated to the holders of the convertible debt instruments, before the roll over;
- (2) The creation of fresh security and execution of fresh trust deed shall not be mandatory if the existing trust deed or the security documents provide for continuance of the security till redemption of secured convertible debt instruments;

Provided that whether the issuer is required to create fresh security and to execute fresh trust deed or not shall be decided by the debenture trustee.

**Conversion of optionally convertible debt instruments into equity share capital [Regulation 22]**

- (1) An issuer shall not convert its optionally convertible debt instruments into equity shares unless the holders of such convertible debt instruments have sent their positive consent to the issuer and non-receipt of reply to any notice sent by the issuer for this purpose shall not be construed as consent for conversion of any convertible debt instruments.
- (2) Where the value of the convertible portion of any convertible debt instruments issued by a listed issuer exceeds fifty lakh rupees and the issuer has not determined the conversion price of such convertible debt instruments at the time of making the issue, the holders of such convertible debt instruments shall be given the option of not converting the convertible portion into equity shares:

Provided that where the upper limit on the price of such convertible debt instruments and justification thereon is determined and disclosed to the investors at the time of making the issue, it shall not be necessary to give such option to the holders of the convertible debt instruments for converting the convertible portion into equity share capital within the said upper limit.

- (3) Where an option is to be given to the holders of the convertible debt instruments in terms of sub-regulation (2) and if one or more of such holders do not exercise the option to convert the instruments into equity share capital at a price determined in the general meeting of the shareholders, the issuer shall redeem that part of the instruments within one month from the last date by which option is to be exercised, at a price which shall not be less than its face value.
- (4) The provision of sub-regulation (3) shall not apply if such redemption is in terms of the disclosures made in the offer document.

**Issue of convertible debt instruments for financing [Regulation 23]**

No issuer shall issue convertible debt instruments for financing replenishment of funds or for providing loan to or for acquiring shares of any person who is part of the same group or who is under the same management:

Provided that an issuer may issue fully convertible debt instruments for these purposes if the period of conversion of such debt instruments is less than eighteen months from the date of issue of such debt instruments.

**Explanation:** For the purpose of this regulation:

- (I) Two persons shall be deemed to be “part of the same group” if they belong to the group within the meaning of clause (ef) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) or if they own “inter connected undertakings within the meaning of clause (g) of section 2 of the said Act;
- (II) The expression “under the same management” shall have the same meaning as assigned to it in sub-section (1B) of section 370 of the Companies Act, 1956 (1 of 1956).

**Alteration of rights of holders of specified securities [Regulation 24]**

No issuer shall alter the terms (including the terms of issue) of specified securities which may adversely affect the interests of the holders of that specified securities, except with the consent in writing of the holders of not less than three-fourths of the specified securities of that class or with the sanction of a special resolution passed at a meeting of the holders of the specified securities of that class.

## **4. Provisions as to Public Issue**

### **Part I - Eligibility Requirements**

#### **Reference date [Regulation 25]**

Unless otherwise provided in this Chapter, an issuer making a public issue shall satisfy the conditions of this Chapter as on the date of filing draft offer document with the Board and also as on the date of registering the offer document with the Registrar of Companies.

#### **Conditions for initial public offer [ Regulation 26]**

- (1) An issuer may make an initial public offer, if:
  - (a) it has net tangible assets of at least three crore rupees in each of the preceding three full years (of twelve months each), of which not more than fifty per cent. are held in monetary assets:

Provided that if more than fifty per cent. of the net tangible assets are held in monetary assets, the issuer has made firm commitments to utilise such excess monetary assets in its business or project;

Provided further that the limit of fifty per cent. on monetary assets shall not be applicable in case the public offer is made entirely through an offer for sale.
  - (b) it has a minimum average pre-tax operating profit of rupees fifteen crore, calculated on a restated and consolidated basis, during the three most profitable years out of the immediately preceding five years.
  - (c) it has a net worth of at least one crore rupees in each of the preceding three full years (of twelve months each);

- (d) the aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed five times its pre-issue net worth as per the audited balance sheet of the preceding financial year;
  - (e) if it has changed its name within the last one year, at least fifty per cent. of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name.
- (2) An issuer not satisfying the condition stipulated in sub-regulation (1) may make an initial public offer if the issue is made through the book-building process and the issuer undertakes to allot, at least seventy five percent of the net offer to public, to qualified institutional buyers and to refund full subscription money if it fails to make the said minimum allotment to qualified institutional buyers.
- (3) An issuer may make an initial public offer of convertible debt instruments without making a prior public issue of its equity shares and listing thereof.
- (4) An issuer shall not make an allotment pursuant to a public issue if the number of prospective allottees is less than one thousand.
- (5) No issuer shall make an initial public offer if there are any outstanding convertible securities or any other right which would entitle any person with any option to receive equity shares:

Provided that the provisions of this sub-regulation shall not apply to:

- (a) a public issue made during the currency of convertible debt instruments which were issued through an earlier initial public offer, if the conversion price of such convertible debt instruments was determined and disclosed in the prospectus of the earlier issue of convertible debt instruments;
  - (b) outstanding options granted to employees pursuant to an employee stock option scheme framed in accordance with the relevant Guidance Note or Accounting Standards, if any, issued by the Institute of Chartered Accountants of India in this regard.
  - (c) fully paid-up outstanding convertible securities which are required to be converted on or before the date of filing of the red herring prospectus (in case of book-built issues) or the prospectus (in case of fixed price issues), as the case may be.
- (6) Subject to provisions of the Companies Act, 1956 and these regulations, equity shares may be offered for sale to public if such equity shares have been held by the sellers for a period of at least one year prior to the filing of draft offer document with the Board in accordance with sub regulation (1) of regulation 6:

Provided that in case equity shares received on conversion or exchange of fully paid-up compulsorily convertible securities including depository receipts are being offered for sale, the holding period of such convertible securities as well as that of resultant equity shares together shall be considered for the purpose of calculation of one year period referred in this sub-regulation:

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Provided further that the requirement of holding equity shares for a period of one year shall not apply:

- (a) in case of an offer for sale of specified securities of a government company or statutory authority or corporation or any special purpose vehicle set up and controlled by any one or more of them, which is engaged in infrastructure sector;
- (b) if the specified securities offered for sale were acquired pursuant to any scheme approved by a High Court under sections 391-394 of the Companies Act, 1956, in lieu of business and invested capital which had been in existence for a period of more than one year prior to such approval
- (c) if the specified securities offered for sale were issued under a bonus issue on securities held for a period of at least one year prior to the filing of draft offer document with the Board and further subject to the following, -
  - (i) such specified securities being issued out of free reserves and share premium existing in the books of account as at the end of the financial year preceding the financial year in which the draft offer document is filed with the Board ; and
  - (ii) such specified securities not being issued by utilization of revaluation reserves or unrealized profits of the issuer.
- (7) An issuer making an initial public offer may obtain grading for such offer from one or more credit rating agencies registered with the Board.

**Explanation:** For the purposes of this regulation:

- (I) “net tangible assets” mean the sum of all net assets of the issuer, excluding intangible assets as defined in Accounting Standard 26 (AS 26) issued by the Institute of Chartered Accountants of India;
- (II) “project” means the object for which monies are proposed to be raised to cover the objects of the issue;
- (III) In case of an issuer which had been a partnership firm, the track record of distributable profits of the partnership firm shall be considered only if the financial statements of the partnership business for the period during which the issuer was a partnership firm, conform to and are revised in the format prescribed for companies under the Companies Act, 1956 and also comply with the following:
  - (a) adequate disclosures are made in the financial statements as required to be made by the issuer as per Schedule VI of the Companies Act, 1956;
  - (b) the financial statements are duly certified by a Chartered Accountant stating that:
    - (i) the accounts and the disclosures made are in accordance with the provisions of Schedule VI of the Companies Act, 1956;
    - (ii) the accounting standards of the Institute of Chartered Accountants of India have been followed;

- (iii) the financial statements present a true and fair view of the firm's accounts;
- (IV) In case of an issuer formed out of a division of an existing company, the track record of distributable profits of the division spun-off shall be considered only if the requirements regarding financial statements as provided for partnership firms in Explanation III are complied with;
- (V) "bid-ask spread" means the difference between quotations for sale and purchase;
- (VI) The term "infrastructure sector" includes the facilities or services as specified in Schedule X.

**Conditions for further public offer [Regulation 27]**

An issuer may make a further public offer if it satisfies the conditions specified in clauses (d) and (e) of sub-regulation (1) of regulation 26 and if it does not satisfy those conditions, it may make a further public offer if it satisfies the conditions specified in sub-regulation (2) of regulation.

**Part II - Pricing in Public Issue**

**Pricing [Regulation 28]**

- (1) An issuer may determine the price of specified securities in consultation with the lead merchant banker or through the book building process.
- (2) An issuer may determine the coupon rate and conversion price of convertible debt instruments in consultation with the lead merchant banker or through the book building process.
- (3) The issuer shall undertake the book building process in a manner specified in Schedule XI.

**Differential pricing [Regulation 29]**

An issuer may offer specified securities at different prices, subject to the following:

- (a) retail individual investors or retail individual shareholders or employees entitled for reservation made under regulation 42 making an application for specified securities of value not more than two lakhs rupees, may be offered specified securities at a price lower than the price at which net offer is made to other categories of applicants:  
Provided that such difference shall not be more than ten per cent. of the price at which specified securities are offered to other categories of applicants;
- (b) in case of a book built issue, the price of the specified securities offered to an anchor investor shall not be lower than the price offered to other applicants;
- (c) in case of a composite issue, the price of the specified securities offered in the public issue may be different from the price offered in rights issue and justification for such price difference shall be given in the offer document.
- (d) In case the issuer opts for the alternate method of book building in terms of Part D of Schedule XI, the issuer may offer specified securities to its employees at a price lower

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than the floor price:

Provided that the difference between the floor price and the price at which specified securities are offered to employees shall not be more than ten per cent. of the floor price.

### Price and price band [Regulation 30]

- (1) The issuer may mention a price or price band in the draft prospectus (in case of a fixed price issue) and floor price or price band in the red herring prospectus (in case of a book built issue) and determine the price at a later date before registering the prospectus with the Registrar of Companies:

Provided that the prospectus registered with the Registrar of Companies shall contain only one price or the specific coupon rate, as the case may be.

- (2) The issuer shall announce the floor price or price band at least five working days before the opening of the bid (in case of an initial public offer) and at least one working day before the opening of the bid (in case of a further public offer), in all the newspapers in which the pre issue advertisement was released.
- (3) The announcement referred to in sub-regulation (2) shall contain relevant financial ratios computed for both upper and lower end of the price band and also a statement drawing attention of the investors to the section titled "basis of issue price" in the prospectus.
- (3A) The announcement referred to in sub-regulation (2) and the relevant financial ratios referred to in sub-regulation (3) shall be disclosed on the websites of those stock exchanges where the securities are proposed to be listed and shall also be pre-filled in the application forms available on the websites of the stock exchanges.
- (4) The cap on the price band shall be less than or equal to one hundred and twenty per cent. of the floor price.
- (5) The floor price or the final price shall not be less than the face value of the specified securities.

**Explanation:** For the purposes of sub-regulation (4), the "cap on the price band" includes cap on the coupon rate in case of convertible debt instruments.

### Face value of equity shares [Regulation 31]

- (1) Subject to the provisions of the Companies Act, 1956, the Act and these regulations, an issuer making an initial public offer may determine the face value of the equity shares in the following manner:

- (a) if the issue price per equity share is five hundred rupees or more, the issuer shall have the option to determine the face value at less than ten rupees per equity share:

Provided that the face value shall not be less than one rupee per equity share;

- (b) if the issue price per equity share is less than five hundred rupees, the face value of the equity shares shall be ten rupees per equity share:



Provided that nothing contained in this sub-regulation shall apply to initial public offer made by any government company, statutory authority or corporation or any special purpose vehicle set up by any of them, which is engaged in infrastructure sector.

- (2) The disclosure about the face value of equity shares (including the statement about the issue price being "X" times of the face value) shall be made in the advertisements, offer documents and application forms in identical font size as that of issue price or price band.

**Explanation:** For the purposes of this regulation, the term "infrastructure sector" includes the facilities or services as specified in Schedule X.

### **Part III - Promoters' Contribution**

#### **Minimum promoters' contribution [Regulation 32]**

- (1) The promoters of the issuer shall contribute in the public issue as follows:
- (a) in case of an initial public offer, not less than twenty per cent. of the post issue capital

Provided that in case the post issue shareholding of the promoters is less than twenty per cent., alternative investment funds may contribute for the purpose of meeting the shortfall in minimum contribution as specified for promoters, subject to a maximum of ten per cent of the post issue capital.

- (b) in case of a further public offer, either to the extent of twenty per cent. of the proposed issue size or to the extent of twenty per cent. of the post-issue capital;
- (c) in case of a composite issue, either to the extent of twenty per cent. of the proposed issue size or to the extent of twenty per cent. of the post -issue capital excluding the rights issue component.
- (2) In case of a public issue or composite issue of convertible securities, minimum promoters' contribution shall be as follows:
- (a) the promoters shall contribute twenty per cent. as stipulated in clauses (a), (b) or (c) of sub-regulation (1), as the case may be, either by way of equity shares or by way of subscription to the convertible securities:
- Provided that if the price of the equity shares allotted pursuant to conversion is not predetermined and not disclosed in the offer document, the promoters shall contribute only by way of subscription to the convertible securities being issued in the public issue and shall undertake in writing to subscribe to the equity shares pursuant to conversion of such securities.
- (b) in case of any issue of convertible securities which are convertible or exchangeable on different dates and if the promoters' contribution is by way of equity shares (conversion price being pre-determined), such contribution shall not be at a price lower than the weighted average price of the equity share capital arising out of conversion of such securities.

- (c) subject to the provisions of clause (a) and (b) above, in case of an initial public offer of convertible debt instruments without a prior public issue of equity shares, the promoters shall bring in a contribution of at least twenty per cent. of the project cost in the form of equity shares, subject to contributing at least twenty per cent. of the issue size from their own funds in the form of equity shares:

Provided that if the project is to be implemented in stages, the promoters' contribution shall be with respect to total equity participation till the respective stage vis-à-vis the debt raised or proposed to be raised through the public issue.

- (3) In case of a further public offer or composite issue where the promoters contribute more than the stipulated minimum promoters' contribution, the allotment with respect to excess contribution shall be made at a price determined in terms of the provisions of regulation 76 or the issue price, whichever is higher.
- (4) The promoters shall satisfy the requirements of this regulation at least one day prior to the date of opening of the issue and the amount of promoters' contribution shall be kept in an escrow account with a scheduled commercial bank and shall be released to the issuer along with the release of the issue proceeds:

Provided that where the promoters' contribution has already been brought in and utilised, the issuer shall give the cash flow statement disclosing the use of such funds in the offer document;

Provided further that where the minimum promoters' contribution is more than one hundred crore rupees, the promoters shall bring in at least one hundred crore rupees before the date of opening of the issue and the remaining amount may be brought on pro-rata basis before the calls are made to public.

**Explanation:** For the purpose of this regulation:

- (I) Promoters' contribution shall be computed on the basis of the post-issue expanded capital:
- (a) assuming full proposed conversion of convertible securities into equity shares;
  - (b) assuming exercise of all vested options, where any employee stock options are outstanding at the time of initial public offer in terms of proviso (b) to sub-regulation (5) of regulation 26.
- (II) For computation of "weighted average price":
- (a) "weights" means the number of equity shares arising out of conversion of such specified securities into equity shares at various stages;
  - (b) "price" means the price of equity shares on conversion arrived at after taking into account predetermined conversion price at various stages.

**Securities ineligible for minimum promoters' contribution [Regulation 33]**

- (1) For the computation of minimum promoters' contribution, the following specified securities shall not be eligible:

- (a) specified securities acquired during the preceding three years, if they are:
  - (i) acquired for consideration other than cash and revaluation of assets or capitalisation of intangible assets is involved in such transaction; or
  - (ii) resulting from a bonus issue by utilisation of revaluation reserves or unrealised profits of the issuer or from bonus issue against equity shares which are ineligible for minimum promoters' contribution;
- (b) specified securities acquired by promoters and alternative investment funds during the preceding one year at a price lower than the price at which specified securities are being offered to public in the initial public offer:

Provided that nothing contained in this clause shall apply:

- (i) if promoters/alternative investment funds, as applicable pay to the issuer, the difference between the price at which specified securities are offered in the initial public offer and the price at which the specified securities had been acquired;
  - (ii) if such specified securities are acquired in terms of the scheme under sections 391-394 of the Companies Act, 1956, as approved by a High Court, by promoters in lieu of business and invested capital that had been in existence for a period of more than one year prior to such approval;
  - (iii) to an initial public offer by a government company, statutory authority or corporation or any special purpose vehicle set up by any of them, which is engaged in infrastructure sector;
- (c) specified securities allotted to promoters and alternative investment funds] during the preceding one year at a price less than the issue price, against funds brought in by them during that period, in case of an issuer formed by conversion of one or more partnership firms, where the partners of the erstwhile partnership firms are the promoters of the issuer and there is no change in the management:

Provided that specified securities, allotted to promoters against capital existing in such firms for a period of more than one year on a continuous basis, shall be eligible;

- (d) specified securities pledged with any creditor.
- (2) Specified securities referred to in clauses (a) and (c) of sub-regulation (1) shall be eligible for the computation of promoters' contribution, if such securities are acquired pursuant to a scheme which has been approved under sections 391-394 of the Companies Act, 1956.

**Explanation:** For the purposes of clause (b) of sub-regulation (1), the term "infrastructure sector" includes the facilities or services as specified in Schedule X.

**Requirement of minimum promoters' contribution not applicable in certain cases [Regulation 34]**

The requirements of minimum promoters' contribution shall not apply in case of:

- (a) an issuer which does not have any identifiable promoter;
- (b) a further public offer, where the equity shares of the issuer are not infrequently traded in a recognised stock exchange for a period of at least three years and the issuer has a track record of dividend payment for at least immediately preceding three years:

Provided that where promoters propose to subscribe to the specified securities offered to the extent greater than higher of the two options available in clause (b) of sub -regulation (1) of regulation 32, the subscription in excess of such percentage shall be made at a price determined in terms of the provisions of regulation 76 or the issue price, whichever is higher.

- (c) rights issues.

**Explanation:** For the purpose of clause (b), the words “infrequently traded” have the same meaning as assigned to them in Explanation to sub-regulation (5) of regulation 20 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and the reference date for the purpose of computing the annualised trading turnover referred to in the said Explanation shall be the date of filing the draft offer document with the Board and in case of a fast track issue, the date of filing the offer document with the Registrar of Companies before opening of the issue.

#### **Part IV - Restriction on Transferability (Lock-In) of Promoters’ Contribution, etc.**

##### **Date of commencement of lock in and inscription of non-transferability [Regulation 35]**

- (1) Save as otherwise provided in this Chapter, specified securities held by promoters and persons other than promoters shall not be transferable (hereinafter referred to as “lock-in’) from the date of allotment of the specified securities in the proposed public issue for the period stipulated in this Chapter.
- (2) The certificate of specified securities which are subject to lock-in shall contain the inscription “non transferable” and the lock-in period and in case such specified securities are dematerialised, the issuer shall ensure that lock-in is recorded by the depository.
- (3) Where the specified securities which are subject to lock-in are partly paid-up and the amount called-up on such specified securities is less than the amount called-up on the specified securities issued to the public, the “lock-in” shall end only on the expiry of three years after such specified securities have become pari-passu with the specified securities issued to the public.

##### **Lock-in of specified securities held by promoters [Regulation 36]**

In a public issue, the specified securities held by promoters shall be locked-in for the period stipulated here under:

- (a) minimum promoters’ contribution including contribution made by alternative investment funds, referred to in proviso to clause (a) of sub-regulation (1) of regulation 32,] shall be locked-in for a period of three years from the date of commencement of commercial production or date of allotment in the public issue, whichever is later;
- (b) promoters’ holding in excess of minimum promoters’ contribution shall be locked-in for a

period of one year:

Provided that excess promoters' contribution as provided in proviso to clause (b) of regulation 34 shall not be subject to lock-in.

**Explanation:** For the purposes of this clause, the expression "date of commencement of commercial production" means the last date of the month in which commercial production in a manufacturing company is expected to commence as stated in the offer document.

**Lock-in of specified securities held by persons other than promoters [Regulation 37]**

In case of an initial public offer, the entire pre-issue capital held by persons other than promoters shall be locked-in for a period of one year:

Provided that nothing contained in this regulation shall apply to:

- (a) equity shares allotted to employees under an employee stock option or employee stock purchase scheme of the issuer prior to the initial public offer, if the issuer has made full disclosures with respect to such options or scheme in accordance with Part A of Schedule VIII;
- (b) equity shares held by a venture capital fund or alternative investment fund of category I or category II or a foreign venture capital investor:

**Provided** that such equity shares shall be locked in for a period of at least one year from the date of purchase by the venture capital fund or alternative investment fund or foreign venture capital investor.

**Explanation:** For the purpose of clause (b), in case such equity shares have resulted pursuant to conversion of fully paid-up compulsorily convertible securities, the holding period of such convertible securities as well as that of resultant equity shares together shall be considered for the purpose of calculation of one year period and convertible securities shall be deemed to be fully paid-up, if the entire consideration payable thereon has been paid and no further consideration is payable at the time of their conversion.

**Lock-in of specified securities lent to stabilising agent under green shoe option [Regulation 38]**

The lock-in provisions of this Chapter shall not apply with respect to the specified securities lent to stabilising agent for the purpose of green shoe option, during the period starting from the date of lending of such specified securities and ending on the date on which they are returned to the lender in terms of sub-regulation (5) or (6) of regulation 45:

Provided that the specified securities shall be locked-in for the remaining period from the date on which they are returned to the lender.

**Pledge of locked-in specified securities [Regulation 39]**

Specified securities held by promoters and locked-in may be pledged with any scheduled commercial bank or public financial institution as collateral security for loan granted by such bank or institution, subject to the following:

- (a) if the specified securities are locked-in in terms of clause (a) of regulation 36, the loan

has been granted by such bank or institution for the purpose of financing one or more of the objects of the issue and pledge of specified securities is one of the terms of sanction of the loan;

- (b) if the specified securities are locked-in in terms of clause (b) of regulation 36 and the pledge of specified securities is one of the terms of sanction of the loan.

**Transferability of locked-in specified securities [Regulation 40]**

Subject to the provisions of Securities and Exchange Board of India (Substantial Acquisition of shares and Takeovers) Regulations, 1997, the specified securities held by promoters and locked-in as per regulation 36 may be transferred to another promoter or any person of the promoter group or a new promoter or a person in control of the issuer and the specified securities held by persons other than promoters and locked-in as per regulation 37 may be transferred to any other person holding the specified securities which are locked-in along with the securities proposed to be transferred:

Provided that lock-in on such specified securities shall continue for the remaining period with the transferee and such transferee shall not be eligible to transfer them till the lock-in period stipulated in these regulations has expired.

**Part V - Minimum Offer to Public, Reservations, Etc.**

**Minimum offer to public [Regulation 41]**

The minimum net offer to the public shall be subject to the provisions of clause (b) of sub-rule (2) of rule 19 of Securities Contracts (Regulations) Rules, 1957.

**Reservation on competitive basis [Regulation 42]**

- (1) In case of an issue made through the book building process, the issuer may make reservation on competitive basis out of the issue size excluding promoters' contribution and net offer to public in favour of the following categories of persons:
- (a) employees; and in case of a new issuer, persons who are in the permanent and full time employment of the promoting companies excluding the promoters and an immediate relative of the promoter of such companies;
  - (b) shareholders (other than promoters) of:
    - (i) listed promoting companies, in case of a new issuer; and
    - (ii) listed group companies, in case of an existing issuer:

Provided that if the promoting companies are designated financial institutions or state and central financial institutions, the shareholders of such promoting companies shall not be eligible for the reservation on competitive basis;

- (c) persons who, as on the date of filing the draft offer document with the Board, are associated with the issuer as depositors, bondholders or subscribers to services of the issuer making an initial public offer:

Provided that the issuer shall not make the reservation to the issue management team, syndicate members, their promoters, directors and employees and for the

group or associate companies of the issue management team and syndicate members and their promoters, directors and employees;

(2) In case of an issue made other than through the book building process, the issuer may make reservation on competitive basis out of the issue size excluding promoters' contribution and net offer to public in favour of the following categories of persons:

(a) employees; and in case of a new issuer, persons who are in the permanent and full time employment of the promoting companies excluding the promoters and an immediate relative of the promoter of such companies;

(b) shareholders (other than promoters) of:

(i) listed promoting companies, in the case of a new issuer; and

(ii) listed group companies, in the case of an existing issuer:

Provided that if the promoting companies are designated financial institutions or state and central financial institutions, the shareholders of such promoting companies shall not be eligible for the reservation on competitive basis.

(3) In case of a further public offer (not being a composite issue), the issuer may make reservation on competitive basis out of the issue size excluding promoters' contribution and net offer to public in favour of retail individual shareholders of the issuer.

(4) The reservation on competitive basis shall be subject to following conditions:

(a) the aggregate of reservations for employees shall not exceed five per cent. of the post issue capital of the issuer;

(b) reservation for shareholders shall not exceed ten per cent. of the issue size;

(c) reservation for persons who as on the date of filing the draft offer document with the Board, have business association as depositors, bondholders and subscribers to services with the issuer making an initial public offer shall not exceed five per cent. of the issue size;

(d) no further application for subscription in the net offer to public category shall be entertained from any person (except an employee and retail individual shareholder) in favour of whom reservation on competitive basis is made;

(e) any unsubscribed portion in any reserved category may be added to any other reserved category and the unsubscribed portion, if any, after such inter-se adjustments among the reserved categories shall be added to the net offer to the public category;

(f) in case of under-subscription in the net offer to the public category, spill-over to the extent of under-subscription shall be permitted from the reserved category to the net public offer category;

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- (g) value of allotment to any employee in pursuance of reservation made under sub regulations (1) or (2), as the case may be, shall not exceed two lakhs rupees.

Provided that in the event of under-subscription in the employee reservation portion, the unsubscribed portion may be allotted on a proportionate basis, for a value in excess of two lakhs rupees, subject to the total allotment to an employee not exceeding five lakhs rupees.

- (5) In the case of reserved categories, a single applicant in the reserved category may make an application for a number of specified securities which exceeds the reservation.

**Explanation:** For the purposes of this regulation:

- (I) The term "reservation on competitive basis" means reservation wherein specified securities are allotted in proportion of the number of specified securities applied for in respect of a particular reserved category to the number of specified securities reserved for that category;
- (II) The term "new issuer" means an issuer which has not completed twelve months of commercial operation and its audited operative results are not available.

### **Allocation in net offer to public [Regulation 43]**

- (1) No person shall make an application in the net offer to public category for that number of specified securities which exceeds the number of specified securities offered to public.
- (2) In an issue made through the book building process under sub-regulation (1) of regulation 26, the allocation in the net offer to public category shall be as follows:
- (a) not less than thirty five per cent to retail individual investors;
  - (b) not less than fifteen per cent to non-institutional investors;
  - (c) not more than fifty per cent to qualified institutional buyers, five per cent. of which shall be allocated to mutual funds:

Provided that in addition to five per cent allocation available in terms of clause (c), mutual funds shall be eligible for allocation under the balance available for qualified institutional buyers.";

- (2A) In an issue made through the book building process under sub-regulation (2) of regulation 26, the allocation in the net offer to public category shall be as follows:
- (a) not more than ten per cent to retail individual investors;
  - (b) not more than fifteen per cent to non-institutional investors;
  - (c) not less than seventy five per cent to qualified institutional buyers, five per cent. of which shall be allocated to mutual funds:

Provided that in addition to five per cent. allocation available in terms of clause (c), mutual funds shall be eligible for allocation under the balance available for qualified institutional buyers.



- (3) In an issue made through the book building process, the issuer may allocate upto sixty per cent of the portion available for allocation to qualified institutional buyers to an anchor investor in accordance with the conditions specified in this regard in Schedule XI.
- (4) In an issue made other than through the book building process, allocation in the net offer to public category shall be made as follows:
  - (a) minimum fifty per cent. to retail individual investors; and
  - (b) remaining to:
    - (i) individual applicants other than retail individual investors; and
    - (ii) other investors including corporate bodies or institutions, irrespective of the number of specified securities applied for;
  - (c) the unsubscribed portion in either of the categories specified in clauses (a) or (b) may be allocated to applicants in the other category.

**Explanation:** For the purpose of sub-regulation (4), if the retail individual investor category is entitled to more than fifty per cent. on proportionate basis, the retail individual investors shall be allocated that higher percentage.

**Safety-net arrangement [Regulation 44]**

An issuer may provide for a safety-net arrangement for the specified securities offered in any public issue in consultation with the merchant banker after ascertaining the financial capacity of the person offering the safety-net arrangement, subject to disclosures specified in this regard in

**Part A of Schedule VIII:**

Provided that any such arrangement shall provide for an offer to purchase up to a maximum of one thousand specified securities per original resident retail individual allottee at the issue price within a period of six months from the last date of despatch of security certificates or credit of demat account.

**Explanation:** For the purpose of this regulation, the term “safety net arrangement” means an arrangement provided by the issuer under which a person offers to purchase specified securities from the original resident retail individual allottees at the issue price.

**Price stabilisation through green shoe option [Regulation 45]**

- (1) An issuer making a public issue of specified securities may provide green shoe option for stabilising the post listing price of its specified securities, subject to the following:
  - (a) the issuer has been authorized, by a resolution passed in the general meeting of shareholders approving the public issue, to allot specified securities to the stabilising agent, if required, on the expiry of the stabilisation period;

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- (b) the issuer has appointed a merchant banker or book runner, as the case may be, from amongst the merchant bankers appointed by the issuer as a stabilising agent, who shall be responsible for the price stabilisation process;
  - (c) prior to filing the draft offer document with the Board, the issuer and the stabilising agent have entered into an agreement, stating all the terms and conditions relating to the green shoe option including fees charged and expenses to be incurred by the stabilising agent for discharging his responsibilities;
  - (d) prior to filing the offer document with the Board, the stabilising agent has entered into an agreement with the promoters or pre-issue shareholders or both for borrowing specified securities from them in accordance with clause (g) of this sub-regulation, specifying therein the maximum number of specified securities that may be borrowed for the purpose of allotment or allocation of specified securities in excess of the issue size (hereinafter referred to as the "over-allotment"), which shall not be in excess of fifteen per cent. of the issue size;
  - (e) subject to clause (d), the lead merchant banker or lead book runner, in consultation with the stabilising agent, shall determine the amount of specified securities to be over-allotted in the public issue;
  - (f) the draft and final offer documents shall contain all material disclosures about the green shoe option specified in this regard in Part A of Schedule VIII;
  - (g) in case of an initial public offer pre-issue shareholders and promoters and in case of a further public offer pre-issue shareholders holding more than five per cent. specified securities and promoters, may lend specified securities to the extent of the proposed overallotment;
    - (h) the specified securities borrowed shall be in dematerialised form and allocation of these securities shall be made pro-rata to all successful applicants.
- (2) For the purpose of stabilisation of post-listing price of the specified securities, the stabilising agent shall determine the relevant aspects including the timing of buying such securities, quantity to be bought and the price at which such securities are to be bought from the market.
- (3) The stabilisation process shall be available for a period not exceeding thirty days from the date on which trading permission is given by the recognised stock exchanges in respect of the specified securities allotted in the public issue.
- (4) The stabilising agent shall open a special account, distinct from the issue account, with a bank for crediting the monies received from the applicants against the over-allotment and a special account with a depository participant for crediting specified securities to be bought from the market during the stabilisation period out of the monies credited in the special bank account.
- (5) The specified securities bought from the market and credited in the special account with the depository participant shall be returned to the promoters or pre-issue shareholders immediately, in any case not later than two working days after the end of the stabilization

period.

- (6) On expiry of the stabilisation period, if the stabilising agent has not been able to buy specified securities from the market to the extent of such securities over-allotted, the issuer shall allot specified securities at issue price in dematerialised form to the extent of the shortfall to the special account with the depository participant, within five days of the closure of the stabilisation period and such specified securities shall be returned to the promoters or pre-issue shareholders by the stabilising agent in lieu of the specified securities borrowed from them and the account with the depository participant shall be closed thereafter.
- (7) The issuer shall make a listing application in respect of the further specified securities allotted under sub-regulation (6), to all the recognised stock exchanges where the specified securities allotted in the public issue are listed and the provisions of Chapter VII shall not be applicable to such allotment.
- (8) The stabilising agent shall remit the monies with respect to the specified securities allotted under sub-regulation (6) to the issuer from the special bank account.
- (9) Any monies left in the special bank account after remittance of monies to the issuer under subregulation (8) and deduction of expenses incurred by the stabilising agent for the stabilisation process shall be transferred to the Investor Protection and Education Fund established by the Board and the special bank account shall be closed soon thereafter.
- (10) The stabilising agent shall submit a report to the stock exchange on a daily basis during the stabilisation period and a final report to the Board in the format specified in Schedule XII.
- (11) The stabilising agent shall maintain a register for a period of at least three years from the date of the end of the stabilisation period and such register shall contain the following particulars:
  - (a) The names of the promoters or pre-issue shareholders from whom the specified securities were borrowed and the number of specified securities borrowed from each of them;
  - (b) The price, date and time in respect of each transaction effected in the course of the stabilisation process; and
  - (c) The details of allotment made by the issuer on expiry of the stabilisation process.

**Period of subscription [Regulation 46]**

- (1) Except as otherwise provided in these regulations] a public issue shall be kept open for at least three working days but not more than ten working days including the days for which the issue is kept open in case of revision in price band.
- (2) In case the price band in a public issue made through the book building process is revised, the bidding (issue) period disclosed in the red herring prospectus shall be extended for a minimum period of three working days:

Provided that the total bidding period shall not exceed ten working days.

**Pre-issue advertisement for public issue [Regulation 47]**

- (1) Subject to the provisions of section 66 of the Companies Act, 1956, the issuer shall, after registering the red herring prospectus (in case of a book built issue) or prospectus (in case of fixed price issue) with the Registrar of Companies, make a pre-issue advertisement in one English national daily newspaper with wide circulation, Hindi national daily newspaper with wide circulation and one regional language newspaper with wide circulation at the place where the registered office of the issuer is situated.
- (2) The pre-issue advertisement shall be in the format and shall contain the disclosures specified in **Part A of Schedule XIII**.

**Issue opening and issue closing advertisement for public issue [Regulation 48]**

An issuer may issue advertisements for issue opening and issue closing advertisements, which shall be in the formats specified in Parts B and C of Schedule XIII.

**Minimum application value [Regulation 49]**

- (1) The issuer shall stipulate in the offer document, the minimum application size in terms of number of specified securities which shall fall within the range of minimum application value of ten thousand rupees to fifteen thousand rupees.
- (2) The issuer shall invite applications in multiples of the minimum application value, an illustration whereof is given in **Schedule XIV**.
- (3) The minimum sum payable on application shall not be less than twenty five per cent. of the issue price:

Provided that in case of an offer for sale, the issue price payable for each specified security shall be brought in at the time of application.

**Explanation:** For the purpose of this regulation, "minimum application value" shall be with reference to the issue price of the specified securities and not with reference to the amount payable on application.

**Allotment procedure and basis of allotment [Regulation 50]**

**50.** (1) The allotment of specified securities to applicants other than retail individual investors and anchor investors shall be on proportionate basis within the specified investor categories and the number of securities allotted shall be rounded off to the nearest integer, subject to minimum allotment being equal to the minimum application size as determined and disclosed by the issuer:

Provided that value of specified securities allotted to any person in pursuance of reservation made under clause (a) of sub-regulation (1) or clause (a) of sub-regulation (2) of regulation 42, shall not exceed two lakhs rupees.

(1A) The allotment of specified securities to each retail individual investor shall not be less than the minimum bid lot, subject to availability of shares in retail individual investor category, and the remaining available shares, if any, shall be allotted on a proportionate basis.

(2) The executive director or managing director of the designated stock exchange along with the post issue lead merchant bankers and registrars to the issue shall ensure that the basis of allotment is finalised in a fair and proper manner in accordance with the allotment procedure as specified in **Schedule XV**.

**Utilisation of subscription money [Regulation 51]**

The post-issue lead merchant banker shall ensure that moneys received in respect of the issue are released to the issuer in compliance with the provisions of section 73 of the Companies Act, 1956.

**Annual Updation of Offer Document [Regulation 51A]**

The disclosures made in the red herring prospectus while making an initial public offer, shall be updated on an annual basis by the issuer and shall be made publicly accessible in the manner specified by the Board.

## **5. Rights Issue**

**Record Date [Regulation 52]**

- (1) A listed issuer making a rights issue shall announce a record date for the purpose of determining the shareholders eligible to apply for specified securities in the proposed rights issue.
- (2) The issuer shall not withdraw rights issue after announcement of the record date.
- (3) If the issuer withdraws the rights issue after announcing the record date, it shall not make an application for listing of any of its specified securities on any recognised stock exchange for a period of twelve months from the record date announced under sub-regulation (1):

Provided that the issuer may seek listing of its equity shares allotted pursuant to conversion or exchange of convertible securities issued prior to the announcement of the record date, on the recognised stock exchange where its securities are listed.

**Restriction on rights issue [Regulation 53]**

- (1) No issuer shall make a rights issue of equity shares unless it has made reservation of equity shares of the same class in favour of the holders of outstanding compulsorily convertible debt instruments if any, in proportion to the convertible part thereof.
- (2) The equity shares so reserved for the holders of fully or partially compulsorily convertible debt instruments shall be issued at the time of conversion of such convertible debt instruments on the same terms at which the equity shares offered in the rights issue were issued.

**Letter of offer, abridged letter of offer, pricing and period of subscription [Regulation 54]**

- (1) The abridged letter of offer, along with application form, shall be dispatched through registered post or speed post to all the existing shareholders at least three days before the date of opening of the issue:

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Provided that the letter of offer shall be given by the issuer or lead merchant banker to any existing shareholder who has made a request in this regard.

- (2) The shareholders who have not received the application form may apply in writing on a plain paper, along with the requisite application money.
- (3) The shareholders making application otherwise than on the application form shall not renounce their rights and shall not utilise the application form for any purpose including renunciation even if it is received subsequently.
- (4) Where any shareholder makes an application on application form as well as on plain paper, the application is liable to be rejected.
- (5) The issue price shall be decided before determining the record date which shall be determined in consultation with the designated stock exchange.
- (6) A rights issue shall be open for subscription for a minimum period of fifteen days and for a maximum period of thirty days.
- (7) The issuer shall give only one payment option out of the following to all the investors—
  - (a) part payment on application with balance money to be paid in calls; or
  - (b) full payment on application:

Provided that where the issuer has given the part payment option to investors, the part payment on application shall not be less than 25% of the issue price and] such issuer shall obtain the necessary regulatory approvals to facilitate the same.

### **Pre-Issue Advertisement for rights issue [Regulation 55]**

- (1) The issuer shall issue an advertisement for rights issue disclosing the following:
  - (a) the date of completion of despatch of abridged letter of offer and the application form;
  - (b) the centres other than registered office of the issuer where the shareholders or the persons entitled to receive the rights entitlements may obtain duplicate copies of the application forms in case they do not receive the application form within a reasonable time after opening of the rights issue;
  - (c) a statement that if the shareholders entitled to receive the rights entitlements have neither received the original application forms nor they are in a position to obtain the duplicate forms, they may make application in writing on a plain paper to subscribe to the rights issue;
  - (d) a format to enable the shareholders entitled to apply against their rights entitlements, to make the application on a plain paper specifying therein necessary particulars such as name, address, ratio of rights issue, issue price, number of equity shares held, ledger folio numbers, depository participant ID, client ID, number of equity shares entitled and applied for, additional shares if any, amount to be paid along with application, and particulars of cheque, etc. to be drawn in favour of the issuer's account;

- (e) a statement that the applications can be directly sent by the shareholders entitled to apply against rights entitlements through registered post together with the application moneys to the issuer's designated official at the address given in the advertisement;
  - (f) a statement to the effect that if the shareholder makes an application on plain paper and also on application form both his applications shall be liable to be rejected at the option of the issuer.
- (2) The advertisement shall be made in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where registered office of the issuer is situated, at least three days before the date of opening of the issue.

#### **Reservation for employees along with rights issue [Regulation 55A]**

Subject to other applicable provision of these regulations the issuer may make reservation for employees along with rights issue subject to the condition that value of allotment to any employee shall not exceed two lakhs rupees.

#### **Utilisation of funds raised in rights issue [Regulation 56]**

The issuer shall utilise funds collected in rights issues after the finalisation of the basis of allotment.

## **6. Manner of Disclosures in the Offer Documents**

#### **Manner of disclosures in the offer document [Regulation 57]**

- (1) The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.
- (2) Without prejudice to the generality of sub-regulation (1):
  - (a) the red-herring prospectus, shelf prospectus and prospectus shall contain:
    - (i) the disclosures specified in Schedule II of the Companies Act, 1956; and
    - (ii) the disclosures specified in Part A of Schedule VIII, subject to the provisions of Parts B and C thereof.
  - (b) the letter of offer shall contain disclosures as specified in Part E of Schedule VIII

Provided that in the case of a further public offer or a rights issue, the offer document shall be deemed to be in compliance with the provisions of this regulation, if suitable references are made to the updated disclosures in the offer document referred to in regulation 51A of these regulations.

#### **Abridged prospectus, abridged letter of offer and ASBA [Regulation 58]**

- (1) The abridged prospectus shall contain the disclosures as specified in **Part D of Schedule VIII**.
- (2) The abridged letter of offer shall contain the disclosures as specified in **Part F of Schedule VIII**.

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- (3) The abridged prospectus and abridged letter of offer shall not contain any matter extraneous to the contents of the offer document.
- (4) Every application form including ASBA form distributed by the issuer or any other person in relation to an issue shall be accompanied by a copy of the abridged prospectus or abridged letter of offer, as the case may be.
- (5) In all, -
  - (i) Public issues, the issuer shall accept bids using only ASBA facility in the manner specified by the Board;
  - (ii) Rights issues, where not more than one payment option is given, the issuer shall provide the facility of ASBA in accordance with the procedure and eligibility criteria specified by the Board:

Provided that in case of qualified institutional buyers and non-institutional investors the issuer shall accept bids using ASBA facility only.

### **7. General Obligations of Issuer and intermediaries with respect to Public Issue and Rights Issue**

#### **Prohibition on payment of incentives [Regulation 59]**

No person connected with the issue shall offer any incentive, whether direct or indirect, in any manner, whether in cash or kind or services or otherwise to any person for making an application for allotment of specified securities:

Provided that nothing contained in this regulation shall apply to fees or commission for services rendered in relation to the issue.

**Explanation:** For the purpose of this regulation, the expression "person connected with the issue" includes a person connected with the distribution of the issue.

#### **Public communications, publicity materials, advertisements and research reports [Regulation 60]**

- (1) Any public communication including advertisement and publicity material issued by the issuer or research report made by the issuer or any intermediary concerned with the issue or their associates shall contain only factual information and shall not contain projections, estimates, conjectures, etc. or any matter extraneous to the contents of the offer document.
- (2) All public communications and publicity material issued or published in any media during the period commencing from the date of the meeting of the board of directors of the issuer in which the public issue or rights issue is approved till the date of filing draft offer document with the Board shall be consistent with its past practices:

Provided that where such public communication or publicity material is not consistent with the past practices of the issuer, it shall be prominently displayed or announced in such public communication or publicity material that the issuer is proposing to make a public or rights issue of specified securities in the near future and is in the process of



filing a draft offer document with the Board.

- (3) All public communications and publicity material issued or published in any media during the period commencing from the date of filing draft offer document with the Board till the date of allotment of securities offered in the issue, shall prominently disclose that:
- (a) the issuer is proposing to make a public issue or rights issue of the specified securities and has filed a draft offer document with the Board or has filed the red herring prospectus or prospectus with the Registrar of Companies or the letter of offer with the designated stock exchange, as the case may be.
  - (b) the draft offer document, red herring prospectus or final offer document, as the case may be, is available on the website of the Board, lead merchant bankers or lead book runners.

Provided that requirements of this sub-regulation shall not be applicable in case of product advertisements of the issuer.

- (4) The issuer shall make prompt, true and fair disclosure of all material developments which take place during the following period mentioned in this sub-regulation, relating to its business and securities and also relating to the business and securities of its subsidiaries, group companies, etc., which may have a material effect on the issuer, by issuing public notices in all the newspapers in which the issuer had issued pre-issue advertisement under regulation 47 or regulation 55, as the case may be:
- (a) in case of public issue, between the date of registering final prospectus or the red herring prospectus, as the case may be, with the Registrar of Companies, and the date of allotment of specified securities;
  - (b) in case of a rights issue, between the date of filing the letter of offer with the designated stock exchange and the date of allotment of the specified securities.
- (5) The issuer shall not, directly or indirectly, release, during any conference or at any other time, any material or information which is not contained in the offer document.
- (6) In respect of all public communications, issue advertisements and publicity materials, the issuer shall obtain approval from the lead merchant bankers responsible for marketing the issue and shall also make copies of all issue related materials available with the lead merchant bankers at least till the allotment is completed.
- (7) Any advertisement or research report issued or caused to be issued by an issuer, any intermediary concerned with the issue or their associates shall comply with the following:
- (a) it shall be truthful, fair and shall not be manipulative or deceptive or distorted and it shall not contain any statement, promise or forecast which is untrue or misleading;
  - (b) if it reproduces or purports to reproduce any information contained in an offer document, it shall reproduce such information in full and disclose all relevant facts and not be restricted to select extracts relating to that information;
  - (c) it shall be set forth in a clear, concise and understandable language;

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- (d) it shall not include any issue slogans or brand names for the issue except the normal commercial name of the issuer or commercial brand names of its products already in use;
  - (e) if it presents any financial data, data for the past three years shall also be included alongwith particulars relating to sales, gross profit, net profit, share capital, reserves, earnings per share, dividends and the book values;
  - (f) no advertisement shall use extensive technical, legal terminology or complex language and excessive details which may distract the investor;
  - (g) no issue advertisement shall contain statements which promise or guarantee rapid increase in profits;
  - (h) no issue advertisement shall display models, celebrities, fictional characters, landmarks or caricatures or the likes;
  - (i) no issue advertisement shall appear in the form of crawlers (the advertisements which run simultaneously with the programme in a narrow strip at the bottom of the television screen) on television;
  - (j) in any issue advertisement on television screen, the risk factors shall not be scrolled on the television screen and the advertisement shall advise the viewers to refer to the red herring prospectus or other offer document for details;
  - (k) no issue advertisement shall contain slogans, expletives or non-factual and unsubstantiated titles;
  - (l) if an advertisement or research report contains highlights, it shall also contain risk factors with equal importance in all respects including print size of not less than point seven size;
  - (m) an issue advertisement displayed on a billboard shall not contain information other than that specified in Parts A, B and C of Schedule XIII, as applicable;
  - (n) an issue advertisement which contains highlights or information other than the details contained in the format as specified in Parts A and B of Schedule XIII shall contain risk factors.
- (8) No advertisement shall be issued giving any impression that the issue has been fully subscribed or oversubscribed during the period the issue is open for subscription.
- (9) An announcement regarding closure of issue shall be made only after the lead merchant banker(s) is satisfied that at least ninety per cent. of the offer through offer document has been subscribed and a certificate has been obtained to that effect from the registrar to the issue:
- Provided that such announcement shall not be made before the date on which the issue is to be closed.
- (10) No advertisement or distribution material with respect to the issue shall contain any offer of incentives, whether direct or indirect, in any manner, whether in cash or kind or

services or otherwise.

- (11) No product advertisement shall contain any reference, directly or indirectly, to the performance of the issuer during the period commencing from the date of the resolution of the board of directors of the issuer approving the public issue or rights issue till the date of allotment of specified securities offered in such issue.
- (12) A research report may be prepared only on the basis of information, disclosed to the public by the issuer by updating the offer document or otherwise.
- (13) No selective or additional information or information which is extraneous to the information disclosed to the public through the offer document or otherwise, shall be given by the issuer or any member of the issue management team or syndicate to any particular section of the investors or to any research analyst in any manner whatsoever, including at road shows, presentations, in research or sales reports or at bidding centres.
- (14) The merchant bankers shall submit a compliance certificate in the format specified in Part D of Schedule XIII, for the period between the date of filing the draft offer document with the Board and the date of closure of the issue, in respect of news reports appearing in any of the following media:
  - (a) newspapers mentioned in sub-regulation (3) of regulation 9;
  - (b) major business magazines;
  - (c) print and electronic media controlled by a media group where the media group has a private treaty/shareholders' agreement with the issuer or promoters of the issuer.

**Explanation:** For the purpose of this regulation:

- (I) "public communication or publicity material" includes corporate, product and issue advertisements of the issuer, interviews by its promoters, directors, duly authorized employees or representatives of the issuer, documentaries about the issuer or its promoters, periodical reports and press releases.
- (II) An issue advertisement shall be considered to be misleading, if it contains:
  - (a) Statements made about the performance or activities of the issuer without necessary explanatory or qualifying statements, which may give an exaggerated picture of such performance or activities.
  - (b) An inaccurate portrayal of past performance or its portrayal in a manner which implies that past gains or income will be repeated in the future.

**Copies of offer documents to be available to public [Regulation 61]**

- (1) The issuer and lead merchant bankers shall ensure that the contents of offer documents hosted on the websites as required in these regulations are the same as that of their printed versions as filed with the Registrar of Companies, Board and the stock exchanges.
- (2) The lead merchant bankers and the recognised stock exchange shall provide copies of the draft offer document and final offer document to the public as and when requested.

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- (3) The lead merchant bankers or the recognised stock exchange may charge a reasonable sum for providing the copy of the offer document.

### **Redressal of investor grievances [Regulation 62]**

The post-issue lead merchant bankers shall actively associate himself with post -issue activities such as allotment, refund, despatch and giving instructions to syndicate members, Self Certified Syndicate Banks and other intermediaries and shall regularly monitor redressal of investor grievances arising therefrom.

### **Appointment of Compliance Officer [Regulation 63]**

The issuer shall appoint a compliance officer who shall be responsible for monitoring the compliance of the securities laws and for redressal of investors' grievances.

**Explanation:** For the purpose of this regulation, the term "securities laws" means the Companies Act, 1956, the Act, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the rules and regulations made thereunder and the regulations, general or special orders, guidelines or circulars made or issued by the Board.

### **Due diligence [Regulation 64]**

- (1) The lead merchant bankers shall exercise due diligence and satisfy himself about all the aspects of the issue including the veracity and adequacy of disclosure in the offer documents.
- (2) The lead merchant bankers shall call upon the issuer, its promoters or directors or in case of an offer for sale, the selling shareholders, to fulfil their obligations as disclosed by them in the offer document and as required in terms of these Regulations.
- (3) The post-issue merchant banker shall continue to be responsible for post-issue activities till the subscribers have received the securities certificates, credit to their demat account or refund of application moneys and the listing agreement is entered into by the issuer with the stock exchange and listing/ trading permission is obtained.
- (4) The responsibility of the lead merchant banker shall continue even after the completion of issue process.

### **Post- issue reports [Regulation 65]**

- (1) In public issue, the lead merchant banker shall submit final post-issue report as specified in Part C of Schedule XVI, within seven days of the date of finalization of basis of allotment or within seven days of refund of money in case of failure of issue.
- (2) In rights issue, the lead merchant banker shall submit post-issue reports as follows:-
  - (a) initial post issue report as specified in Part B of Schedule XVI, within three days of closure of the issue;
  - (b) final post issue report as specified in Part D of Schedule XVI, within fifteen days of the date of finalization of basis of allotment or within fifteen days of refund of money in case of failure of issue.

The lead merchant banker shall submit a due diligence certificate as per the format specified in **Form G of Schedule VI**, along with the final post issue report.

**Post-issue Advertisements [Regulation 66]**

- (1) The post-issue merchant banker shall ensure that advertisement giving details relating to oversubscription, basis of allotment, number, value and percentage of all applications including ASBA, number, value and percentage of successful allottees for all applications including ASBA, date of completion of despatch of refund orders or instructions to Self Certified Syndicate Banks by the Registrar, date of despatch of certificates and date of filing of listing application, etc. is released within ten days from the date of completion of the various activities in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where registered office of the issuer is situated.
- (2) The post-issue merchant banker shall ensure that issuer, advisors, brokers or any other entity connected with the issue do not publish any advertisement stating that issue has been oversubscribed or indicating investors' response to the issue, during the period when the public issue is still open for subscription by the public.

**Co-ordination with Intermediaries [Regulation 67]**

- (1) The post-issue merchant banker shall maintain close co-ordination with the registrars to the issue and arrange to depute its officers to the offices of various intermediaries at regular intervals after the closure of the issue to monitor the flow of applications from collecting bank branches and/or Self Certified Syndicate Banks, processing of the applications including application form for ASBA and other matters till the basis of allotment is finalised, despatch of security certificates and refund orders are completed and securities are listed.
- (2) Any act of omission or commission on the part of any of the intermediaries noticed during such visits shall be duly reported to the Board.
- (3) In case there is a devolvement on underwriters, the merchant banker shall ensure that the notice for devolvement containing the obligation of the underwriters is issued within a period of ten days from the date of closure of the issue.
- (4) In case of undersubscribed issues, the merchant banker shall furnish information in respect of underwriters who have failed to meet their underwriting devolvement to the Board in the format specified in **Schedule XVII**.
- (5) The post-issue merchant banker shall confirm to the bankers to the issue by way of copies of listing and trading approvals that all formalities in connection with the issue have been completed and that the banker is free to release the money to the issuer or release the money for refund in case of failure of the issue.

**Audited financial statements in the offer document [Regulation 68]**

The merchant banker shall ensure that the information contained in the offer document and

the particulars as per audited financial statements in the offer document are not more than six months old from the issue opening date.

**Other responsibilities [Regulation 69]**

- (1) The post-issue merchant banker shall ensure that the despatch of refund orders, allotment letters and share certificates is done by way of registered post or certificate of posting, as may be applicable.
- (2) The post-issue merchant banker shall ensure payment of interest to the applicants for delayed dispatch of allotment letters, refund orders, etc. as per the disclosure made in the offer document.
- (3) In case of absence of definite information about subscription figures, the issue shall be kept open for the required number of days to avoid any dispute, at a later date, by the underwriters in respect of their liability.
- (4) The issuer shall ensure that transactions in securities by the promoter and promoter group during the period between the date of registering the offer document with the Registrar of Companies or filing the letter of offer with the designated stock exchange, as the case may be and the date of closure of the issue shall be reported to the recognised stock exchanges where the specified securities of the issuer are listed, within twenty four hours of the transactions.

**8. Conditions and Manner of providing exit opportunity to dissenting Shareholders**

**Applicability [Regulation 69A]**

- (1) The provisions of this Chapter shall apply to an exit offer made by the promoters or shareholders in control of an issuer to the dissenting shareholders in terms of section 13(8) and section 27(2) of the Companies Act, 2013, in case of change in objects or variation in the terms of contract referred to in the prospectus.
- (2) The provisions of this Chapter shall not apply where there are neither identifiable promoters nor shareholders in control of the listed issuer.

**Definitions [Regulation 69B]**

For the purpose of this Chapter:

- (a) "dissenting shareholders" means those shareholders who have voted against the resolution for change in objects or variation in terms of a contract, referred to in the prospectus of the issuer;
- (b) "frequently traded shares" shall have the same meaning as assigned to it in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
- (c) "relevant date" means date of the board meeting in which the proposal for change in objects or variation in terms of a contract, referred to in the prospectus is approved, before seeking shareholders' approval.

**Conditions for exit offer [Regulation 69C]**

The promoters or shareholders in control shall make the exit offer in accordance with the provisions of this Chapter, to the dissenting shareholders, if:

- (a) the public issue has opened after April 1, 2014; and
- (b) the proposal for change in objects or variation in terms of a contract, referred to in the prospectus is dissented by at least ten per cent. of the shareholders who voted in the general meeting; and
- (c) the amount to be utilized for the objects for which the prospectus was issued is less than seventy five per cent. of the amount raised (including the amount earmarked for general corporate purposes as disclosed in the offer document).

**Eligibility of shareholders for availing the exit offer [Regulation 69D]**

Only those dissenting shareholders of the issuer who are holding shares as on the relevant date shall be eligible to avail the exit offer made under this Chapter.

**Exit offer price [Regulation 69E]**

The 'exit price' payable to the dissenting shareholders shall be the highest of the following:

- (a) the volume-weighted average price paid or payable for acquisitions, whether by the promoters or shareholders having control or by any person acting in concert with them, during the fifty-two weeks immediately preceding the relevant date;
- (b) the highest price paid or payable for any acquisition, whether by the promoters or shareholders having control or by any person acting in concert with them, during the twenty-six weeks immediately preceding the relevant date;
- (c) the volume-weighted average market price of such shares for a period of sixty trading days immediately preceding the relevant date as traded on the recognised stock exchange where the maximum volume of trading in the shares of the issuer are recorded during such period, provided such shares are frequently traded;
- (d) where the shares are not frequently traded, the price determined by the promoters or shareholders having control and the merchant banker taking into account valuation parameters including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such issuers.

**Manner of providing exit to dissenting shareholders [Regulation 69F]**

- (1) The notice proposing the passing of special resolution for changing the objects of the issue and varying the terms of contract, referred to in the prospectus shall also contain information about the exit offer to the dissenting shareholders.
- (2) In addition to the disclosures required under the provisions of section 102 of the Companies Act, 2013 read with rule 32 of the Companies (Incorporation) Rules, 2014 and rule 7 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 and any other applicable law, a statement to the effect that the promoters or the shareholders having control shall provide an exit opportunity to the dissenting shareholders shall also

be included in the explanatory statement to the notice for passing special resolution.

- (3) After passing of the special resolution, the issuer shall submit the voting results to the recognised stock exchange(s), in terms of the provisions of regulation 44(3) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.
- (4) The issuer shall also submit the list of dissenting shareholders, as certified by its compliance officer, to the recognised stock exchange(s).
- (5) The promoters or shareholders in control, shall appoint a merchant banker registered with the Board and finalize the exit offer price in accordance with these regulations.
- (6) The issuer shall intimate the recognised stock exchange(s) about the exit offer to dissenting shareholders and the price at which such offer is being given.
- (7) The recognised stock exchange(s) shall immediately on receipt of such intimation disseminate the same to public within one working day.
- (8) To ensure security for performance of their obligations, the promoters or shareholders having control, as applicable, shall create an escrow account which may be interest bearing and deposit the aggregate consideration in the account at least two working days prior to opening of the tendering period.
- (9) The tendering period shall start not later than seven working days from the passing of the special resolution and shall remain open for ten working days.
- (10) The dissenting shareholders who have tendered their shares in acceptance of the exit offer shall have the option to withdraw such acceptance till the date of closure of the tendering period.
- (11) The promoters or shareholders having control shall facilitate tendering of shares by the shareholders and settlement of the same through the recognised stock exchange mechanism as specified by SEBI for the purpose of takeover, buy-back and delisting.
- (12) The promoters or shareholders having control shall, within a period of ten working days from the last date of the tendering period, make payment of consideration to the dissenting shareholders who have accepted the exit offer.
- (13) Within a period of two working days from the payment of consideration, the issuer shall furnish to the recognised stock exchange(s), disclosures giving details of aggregate number of shares tendered, accepted, payment of consideration and the post-offer shareholding pattern of the issuer and a report by the merchant banker that the payment has been duly made to all the dissenting shareholders whose shares have been accepted in the exit offer.

**Offer not to exceed maximum permissible non-public shareholding [Regulation 69G]**

In the event, the shares accepted in the exit offer were such that the shareholding of the promoters or shareholders in control, taken together with persons acting in concert with them pursuant to completion of the exit offer results in their shareholding exceeding the maximum permissible non-public shareholding, the promoters or shareholders in control, as applicable,



shall be required to bring down the non-public shareholding to the level specified and within the time permitted under Securities Contract (Regulation) Rules, 1957.

## **9. Preferential Issue**

### **Chapter VII not to apply in certain cases [Regulation 70]**

(1) The provisions of this Chapter shall not apply where the preferential issue of equity shares is made:

- (a) pursuant to conversion of loan or option attached to convertible debt instruments in terms of sub-sections (3) and (4) of sections 81 of the Companies Act, 1956 or sub-section (3) and (4) of section 62 of the Companies Act, 2013, whichever applicable;
- (b) pursuant to a scheme approved by a High Court under section 391 to 394 of the Companies Act, 1956 or a Tribunal under sections 230 to 234 of the Companies Act, 2013, whichever applicable

Provided that the pricing provisions of this Chapter shall apply to the issuance of shares under schemes mentioned in clause (b) in case of allotment of shares only to a select group of shareholders or shareholders of unlisted companies pursuant to such schemes;

- (c) in terms of the rehabilitation scheme approved by the Board of Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 or the resolution plan approved by] the Tribunal under the Insolvency and Bankruptcy Code, 2016, whichever applicable:

Provided that the lock-in provisions of this Chapter shall apply to preferential issue of equity shares mentioned in clause (c).

(2) The provisions of this Chapter relating to pricing and lock-in shall not apply to equity shares allotted to any financial institution within the meaning of sub-clauses (ia) and (ii) of clause (h) of section 2 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (51 of 1993).

(3) The provisions of regulation 73 and regulation 76 shall not apply to a preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, where the Board has granted relaxation to the issuer in terms of regulation 29A of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 or regulation 11 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, whichever applicable], if adequate disclosures about the plan and process proposed to be followed for identifying the allottees are given in the explanatory statement to notice for the general meeting of shareholders.

(4) The provisions of sub-regulation (2) of regulation 72 and sub-regulation (6) of regulation 78 shall not apply to a preferential issue of specified securities where the proposed allottee is a Mutual Fund registered with the Board or Insurance Company registered with Insurance Regulatory and Development Authority of India or a Scheduled Bank listed

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under the Second Schedule of the Reserve Bank of India Act, 1934 or a Public Financial Institution as defined in clause 72 of section 2 of the Companies Act, 2013.

- (5) The provisions of this Chapter shall not apply where the preferential issue of specified securities is made to the lenders pursuant to conversion of their debt, as part of a debt restructuring scheme implemented in accordance with the guidelines specified by the Reserve Bank of India, subject to the following conditions:
- (a) the guidelines for determining the conversion price have been specified by the Reserve Bank of India in accordance with which the conversion price shall be determined and which shall be in compliance with the applicable provisions of the Companies Act, 2013;
  - (b) the conversion price shall be certified by two independent qualified valuers, and for this purpose 'valuer' shall be a person who is registered under section 247 of the Companies Act, 2013 and the relevant Rules framed thereunder:  
Provided that till such date on which section 247 of the Companies Act, 2013 and the relevant Rules come into force, valuer shall mean an independent merchant banker registered with the Board or an independent chartered accountant in practice having a minimum experience of ten years;
  - (c) specified securities so allotted shall be locked-in for a period of one year from the date of their allotment:  
Provided that for the purpose of transferring the control, the lenders may transfer the specified securities allotted to them before completion of the lock-in period subject to continuation of the lock-in on such securities for the remaining period, with the transferee;
  - (d) the lock-in of equity shares allotted pursuant to conversion of convertible securities issued on preferential basis shall be reduced to the extent the convertible securities have already been locked-in;
  - (e) the applicable provisions of the Companies Act, 2013 are complied with, including the requirement of special resolution.
- (6) The provisions of this Chapter shall not apply where the preferential issue, if any, of specified securities is made to person(s) at the time of lenders selling their holding of specified securities or enforcing change in ownership in favour of such person(s) pursuant to a debt restructuring scheme implemented in accordance with the guidelines specified by the Reserve Bank of India, subject to the following conditions:
- (a) the guidelines for determining the issue price have been specified by the Reserve Bank of India in accordance with which the issue price shall be determined and which shall be in compliance with the applicable provisions of the Companies Act, 2013;
  - (b) the issue price shall be certified by two independent qualified valuers, and for this purpose 'valuer' shall be a person who is registered under section 247 of the Companies Act, 2013 and the relevant Rules framed thereunder:

Provided that till such date on which section 247 of the Companies Act, 2013 and the relevant Rules come into force, valuer shall mean an independent merchant banker registered with the Board or an independent chartered accountant in practice having a minimum experience of ten years;

- (c) the specified securities so allotted shall be locked-in for a period of at least three years from the date of their allotment;
- (d) the lock-in of equity shares allotted pursuant to conversion of convertible securities issued on preferential basis shall be reduced to the extent the convertible securities have already been locked-in;
- (e) a special resolution has been passed by shareholders of the issuer before the preferential issue;
- (f) the issuer shall, in addition to the disclosures required under the Companies Act, 2013 or any other applicable law, disclose the following information pertaining to the proposed allottee(s) in the explanatory statement to the notice for the general meeting proposed for passing the special resolution as stipulated at clause (e) of this sub-regulation:
  - a. the identity including that of the natural persons who are the ultimate beneficial owners of the shares proposed to be allotted and/ or who ultimately control the proposed allottee(s);
  - b. the business model;
  - c. a statement on growth of business over the period of time;
  - d. summary of audited financials of previous three financial years;
  - e. track record in turning around companies, if any;
  - f. the proposed roadmap for effecting turnaround of the issuer.
- (g) the applicable provisions of the Companies Act, 2013 are complied with.

**Relevant date [Regulation 71]**

For the purpose of this Chapter, "relevant date" means:

- (a) in case of preferential issue of equity shares, the date thirty days prior to the date on which the meeting of shareholders is held to consider the proposed preferential issue:

Provided that in case of preferential issue of equity shares pursuant to a scheme approved under the Corporate Debt Restructuring framework of Reserve Bank of India, the date of approval of the Corporate Debt Restructuring Package shall be the relevant date.

- (b) in case of preferential issue of convertible securities, either the relevant date referred to in clause (a) of this regulation or a date thirty days prior to the date on which the holders of the convertible securities become entitled to apply for the equity shares.

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

**Frequently traded shares [Regulation 71A]**

For the purpose of this Chapter, “frequently traded shares” means shares of an issuer, in which the traded turnover on any stock exchange during the twelve calendar months preceding the relevant date, is at least ten per cent of the total number of shares of such class of shares of the issuer:

Provided that where the share capital of a particular class of shares of the issuer is not identical throughout such period, the weighted average number of total shares of such class of the issuer shall represent the total number of shares.

**Conditions for preferential issue [Regulation 72]**

- (1) A listed issuer may make a preferential issue of specified securities, if:
  - (a) a special resolution has been passed by its shareholders;
  - (b) all the equity shares, if any, held by the proposed allottees in the issuer are in dematerialised form;
  - (c) the issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the recognised stock exchange where the equity shares of the issuer are listed;
  - (d) the issuer has obtained the Permanent Account Number of the proposed allottees.

- (2) The issuer shall not make preferential issue of specified securities to any person who has sold any equity shares of the issuer during the six months preceding the relevant date:

Provided that in respect of the preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, the Board may grant relaxation from the requirements of this sub-regulation, if the Board has granted relaxation in terms of regulation 29A of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 to such preferential allotment.

**Explanation.**—Where any person belonging to promoter(s) or the promoter group has sold his equity shares in the issuer during the six months preceding the relevant date, the promoter(s) and promoter group shall be ineligible for allotment of specified securities on preferential basis.

- (3) Where any person belonging to promoter(s) or the promoter group has previously subscribed to warrants of an issuer but failed to exercise the warrants, the promoter(s) and promoter group shall be ineligible for issue of specified securities of such issuer on preferential basis for a period of one year from:
  - (a) the date of expiry of the tenure of the warrants due to non-exercise of the option to convert; or
  - (b) the date of cancellation of the warrants, as the case may be.

**Disclosures [Regulation 73]**

(1) The issuer shall, in addition to the disclosures required under section 173 of the Companies Act, 1956 or any other applicable law, disclose the following in the explanatory statement to the notice for the general meeting proposed for passing special resolution:

- (a) the objects of the preferential issue;
- (b) the proposal of the promoters, directors or key management personnel of the issuer to subscribe to the offer;
- (c) the shareholding pattern of the issuer before and after the preferential issue;
- (d) the time within which the preferential issue shall be completed;
- (e) the identity of the natural persons who are the ultimate beneficial owners of the shares proposed to be allotted and/or who ultimately control] the proposed allottees, the percentage of post preferential issue capital that may be held by them and change in control, if any, in the issuer consequent to the preferential issue

Provided that if there is any listed company, mutual fund, bank or insurance company in the chain of ownership of the proposed allottee, no further disclosure will be necessary.

- (f) an undertaking that the issuer shall re-compute the price of the specified securities in terms of the provision of these regulations where it is required to do so;
  - (g) an undertaking that if the amount payable on account of the re-computation of price is not paid within the time stipulated in these regulations, the specified securities shall continue to be locked- in till the time such amount is paid by the allottees.
  - (h) disclosures, similar to disclosures specified in Part G of Schedule VIII, if the issuer or any of its promoters or directors is a wilful defaulter.
- (2) The issuer shall place a copy of the certificate of its statutory auditor before the general meeting of the shareholders, considering the proposed preferential issue, certifying that the issue is being made in accordance with the requirements of these regulations.
- (3) Where specified securities are issued on a preferential basis to promoters, their relatives, associates and related entities for consideration other than cash, the valuation of the assets in consideration for which the equity shares are issued shall be done by an independent qualified valuer, which shall be submitted to the recognised stock exchanges where the equity shares of the issuer are listed:
- Provided that if the recognised stock exchange is not satisfied with the appropriateness of the valuation, it may get the valuation done by any other valuer and for this purpose it may obtain any information, as deemed necessary, from the issuer.
- (4) The special resolution shall specify the relevant date on the basis of which price of the equity shares to be allotted on conversion or exchange of convertible securities shall be calculated.

**Explanation:** For the purpose of sub-regulation (3), the term 'valuer' has the same meaning as is assigned to it under clause (r) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002.

**Allotment pursuant to special resolution [Regulation 74]**

- (1) Allotment pursuant to the special resolution shall be completed within a period of fifteen days from the date of passing of such resolution:

Provided that where any application for exemption from the applicability of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 or any approval or permission by any regulatory authority or the Central Government for allotment is pending, the period of fifteen days shall be counted from the date of order on such application or the date of approval or permission, as the case may be:

Provided further that where the Board has granted relaxation to the issuer in terms of regulation 29A of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, the preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, shall be made by it within such time as may be specified by the Board in its order granting the relaxation:

Provided further that requirement of allotment within fifteen days shall not apply to allotment of specified securities on preferential basis pursuant to a scheme of corporate debt restructuring as per the corporate debt restructuring framework specified by the Reserve Bank of India.

- (2) If the allotment of specified securities is not completed within fifteen days from the date of special resolution, a fresh special resolution shall be passed and the relevant date for determining the price of specified securities under this Chapter will be taken with reference to the date of latter special resolution.
- (3) Notwithstanding anything contained in this regulation, where a preferential allotment is made that attracts an obligation to make an open offer for shares of the issuer under Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011, and there is no offer made under sub-regulation (1) of regulation 20 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011, the period of fifteen days shall be counted from the expiry of the period specified in sub-regulation (1) of regulation 20 or date of receipt of all statutory approvals required for the completion of an open offer under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011:

**Provided** that if an offer is made under sub-regulation (1) of regulation 20 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011, the period of fifteen days shall be counted from the expiry of the offer period as defined in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011:

**Provided further** that the provisions of this sub-regulation shall not apply to an offer made under sub-regulation (1) of regulation 20 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011, pursuant to a preferential allotment.

- (4) Allotment shall only be made in dematerialised form.

**Explanation.**-The requirement of allotment in dematerialised form shall also be applicable for the equity shares to be allotted pursuant to exercise of option attached to warrant or conversion of convertible securities.

**Tenure of convertible securities [Regulation 75]**

The tenure of the convertible securities of the issuer shall not exceed eighteen months from the date of their allotment.

**Pricing of equity shares - Frequently traded shares [Regulation 76]**

- (1) If the equity shares of the issuer have been listed on a recognised stock exchange for a period of twenty six weeks or more as on the relevant date, the equity shares shall be allotted at a price not less than higher of the following:
- (a) The average of the weekly high and low of the volume weighted average price of the related equity shares quoted on the recognised stock exchange during the twenty six weeks preceding the relevant date; or
  - (b) The average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.
- (2) If the equity shares of the issuer have been listed on a recognised stock exchange for a period of less than twenty six weeks] as on the relevant date, the equity shares shall be allotted at a price not less than the higher of the following:
- (a) the price at which equity shares were issued by the issuer in its initial public offer or the value per share arrived at in a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956, pursuant to which the equity shares of the issuer were listed, as the case may be; or
  - (b) the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on the recognised stock exchange during the period shares have been listed preceding the relevant date; or
  - (c) the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.
- (3) Where the price of the equity shares is determined in terms of sub-regulation (2), such price shall be recomputed by the issuer on completion of twenty six weeks from the date of listing on a recognised stock exchange with reference to the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on the recognised stock exchange during these twenty six weeks and if such recomputed

price is higher than the price paid on allotment, the difference shall be paid by the allottees to the issuer.

- (4) Any preferential issue of specified securities, to qualified institutional buyers not exceeding five in number, shall be made at a price not less than the average of the weekly high and low of the volume weighted average prices] of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

**Explanation:** For the purpose of this regulation, 'stock exchange' means any of the recognised stock exchanges in which the equity shares are listed and in which the highest trading volume in respect of the equity shares of the issuer has been recorded during the preceding twenty six weeks prior to the relevant date.

**Pricing of equity shares – Infrequently traded shares [Regulation 76A]**

Where the shares are not frequently traded, the price determined by the issuer shall take into account valuation parameters including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies:

Provided that the issuer shall submit a certificate stating that the issuer is in compliance of this regulation, obtained from an independent merchant banker or an independent chartered accountant in practice having a minimum experience of ten years, to the stock exchange where the equity shares of the issuer are listed.

**Adjustments in pricing - Frequently or Infrequently traded shares [Regulation 76B]**

The price determined for preferential issue in accordance with regulation 76 or regulation 76A, shall be subject to appropriate adjustments, if the issuer :

- (a) makes an issue of equity shares by way of capitalization of profits or reserves, other than by way of a dividend on shares;
- (b) makes a rights issue of equity shares;
- (c) consolidates its outstanding equity shares into a smaller number of shares;
- (d) divides its outstanding equity shares including by way of stock split;
- (e) re-classifies any of its equity shares into other securities of the issuer;
- (f) is involved in such other similar events or circumstances, which in the opinion of the concerned stock exchange, requires adjustments.]

**Payment of consideration [Regulation 77]**

- (1) Full consideration of specified securities other than warrants issued under this Chapter shall be paid by the allottees at the time of allotment of such specified securities:

Provided that in case of a preferential issue of specified securities pursuant to a scheme of corporate debt restructuring as per the corporate debt restructuring framework specified by the Reserve Bank of India, the allottee may pay the consideration in terms of such scheme.



- (2) An amount equivalent to at least twenty five per cent. of the consideration determined in terms of regulation 76 shall be paid against each warrant on the date of allotment of warrants.
- (3) The balance seventy five per cent. of the consideration shall be paid at the time of allotment of equity shares pursuant to exercise of option against each such warrant by the warrant holder.
- (4) In case the warrant holder does not exercise the option to take equity shares against any of the warrants held by him, the consideration paid in respect of such warrant in terms of sub-regulation (2) shall be forfeited by the issuer.
- (5) The issuer shall ensure that the consideration of specified securities, if paid in cash, shall be received from respective allottee's bank account.
- (6) The issuer shall submit a certificate of the statutory auditor to the stock exchange where the equity shares of the issuer are listed stating that the issuer is in compliance of sub-regulation (5) and the relevant documents thereof are maintained by the issuer as on the date of certification.

**Lock-in of specified securities [Regulation 78]**

- (1) The specified securities allotted on preferential basis to promoter or promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to promoter or promoter group, shall be locked-in for a period of three years from date of trading approval granted for the specified securities or equity shares allotted pursuant to exercise of the option attached to warrant, as the case may be:  
Provided that not more than twenty per cent. of the total capital of the issuer shall be locked-in for three years from the date of trading approval:  
Provided further that equity shares allotted in excess of the twenty per cent. shall be locked-in for one year from the date of trading approval pursuant to exercise of options or otherwise, as the case may be.
- (2) The specified securities allotted on preferential basis to persons other than promoter and promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to such persons shall be locked in for a period of one year from the date of trading approval.
- (3) The lock-in of equity shares allotted pursuant to conversion of convertible securities other than warrants, issued on preferential basis shall be reduced to the extent the convertible securities have already been locked-in.
- (4) The equity shares issued on preferential basis pursuant to a scheme of corporate debt restructuring as per the Corporate Debt Restructuring framework specified by the Reserve Bank of India shall be locked-in for a period of one year from the trading approval :  
Provided that partly paid up equity shares, if any, shall be locked-in from the date of trading approval and the lock-in shall end on the expiry of one year from the date when such equity shares become fully paid up.

- (5) If the amount payable by the allottee, in case of re-calculation of price under sub-regulation (3) of regulation 76 is not paid till the expiry of lock-in period, the equity shares shall continue to be locked in till such amount is paid by the allottee.
- (6) The entire pre-preferential allotment shareholding of the allottees, if any, shall be locked-in from the relevant date upto a period of six months from the date of trading approval.

**Explanation 1 :** For the purpose of this regulation:

- (I) The expression “total capital of the issuer” means:
  - (a) equity share capital issued by way of public issue or rights issue including equity shares issued pursuant to conversion of specified securities which are convertible; and
  - (b) specified securities issued on a preferential basis to promoter or promoter group.
- (II)
  - (a) For the computation of twenty per cent. of the total capital of the issuer, the amount of minimum promoters’ contribution held and locked-in, in the past in terms of Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 or these regulations shall be taken into account.
  - (b) The minimum promoters’ contribution shall not again be put under fresh lock-in, even though it is considered for computing the requirement of twenty per cent. of the total capital of the issuer, in case the said minimum promoters’ contribution is free of lock-in at the time of the preferential issue.

**Explanation 2.** — For the purposes of this regulation, the date of trading approval shall mean the latest date when trading approval has been granted by all the recognised stock exchanges where the equity shares of the issuer are listed, for specified securities allotted as per the provisions of this Chapter.

**Transferability of locked-in specified securities and warrants issued on preferential basis [Regulation 79]**

- (1) Subject to the provisions of Securities and Exchange Board of India (Substantial Acquisition of shares and Takeovers) Regulations, 1997, specified securities held by promoters and locked-in in terms of sub-regulation (1) of regulation 78 may be transferred among promoters or promoter group or to a new promoter or persons in control of the issuer:

Provided that lock-in on such specified securities shall continue for the remaining period with the transferee.
- (2) The specified securities allotted on preferential basis shall not be transferred by the allottee till trading approval is granted for such securities by all the recognised stock exchanges where the equity shares of the issuer are listed.

**10. Qualified Institutions Placement**

**Applicability [Regulation 80]**

The provisions of this Chapter shall apply to a qualified institutions placement made by a listed issuer.

**Definitions [Regulation 81]**

For the purpose of this Chapter:

- (a) "eligible securities" include equity shares, non-convertible debt instruments along with warrants and convertible securities other than warrants;
- (b) "qualified institutions placement" means allotment of eligible securities by a listed issuer to qualified institutional buyers on private placement basis in terms of these regulations;
- (c) "relevant date" means:
  - (i) in case of allotment of equity shares, the date of the meeting in which the board of directors of the issuer or the committee of directors duly authorised by the board of directors of the issuer decides to open the proposed issue;
  - (ii) in case of allotment of eligible convertible securities, either the date of the meeting in which the board of directors of the issuer or the committee of directors duly authorised by the board of directors of the issuer decides to open the issue of such convertible securities or the date on which the holders of such convertible securities become entitled to apply for the equity shares.

**Conditions for qualified institutions placement [Regulation 82]**

A listed issuer may make qualified institutions placement if it satisfies the following conditions:

- (a) a special resolution approving the qualified institutions placement has been passed by its shareholders;
- (b) the equity shares of the same class, which are proposed to be allotted through qualified institutions placement or pursuant to conversion or exchange of eligible securities offered through qualified institutions placement, have been listed on a recognised stock exchange having nation wide trading terminal for a period of at least one year prior to the date of issuance of notice to its shareholders for convening the meeting to pass the special resolution:

Provided that where an issuer, being a transferee company in a scheme of merger, demerger, amalgamation or arrangement sanctioned by a High Court under sections 391 to 394 of the Companies Act, 1956, makes qualified institutions placement, the period for which the equity shares of the same class of the transferor company were listed on a stock exchange having nation wide trading terminals shall also be considered for the purpose of computation of the period of one year.

- (c) it is in compliance with the requirement of minimum public shareholding specified in the Securities Contracts (Regulation) Rules, 1957;
- (d) In the special resolution, it shall be, among other relevant matters, specified that the allotment is proposed to be made through qualified institutions placement and the relevant date referred to in sub-clause (ii) of clause (c) of regulation 81 shall also be specified.

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**Explanation:** For the purpose of clause (b), “equity shares of the same class” shall have the same meaning as assigned to them in Explanation to sub-rule (4) of rule 19 of the Securities Contracts (Regulation) Rules, 1957.

### **Appointment of merchant banker [Regulation 83]**

- (1) A qualified institutions placement shall be managed by merchant banker(s) registered with the Board who shall exercise due diligence.
- (2) The merchant banker shall, while seeking in-principle approval for listing of the eligible securities issued under qualified institutions placement, furnish to each stock exchange on which the same class of equity shares of the issuer are listed, a due diligence certificate stating that the eligible securities are being issued under qualified institutions placement and that the issuer complies with requirements of this Chapter.

### **Placement Document [Regulation 84]**

- (1) The qualified institutions placement shall be made on the basis of a placement document which shall contain all material information, including those specified in **Schedule XVIII** and disclosures similar to disclosures specified in Part G of Schedule VIII shall be made, if applicable.
- (2) The placement document shall be serially numbered and copies shall be circulated only to select investors.
- (3) The issuer shall, while seeking in-principle approval from the recognised stock exchange, furnish a copy of the placement document, a certificate confirming compliance with the provisions of this Chapter along with any other documents required by the stock exchange.
- (4) The placement document shall also be placed on the website of the concerned stock exchange and of the issuer with a disclaimer to the effect that it is in connection with a qualified institutions placement and that no offer is being made to the public or to any other category of investors.

### **Pricing [Regulation 85]**

- (1) The qualified institutions placement shall be made at a price not less than the average of the weekly high and low of the closing prices of the equity shares of the same class quoted on the stock exchange during the two weeks preceding the relevant date:  
Provided that the issuer may offer a discount of not more than five per cent. on the price so calculated for the qualified institutions placement, subject to approval of shareholders as specified in clause (a) of regulation 82 of these regulations.
- (2) Where eligible securities are convertible into or exchangeable with equity shares of the issuer, the issuer shall determine the price of such equity shares allotted pursuant to such conversion or exchange taking the relevant date as decided and disclosed by it while passing the special resolution.
- (3) The issuer shall not allot partly paid up eligible securities:

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Provided that in case of allotment of non convertible debt instruments along with warrants, the allottees may pay the full consideration or part thereof payable with respect to warrants, at the time of allotment of such warrants:

Provided further that on allotment of equity shares on exercise of options attached to warrants, such equity shares shall be fully paid up.

- (4) The prices determined for qualified institutions placement shall be subject to appropriate adjustments if the issuer:
- (a) makes an issue of equity shares by way of capitalization of profits or reserves, other than by way of a dividend on shares;
  - (b) makes a rights issue of equity shares;
  - (c) consolidates its outstanding equity shares into a smaller number of shares;
  - (d) divides its outstanding equity shares including by way of stock split;
  - (e) re-classifies any of its equity shares into other securities of the issuer;
  - (f) is involved in such other similar events or circumstances, which in the opinion of the concerned stock exchange, requires adjustments.

**Explanation:** For the purpose of sub-regulation (1), the term “stock exchange” means any of the recognised stock exchanges in which the equity shares of the same class of the issuer are listed and in which the highest trading volume in such equity shares has been recorded during the two weeks immediately preceding the relevant date.

### **Restrictions on allotment [Regulation 86]**

- (1) Allotment under the qualified institutions placement shall be made subject to the following conditions:
- (a) Minimum of ten per cent. of eligible securities shall be allotted to mutual funds:  
Provided that if the mutual funds 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 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 said rights in the capacity of a lender shall not be deemed to be a person related to promoters.
- (2) In a qualified institutions placement of non-convertible debt instrument along with warrants, an investor can subscribe to the combined offering of non- convertible debt instruments with warrants or to the individual securities, that is, either non- convertible debt instruments or warrants.
- (3) The applicants in qualified institutions placement shall not withdraw their bids after the closure of the issue.

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**Explanation:** For the purpose of clause (b) of sub-regulation (1), 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 [Regulation 87]**

- (1) The minimum number of allottees for each placement of eligible securities made under qualified institutions placement shall not be less than:
  - (a) two, where the issue size is less than or equal to two hundred and fifty crore rupees;
  - (b) five, where the issue size is greater than two hundred and fifty crore rupees:Provided that no single allottee shall be allotted more than fifty per cent. of the issue 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;

### **Validity of the special resolution [Regulation 88]**

- (1) Allotment pursuant to the special resolution referred to in clause (a) of regulation 82 shall be completed within a period of twelve months from the date of passing of the resolution.
- (2) The issuer shall not make subsequent qualified institutions placement until expiry of six months from the date of the prior qualified institutions placement made pursuant to one or more special resolutions.

### **Restrictions on amount raised [Regulation 89]**

The aggregate of the proposed qualified institutions placement and all previous qualified institutions placements made by the issuer in the same financial year shall not exceed five times the net worth of the issuer as per the audited balance sheet of the previous financial year.

### **Tenure [Regulation 90]**

The tenure of the convertible or exchangeable eligible securities issued through qualified institutions placement shall not exceed sixty months from the date of allotment.

### **Transferability of eligible securities [Regulation 91]**

The eligible securities allotted under qualified institutions placement shall not be sold by the allottee for a period of one year from the date of allotment, except on a recognised stock exchange.

## **11. Institutional Placement Programme**

### **Applicability [Regulation 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 [Regulation 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 [Regulation 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 [Regulation 91D]**

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

### **Offer Document [Regulation 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

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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 [Regulation 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 [Regulation 91G]**

- (1) The promoter or promoter group shall not make institutional placement programme if the promoter or any person who is part of the promoter group has purchased or sold the eligible securities during the twelve weeks period prior to the date of the programme and they shall not purchase or sell the eligible securities during the twelve weeks period after the date of the programme:

Provided that such promoter or promoter group may, within the period provided in sub-regulation (1), offer eligible securities held by them through institutional placement programme or offer for sale through stock exchange mechanism specified by the Board, subject to the condition that there shall be a gap of minimum two weeks between the two successive offer(s) and /or programme(s).]

- (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;



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- (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 [Regulation 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 [Regulation 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 [Regulation 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 [Regulation 91K]**

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

**Transferability of eligible securities [Regulation 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.

## **12. Bonus Issue**

**Conditions for bonus issue [Regulation 92]**

Subject to the provisions of the Companies Act, 1956 or any other applicable law for the time being in force, a listed issuer may issue bonus shares to its members if:

- (a) it is authorised by its articles of association for issue of bonus shares, capitalisation of reserves, etc.:

Provided that if there is no such provision in the articles of association, the issuer shall pass a resolution at its general body meeting making provisions in the articles of associations for capitalisation of reserve;

- (b) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- (c) it has sufficient reason to believe that it has not defaulted in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity and bonus;
- (d) the partly paid shares, if any outstanding on the date of allotment, are made fully paid up

**Restriction on bonus issue [Regulation 93]**

- (1) No issuer shall make a bonus issue of equity shares 172 unless it has made reservation of equity shares of the same class in favour of the holders of 173 outstanding 174[compulsorily] convertible debt instruments 175 [,if any,] in proportion to the convertible part thereof.
- (2) The equity shares 176[so] reserved for the holders of fully or partly 177[compulsorily] convertible debt instruments shall be issued at the time of conversion of such convertible debt instruments on the same terms or same proportion 178[at] which the bonus shares were issued.

**Bonus shares only against reserves, etc. if capitalised in cash [Regulation 94]**

- (1) The bonus issue shall be made out of free reserves built out of the genuine profits or securities premium collected in cash only and reserves created by revaluation of fixed assets shall not be capitalised for the purpose of issuing bonus shares.
- (2) Without prejudice to the provisions of sub-regulation (1), the bonus share shall not be issued in lieu of dividend.

**Completion of bonus issue [Regulation 95]**

- (1) An issuer, announcing a bonus issue after the approval of its board of directors and not requiring shareholders' approval for capitalisation of profits or reserves for making the bonus issue, shall implement the bonus issue within fifteen days from the date of approval of the issue by its board of directors:

Provided that where the issuer is required to seek shareholders' approval for capitalisation of profits or reserves for making the bonus issue, the bonus issue shall be implemented within two months from the date of the meeting of its board of directors wherein the decision to announce the bonus issue was taken subject to shareholders' approval.

- (2) Once the decision to make a bonus issue is announced, the issue cannot be withdrawn.

**13. Issue of Indian Depository Receipts**

**Applicability [Regulation 96]**

- (1) The provisions of this Chapter shall apply to an issue of Indian Depository Receipts (hereinafter referred to as "IDR") made in terms of section 605A of the Companies Act, 1956 and Companies (Issue of Indian Depository Receipts) Rules, 2004.
- (2) All provisions of these regulations shall be applicable in case of issue of IDR, except the disclosure requirements with respect to public issue and rights issue of specified securities as provided in these regulations and the following:
- (a) clauses (a), (b), (c) and (f) of sub-regulation (2) of regulation 4;
  - (b) sub-regulations (1), (2) and (3) of regulation 6,
  - (c) clauses (c),(d) and (e) of sub-regulation (1) of regulation 8;
  - (d) sub-regulations (2) and (3) of regulation 8;
  - (e) regulations 10,16,17,19, 20,21,22,23,24,26,27,31,41,42,45,47,49 and 68;
  - (f) sub-regulation (2) of regulation 11;
  - (g) sub-regulation (2) of regulation 28;
  - (h) clauses (b) and (c) of regulation 29;
  - (i) Parts III and IV of Chapter III;
  - (ia) regulation 43, except sub-regulation (3) thereof;
  - (j) Chapter IV;
  - (k) sub-regulation (3) of regulation 65;
  - (l) Chapters VII, VIII and IX.
- (3) Further, the applicability of regulation 60 shall be as follows:
- (a) the applicability of sub-regulations (1) and (7) and Explanation II shall be restricted to any issue advertisements made in India or any research report circulated in India, pertaining to the IDR issue of the issuing company;

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- (b) the applicability of sub-regulations (2) and (3) shall be restricted to any public communications and publicity material issued or published in any media in India;
- (c) the applicability of sub-regulations (5) and (6) shall be restricted to any material or information released in India and any issue advertisements and publicity materials issued or published in any media in India;
- (d) the applicability of sub-regulation (13) shall be restricted to any product advertisement of an issuing company issued or published in any media in India;
- (e) all other provisions of regulation 60 shall be applicable.

### **Eligibility [Regulation 97]**

An issuing company making an issue of IDR shall also satisfy the following:

- (a) the issuing company is listed in its home country;
- (b) the issuing company is not prohibited to issue securities by any regulatory body;
- (c) the issuing company has track record of compliance with securities market regulations in its home country.

**Explanation:** For the purpose of this regulation, the term “home country” means the country where the issuing company is incorporated and listed.

### **Conditions for issue of IDR [Regulation 98]**

An issue of IDR shall be subject to the following conditions:

- (a) issue size shall not be less than fifty crore rupees;
- (b) procedure to be followed by each class of applicant for applying shall be mentioned in the prospectus;
- (c) minimum application amount shall be twenty thousand rupees;
- (d) at least fifty per cent. of the IDR issued shall be allotted to qualified institutional buyers on proportionate basis as per illustration given in Part C of Schedule XI;
- (e) the balance fifty per cent. may be allocated among the categories of non-institutional investors and retail individual investors including employees at the discretion of the issuer and the manner of allocation shall be disclosed in the prospectus. Allotment to investors within a category shall be on proportionate basis:

Provided that at least thirty per cent. of the IDRs being offered in the public issue shall be available for allocation to retail individual investors and in case of under subscription in retail individual investor category, spillover to other categories to the extent of under subscription may be permitted.

**Explanation:** For the purpose of this regulation, “employee” shall mean a person who,-

- (a) is a resident of India, and
- (b) is a permanent and full-time employee or a director, whether whole time or part time, of the issuer or of the holding company or subsidiary company or of the

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material associate(s) of the issuer, whose financial statements are consolidated with the issuer's financial statements, working in India and does not include promoters and an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse).]

- (f) At any given time, there shall be only one denomination of IDR of the issuing company.
- (g) 182[the issuing company shall ensure that the underlying equity shares against which IDRs are issued have been or will be listed in its home country before listing of IDRs in stock exchange(s).
- (h) the issuing company shall ensure that the underlying shares of IDRs shall rank pari-passu with the existing shares of the same class.

### **Minimum subscription [Regulation 99]**

- (1) For non-underwritten issues:
  - (a) If the issuing company does not receive the minimum subscription of ninety per cent. of the offer through offer document on the date of closure of the issue, or if the subscription level falls below ninety per cent. after the closure of issue on account of cheques having being returned unpaid or withdrawal of applications, the issuing company shall forthwith refund the entire subscription amount received.
  - (b) If the issuing company fails to refund the entire subscription amount within fifteen days from the date of the closure of the issue, it is liable to pay the amount with interest to the subscribers at the rate of fifteen per cent. per annum for the period of delay.
- (2) For underwritten issues: If the issuing company does not receive the minimum subscription of ninety per cent. of the offer through offer document including devolvement of underwriters within sixty days from the date of closure of the issue, the issuing company shall forthwith refund the entire subscription amount received with interest to the subscribers at the rate of fifteen per cent. per annum for the period of delay beyond sixty days.

### **Fungibility [Regulation 100]**

The Indian Depository Receipts shall be fungible into underlying equity shares of the issuing company in the manner specified by the Board and Reserve Bank of India, from time to time.

### **Filing of draft prospectus, due diligence certificates, payment of fees and issue advertisement for IDR [Regulation 101]**

- (1) The issuing company shall appoint one or more merchant bankers, at least one of whom shall be a lead merchant banker and shall also appoint other intermediaries, in consultation with the lead merchant banker and shall enter into an agreement with the merchant banker on the lines of format of agreement as specified in Schedule II.
- (2) Where the issue is managed by more than one merchant banker, the rights, obligations

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and responsibilities, relating inter-alia to disclosures, allotment, refund and underwriting obligations, if any, of each merchant banker shall be predetermined and disclosed in the prospectus on the lines of format as specified in **Schedule I**.

- (3) The issuing company shall file a draft prospectus with the Board through a merchant banker along with the requisite fee, as prescribed in Companies (Issue of Indian Depository Receipts) Rules, 2004.
- (4) The prospectus filed with the Board under this regulation shall also be furnished to the Board in a soft copy on the lines specified in **Schedule V**.
- (5) The lead merchant bankers shall:
  - (a) submit a due diligence certificate as per format given in **Part C of Schedule XIX** to the Board along with the draft prospectus.
  - (b) certify that all amendments, suggestions or observations made by the Board have been incorporated in the prospectus
  - (c) submit a fresh due diligence certificate as per format given in **Part C of Schedule XIX**, at the time of filing the prospectus with the Registrar of the Companies.
  - (d) furnish a certificate as per format given in **Part C of Schedule XIX**, immediately before the opening of the issue, certifying that no corrective action is required on its part.
  - (e) furnish a certificate as per format given in **Part C of Schedule XIX**, after the issue has opened but before it closes for subscription.
- (6) The issuing company shall make arrangements for mandatory collection centres as specified in **Schedule III**.
- (7) The issuing company shall issue an advertisement in one English national daily newspaper with wide circulation and one Hindi national daily newspaper with wide circulation, soon after receiving final observations, if any, on the publicly filed draft prospectus with the Board, which shall be on the lines of the format and contain the minimum disclosures as given in **Part A of Schedule XIII**.

### **Agreements with other intermediaries and others [Regulation 101A]**

- (1) The issuing company shall appoint a registrar and transfer agent which has connectivity with all the depositories.
- (2) The issuing company shall enter into an agreement with overseas custodian bank and domestic depository.
- (3) The lead merchant banker, after independently assessing the capability of other intermediaries and others to carry out their obligations, shall advise the issuing company on their appointment.

### **Display of bid data and issue of allotment letter [Regulation 102]**

- (1) The stock exchange(s) offering online bidding system for the book building process shall

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display on their website, the data pertaining to book built IDR issue, in the format specified in Part B(2) of Schedule XI, from the date of opening of the bids till at least three days after closure of bids.

- (2) The issuing company shall ensure that letter of allotment for the IDRs are issued simultaneously to all allottees and that in the event of it being impossible to issue letters of regret at the same time, a notice to that effect be issued in the media so that it appears on the morning after the letters of allotment have been dispatched.

### **Disclosures in prospectus and abridged prospectus [Regulation 103]**

- (1) The prospectus shall contain all material disclosures which are true, correct and adequate so as to enable the applicants to take an informed investment decision.
- (2) Without prejudice to the generality of sub-regulation (1), the prospectus shall contain:
  - (a) the disclosures specified in Schedule to Companies (Issue of Indian Depository Receipts) Rules, 2004; and
  - (b) the disclosures in the manner as specified in Part A of Schedule XIX.
- (3) The abridged prospectus for issue of Indian Depository Receipts shall contain the disclosures as specified in Part B of Schedule XIX.

### **Post-issue reports [Regulation 104]**

- (1) The merchant banker shall submit post-issue reports to the Board in accordance with sub-regulation (2).
- (2) The post-issue reports shall be submitted as follows:
  - (a) initial post issue report on the lines of Parts A and B of Schedule XVI, within three days of closure of the issue;
  - (b) final post issue report on the lines of Parts C and D of Schedule XVI, within fifteen days of the date of finalisation of basis of allotment or within fifteen days of refund of money in case of failure of issue.

### **Undersubscribed issue [Regulation 105]**

In case of undersubscribed issue of IDR, the merchant banker shall furnish information in respect of underwriters who have failed to meet their underwriting devolvement to the Board on the lines of the format specified in **Schedule XVII**.

### **Finalisation of basis of allotment [Regulation 106]**

The executive director or managing director of the stock exchange, where the IDR are proposed to be listed, along with the post issue lead merchant bankers and registrars to the issue shall ensure that the basis of allotment is finalised in a fair and proper manner in accordance with the allotment procedure as specified in **Schedule XV**.

## 14. Rights Issue of Indian Depository Receipts

### Applicability [Regulation 106A]

- (1) In addition to compliance with Chapter X, a listed issuer offering IDR through a rights issue shall satisfy the conditions specified in this Chapter at the time of filing the offer document:

Provided that the provisions of the following regulations shall not be applicable in case of rights issue of IDRs:

- (a) clauses (a), (b), (c), (d) and (e) of regulation 98;
  - (b) regulation 102; and
  - (c) regulation 103.
- (2) Every listed issuer offering IDRs through a rights issue shall prepare the offer document in accordance with the home country requirements along with an addendum containing disclosures as specified in Part A of Schedule XXI and regulation 106F and file the same with the Board and the stock exchanges on which the IDRs of the issuer are listed.

### Eligibility [Regulation 106B]

No issuer shall make a rights issue of IDRs:

- (a) if at the time of undertaking the rights issue, the issuer is in breach of ongoing material obligations under the IDR Listing Agreement as may be applicable to such issuer or material obligations under the deposit agreement entered into between the domestic depository and the issuer at the time of initial offering of IDRs; and
- (b) unless it has made an application to all the recognised stock exchanges in India, where its IDRs are already listed, for listing of the IDRs to be issued by way of rights and has chosen one of them as the designated stock exchange.

### Renunciation by an IDR holder [Regulation 106C]

Unless the laws of the home jurisdiction of the issuer company otherwise provide, the rights offering shall be deemed to include a right exercisable by the person concerned to renounce the IDRs offered to the IDR holder in favour of any other person subject to applicable laws and the same shall be disclosed in the offer document.

### Depository [Regulation 106D]

The domestic depository shall, in accordance with the depository agreement executed with the issuer at the time of initial offering of IDRs, take such steps as are necessary to enable the IDR holders to have entitlements under the rights offering and issue additional IDRs to such IDR holders, distribute the rights to the IDR Holders/renouncees or arrange for the IDR holders/renouncees to subscribe for any additional rights which are available due to lack of take-up by other holders of underlying shares.



**Record Date [Regulation 106E]**

- (1) A listed issuer making a rights issue of IDRs shall in accordance with provisions of the listing agreement, announce a record date for the purpose of determining the shareholders eligible to apply for IDRs in the proposed rights issue.
- (2) If the issuer withdraws the rights issue after announcing the record date, it shall notify the Board about the same and shall notify the same in one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where principal office of the issuer is situated in India. If the issuer withdraws the rights issue after announcing the record date, it shall not make an application for offering of IDRs on a rights basis for a period of twelve months from the said record date.

**Disclosures in the offer document and the addendum for the rights offering [Regulation 106F]**

- (1) The offer document for the rights offering shall contain disclosures as required under the home country regulations of the issuer.
- (2) Apart from the disclosures as required under the home country regulations, an additional wrap (addendum to offer document) shall be attached to the offer document to be circulated in India containing information as specified in Part A of Schedule XXI and other instructions as to the procedures and process to be followed with respect to rights issue of IDRs in India.
- (3) Without prejudice to the generality of sub-regulations (1) and (2), the offer document and the addendum attached with it, shall contain all material information, which are true, correct and adequate, so as to enable the applicants to take an informed investment decision.

**Filing of draft offer document and the addendum for rights offering [Regulation 106G]**

- (1) The issuer shall appoint one or more merchant bankers, one of whom shall be a lead merchant banker and shall also appoint other intermediaries, in consultation with the lead merchant banker, to carry out the obligations relating to the issue.
- (2) The issuer shall, through the lead merchant banker, file the draft offer document prepared in accordance with the home country requirements along with an addendum containing disclosures as specified in Part A of Schedule XXI with the Board, as a confidential filing accompanied with fees as specified in Part A of Schedule IV.
- (3) The Board may specify changes or issue observations, if any, on the draft offer document and the addendum within thirty days or from the following dates, whichever is later:
  - (a) the date of receipt of the draft offer document prepared in accordance with the home country requirements along with an addendum under sub-regulation (2); or
  - (b) the date of receipt of satisfactory reply from the lead merchant bankers, where the Board has sought any clarification or additional information from them; or

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- (c) the date of receipt of clarification or information from any regulator or agency, where the Board has sought any clarification or information from such regulator or agency; or
  - (d) the date of receipt of a copy of in-principle approval letter issued by the recognised stock exchanges.
- (4) If the Board specifies changes or issues observations on the draft offer document and the addendum under sub-regulation(3), the issuer and the merchant banker shall file the revised draft offer document and the updated addendum after incorporating the changes suggested or specified by the Board.
- (5) The issuer shall also submit an undertaking from the Overseas Custodian and Domestic Depository addressed to the issuer, to comply with their obligations with respect to the said rights issue under their respective agreements entered into between them, along with the offer document.
- (6) The issuer shall ensure that the Compliance Officer, in charge of ensuring compliance with the obligations under this Chapter, functions from within the territorial limits of India.

### **Fast track issue [Regulation 106H]**

- (1) Nothing contained in sub-regulations (1), (2), (3) and (4) of regulation 106G shall apply, if the issuer satisfies the following conditions:
- (a) the issuer is in compliance in all material respects with the provisions of deposit agreement and the provisions of listing agreements (or listing conditions) applicable in all the jurisdictions wherever the issuer is listed, for a period of at least three years immediately preceding the date of filing of the offer document, and a certification to this effect is provided by the issuer;
  - (b) the offer document for the rights offering of the securities of the issuer has been filed and reviewed by the securities regulator in the home country of the issuer;
  - (c) there are no pending show-cause notices or prosecution proceedings against the issuer or its promoters, where applicable, or whole time directors on the reference date by the Board or the regulatory authorities in its home country restricting them from accessing the capital markets; and
  - (d) the issuer has redressed at least ninety five per cent. of the complaints received from the IDR holders before the end of the three months period immediately preceding the month of date of filing the letter of offer with the designated stock exchange.
- (2) Where the conditions in sub-regulation (1) are satisfied, the issuer may opt for rights issue of IDRs by filing a copy of the offer document prepared in accordance with the home country requirements along with an addendum containing disclosures as specified in Part A of Schedule XXI with the Board for record purposes, before filing the same with the recognised stock exchanges.

**Dispatch of abridged letter of offer and application form [Regulation 106-I]**

- (1) The abridged letter of offer, containing disclosures as specified in Part B of Schedule XXI, for a rights offering, along with application form, shall be dispatched through registered post or speed post to all the eligible IDR holders at least three days before the date of opening of the issue and shall be made available on the website of the issuer with appropriate access restrictions at the same time it is made available to the holders of its equity shares.

Provided that a hard copy of the offer document for a rights offering along with the addendum shall be made available at the principal office of the issuer or lead merchant banker to any existing IDR holder who has made a request in this regard.

- (2) The eligible IDR holders who have not received the application form may apply in writing on a plain paper to the domestic depository, along with the requisite application money within the time frame for acceptance.
- (3) The eligible IDR holders making an application otherwise than on the application form shall not renounce their rights and shall not utilise the application form for any purpose including renunciation even if it is received subsequently.
- (4) Where any eligible IDR holder makes an application on an application form as well as on plain paper, such application is liable to be rejected.
- (5) The issue price and the ratio shall be decided simultaneously with record date in accordance with the home country regulations.

**Period of subscription and issue of allotment letter [Regulation 106J]**

- (1) A rights issue shall be open for subscription in India for a period as applicable under the laws of its home country but in no case less than ten days.
- (2) The issuing company shall ensure that it sends the allotment letter of rights to IDR Holders at the time they are sent to shareholders of the issuing company as per the requirement of its home country or other jurisdictions where its securities are listed.]

**Pre-Issue Advertisement for rights issue [Regulation 106K]**

- (1) The issuer shall issue an advertisement for the rights issue disclosing the following:
  - (a) the date of completion of despatch of the abridged letter of offer and the application form;
  - (b) the centres other than principal office of the issuer in India where the eligible IDR holders may obtain duplicate copies of the application forms in case they do not receive the application form within a reasonable time after opening of the rights issue;
  - (c) a statement that if the eligible IDR holders have neither received the original application forms nor they are in a position to obtain the duplicate forms, they may make application in writing on a plain paper to subscribe to the rights issue;

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- (d) a format to enable the eligible IDR holders, to make the application on a plain paper specifying therein necessary particulars such as name, address, ratio of rights issue, issue price, number of IDRs held, ledger folio numbers, depository participant ID, client ID, number of IDRs entitled and applied for, amount to be paid along with application, and particulars of cheque, etc. to be drawn in favour of the issuer's account;
  - (e) a statement that the applications can be directly sent by the eligible IDR holders through registered post together with the application moneys to the issuer's designated official at the address given in the advertisement;
  - (f) a statement to the effect that if the eligible IDR holder makes an application on plain paper and also on application form both his applications shall be liable to be rejected at the option of the issuer.
- (2) The advertisement shall be made in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where principal office of the issuer is situated in India at least three days before the date of opening of the issue.

### Utilisation of funds raised in rights issue [Regulation 106L]

- (1) The issuer shall utilise funds raised in relation to the IDRs pursuant to the rights offering only upon completion of the allotment process.

## 15. Issue of Specified Securities by Small and Medium Enterprises

### Applicability [Regulation 106M]

- (1) An issuer whose post-issue face value capital does not exceed ten crore rupees shall issue its specified securities in accordance with provisions of this Chapter.
- (2) An issuer, whose post issue face value capital is more than ten crore rupees and upto twenty five crore rupees, may also issue specified securities in accordance with provisions of this Chapter.
- (3) The provisions of these regulations, in respect of the matters not specifically dealt or excluded under this Chapter, shall mutatis mutandis apply to any issue of specified securities under this Chapter:

Provided that provisions of sub-regulations (1), (2) and (3) of regulation 6, regulation 8, regulation 9, regulation 10, regulation 25, regulation 26, regulation 27 and sub-regulation (1) of regulation 49 of these regulations shall not apply to an issue of specified securities made under this Chapter.

### Definitions [Regulation 106 N]

- (1) In this Chapter, unless the context otherwise requires, -
- (a) "Main Board" means a recognized stock exchange having nationwide trading terminals, other than SME exchange;

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- (b) “nominated investor” means a qualified institutional buyer or private equity fund, who enters into an agreement with the merchant banker to subscribe to the issue in case of under-subscription or to receive or deliver the specified securities in the market-making process;

Explanation: “private equity fund” means a fund registered with any regulatory authority or a fund established by any person registered with any regulatory authority;

- (c) “SME exchange” means a trading platform of a recognised stock exchange having nationwide trading terminals permitted by the Board to list the specified securities issued in accordance with this Chapter and includes a stock exchange granted recognition for this purpose but does not include the Main Board;
- (2) All other words and expression used in this Chapter but not defined under sub- regulation (1) shall derive their meaning from regulation 2 of these regulations.

**Filing of offer document and due diligence certificate [Regulation 106-O]**

- (1) The issuer making a public issue or rights issue of specified securities under this Chapter shall not file the draft offer document with the Board:

Provided that the issuer shall file a copy of the offer document with the Board through a merchant banker, simultaneously with the filing of the prospectus with the SME exchange and the Registrar of Companies or letter of offer with the SME Exchange:

Provided further that the Board shall not issue any observation on the offer document.

- (2) The merchant banker shall submit a due-diligence certificate as per Form A of Schedule VI including additional confirmations as provided in Form H of Schedule VI alongwith the offer document to the Board.
- (3) The offer document shall be displayed from the date of filing in terms of sub-regulation (1) on the websites of the Board, the issuer, the merchant banker and the SME exchange where the specified securities offered through the offer document are proposed to be listed.

**Underwriting by merchant bankers and underwriters [Regulation 106P]**

- (1) The issue made under this Chapter shall be hundred per cent. underwritten.

Explanation: The underwriting under this regulation shall be for the entire hundred percent of the offer through offer document and shall not be restricted upto the minimum subscription level.

- (2) The merchant banker/s shall underwrite at least fifteen per cent of the issue size on his/ their own account/s.
- (3) The issuer in consultation with merchant banker may appoint underwriters in accordance with Securities and Exchange Board of India (Underwriters) Regulations, 1993 and the merchant banker may enter into an agreement with nominated investor indicating therein the number of specified securities which they agree to subscribe at issue price in case of under-subscription.

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- (4) If other underwriters fail to fulfill their underwriting obligations or other nominated investors fail to subscribe to unsubscribed portion, the merchant banker shall fulfill the underwriting obligations.
- (5) The underwriters other than the merchant banker and the nominated investors, who have entered into an agreement for subscribing to the issue in case of under-subscription, shall not subscribe to the issue made under this Chapter in any manner except for fulfilling their obligations under their respective agreements with the merchant banker in this regard.
- (6) All the underwriting and subscription arrangements made by the merchant banker shall be disclosed in the offer document.
- (7) The merchant banker shall file an undertaking to the Board that the issue has been hundred per cent. underwritten along with the list of underwriters and nominated investors indicating the extent of underwriting or subscription commitment made by them, one day before the opening of issue.

### **Minimum Application Value [Regulation 106 Q]**

The issuer shall stipulate in the offer document, the minimum application size in terms of number of specified securities which shall not be less than one lakh rupees per application.

### **Minimum Number of Allottees [Regulation 106R]**

No allotment shall be made pursuant to any initial public offer made under this Chapter, if the number of prospective allottees is less than fifty.

### **Listing of specified securities [Regulation 106S]**

- (1) Specified securities issued in accordance with this Chapter shall be listed on SME exchange.
- (2) Where any listed issuer issues specified securities in accordance with provisions of this Chapter it shall migrate the specified securities already listed on any recognized stock exchange/s to the SME exchange.

### **Migration to SME exchange [Regulation 106T]**

A listed issuer whose post-issue face value capital is less than twenty five crore rupees may migrate its specified securities to SME exchange if its shareholders approve such migration by passing a special resolution through postal ballot to this effect and if such issuer fulfils the eligibility criteria for listing laid down by the SME exchange:

Provided that the special resolution shall be acted upon if and only if the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal.

### **Migration to Main Board [Regulation 106U]**

- (1) An issuer, whose specified securities are listed on a SME Exchange and whose post issue face value capital is more than ten crore rupees and upto twenty five crore rupees,

may migrate its specified securities to Main Board if its shareholders approve such migration by passing a special resolution through postal ballot to this effect and if such issuer fulfils the eligibility criteria for listing laid down by the Main Board:

Provided that the special resolution shall be acted upon if and only if the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal.

- (2) Where the post issue face value capital of an issuer listed on SME exchange is likely to increase beyond twenty five crore rupees by virtue of any further issue of capital by the issuer by way of rights issue, preferential issue, bonus issue, etc. the issuer shall migrate its specified securities listed on SME exchange to Main Board and seek listing of specified securities proposed to be issued on the Main Board subject to the fulfilment of the eligibility criteria for listing of specified securities laid down by the Main Board:

Provided that no further issue of capital by the issuer shall be made unless –

- (a) the shareholders of the issuer have approved the migration by passing a special resolution through postal ballot wherein the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal;
- (b) the issuer has obtained in- principle approval from the Main Board for listing of its entire specified securities on it.

#### **Market Making [Regulation 106V]**

- (1) The merchant banker shall ensure compulsory market making through the stock brokers of SME exchange in the manner specified by the Board for a minimum period of three years from the date of listing of specified securities issued under this Chapter on SME exchange or from the date of migration from Main Board in terms of regulation 202[106T], as the case may be.
- (2) The merchant banker may enter into agreement with nominated investors for receiving or delivering the specified securities in the market making subject to the prior approval by the SME exchange where the specified securities are proposed to be listed.
- (3) The issuer shall disclose the details of arrangement of market making in the offer document.
- (4) The specified securities being bought or sold in the process of market making may be transferred to or from the nominated investor with whom the merchant banker has entered into an agreement for the market making:

Provided that the inventory of the market maker, as on the date of allotment of the specified securities, shall be at least five per cent. of the specified securities proposed to be listed on SME exchange.

- (5) The market maker shall buy the entire shareholding of a shareholder of the issuer in one lot, where value of such shareholding is less than the minimum contract size allowed for

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trading on the SME exchange:

Provided that market maker shall not sell in lots less than the minimum contract size allowed for trading on the SME exchange.

- (6) Market maker shall not buy the shares from the promoters or persons belonging to promoter group of the issuer or any person who has acquired shares from such promoter or person belonging to promoter group, during the compulsory market making period laid down under sub-regulation (1).
- (7) The promoters' holding shall not be eligible for offering to the market maker under this Chapter during the period specified in sub-regulation (1):  
Provided that the promoters' holding which is not locked-in as per these regulations can be traded with prior permission of the SME exchange, in the manner specified by the Board.
- (8) Subject to the agreement between the issuer and the merchant banker/s, the merchant banker/s who have the responsibility of market making may be represented on the board of the issuer.

## 16. Listing on Institutional Trading Platform

### Applicability [Regulation 106W]

- (1) The provisions of this chapter shall apply to entities which seek listing of their specified securities exclusively on the institutional trading platform either pursuant to a public issue or otherwise.
- (2) The provisions of these regulations, in respect of the matters not specifically dealt or excluded under this Chapter, shall apply mutatis mutandis to any listing of specified securities under this Chapter:  
Provided that the provisions of sub-regulation (4) of regulation 4, sub-regulations (1) and (2) of regulation 26 of these regulations shall not apply to listing of specified securities made under this Chapter.
- (3) The institutional trading platform shall be accessible to institutional investors and non-institutional investors.

### Definitions [Regulation 106X]

- (1) In this chapter, unless the context otherwise requires,-
  - (a) "institutional trading platform" means the trading platform for listing and trading of specified securities of entities that comply with the eligibility criteria specified in regulation 106Y;
  - (b) "institutional investor" means:
    - (i) qualified institutional buyer; or



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- (ii) family trust or systematically important NBFCs registered with Reserve Bank of India or intermediaries registered with the Board, all with net-worth of more than five hundred crore rupees, as per the last audited financial statements;
  - (c) “persons acting in concert” shall have the same meaning as assigned to it under regulation 2(1)(q) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
- (3) All other words and expressions used in this Chapter but not defined under sub-regulation (1) shall derive their meaning from regulation 2 of these regulations.

**Eligibility [Regulation 106Y]**

- (1) The following entities shall be eligible for listing on the institutional trading platform,-
- (a) an entity which is intensive in the use of technology, information technology, intellectual property, data analytics, bio-technology or nano-technology to provide products, services or business platforms with substantial value addition and at least twenty five per cent of its pre-issue capital is held by qualified institutional buyer(s) as on the date of filing of draft information document or draft offer document with the Board, as the case may be; or
  - (b) any other entity in which at least fifty per cent of the pre-issue capital is held by qualified institutional buyers as on the date of filing of draft information document or draft offer document with the Board, as the case may be.
- (2) No person, individually or collectively with persons acting in concert, shall hold twenty five per cent or more of the post-issue share capital in an entity specified in sub-regulation (1).

**Listing without public issue [Regulation 106Z]**

- (1) An entity seeking listing of its specified securities without making a public issue shall file a draft information document along with necessary documents with the Board in accordance with these regulations along with fee as specified in Schedule IV of these regulations.
- (2) The draft information document shall contain the disclosures as specified for draft offer document in these regulations.
- (3) Regulations relating to the following shall not be applicable in case of listing without public issue:
- (i) allotment;
  - (ii) issue opening / closing;
  - (iii) advertisement;
  - (iv) underwriting;
  - (v) sub-regulation (5) of regulation 26;
  - (vi) pricing;

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- (vii) dispatch of issue material;
- (viii) and other such provisions related to offer of specified securities to public.
- (4) The entity shall obtain in-principle approval from the recognised stock exchanges on which it proposes to get its specified securities listed.
- (5) The entity shall list its specified securities on the recognised stock exchange(s) within thirty days:
  - (a) from the date of issuance of observations by the Board; or
  - (b) from the expiry of the period stipulated in sub-regulation (2) of regulation 6, if the Board has not issued any such observations.
- (6) The entity which has received in-principle approval from the recognised stock exchange for listing of its specified securities on the institutional trading platform, without making a public issue, shall be deemed to have been waived by the Board under sub-rule (7) of rule 19 from the requirement of clause (b) of sub-rule (2) of rule 19 of Securities Contracts (Regulation) Rules, 1957 for the limited purpose of listing on the institutional trading platform.
- (7) Provisions relating to minimum public shareholding shall not apply to entities listed on institutional trading platform without making a public issue.
- (8) The draft and final information document shall be approved by the board of directors of the entity and shall be signed by all directors, the Chief Executive Officer, i.e., the Managing Director or Manager within the meaning of the Companies Act, 2013 and the Chief Financial Officer, i.e., the Whole-time Finance Director or any other person heading the finance function and discharging that function.
- (9) The signatories shall also certify that all disclosures made in the information document are true and correct.
- (10) In case of mis-statement in the information document or any omission therein, any person who has authorized the issue of information document shall be liable in accordance with the provisions of the SEBI Act, 1992 and regulations made thereunder.

### **Listing pursuant to public issue [Regulation 106ZA]**

- (1) An entity seeking issue and listing of its specified securities shall file a draft offer document along with necessary documents with the Board in accordance with these regulations along with fees as specified in Schedule IV of these regulations.
- (2) The minimum application size shall be ten lakh rupees.
- (3) The number of allottees shall be more than two hundred.
- (4) The allocation in the net offer to public category shall be as follows:
  - (a) seventy-five per cent to institutional investors:  
Provided that there shall be no separate allocation for Anchor Investors;
  - (b) twenty-five per cent to non-institutional investors;

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- (5) Any under-subscription in the non-institutional investor category shall be available for subscription under the institutional investors' category.
- (6) The allotment to institutional investors may be on a discretionary basis whereas the allotment to non-institutional investors shall be on a proportionate basis.
- (7) The mode of allotment to institutional investors, i.e., whether discretionary or proportionate, shall be disclosed prior to or at the time of filing of the Red Herring Prospectus.
- (8) In case of discretionary allotment to institutional investors, no institutional investor shall be allotted more than ten per cent of the issue size.
- (9) The offer document shall disclose the broad objects of the issue.
- (10) The basis of issue price may include disclosures, except projections, as deemed fit by the issuers in order to enable investors to take informed decisions and the disclosures shall suitably caution the investors about basis of valuation.

**Lock-in [Regulation 106ZB]**

- (1) The entire pre-issue capital of the shareholders shall be locked-in for a period of six months from the date of allotment in case of listing pursuant to public issue or date of listing in case of listing without public issue:

Provided that nothing contained in this regulation shall apply to:

- (i) equity shares allotted to employees under an employee stock option or employee stock purchase scheme of the entity prior to the initial public offer, if the entity has made full disclosures with respect to such options or scheme in accordance with Part A of Schedule VIII;
- (ii) equity shares held by a venture capital fund or alternative investment fund of Category I or a foreign venture capital investor:  
Provided that such equity shares shall be locked in for a period of at least one year from the date of purchase by the venture capital fund or alternative investment fund or foreign venture capital investor.
- (iii) equity shares held by persons other than promoters, continuously for a period of at least one year prior to the date of listing in case of listing without public issue:

Explanation.- For the purpose of clause (ii) and (iii), in case such equity shares have resulted pursuant to conversion of fully paid-up compulsorily convertible securities, the holding period of such convertible securities as well as that of resultant equity shares together shall be considered for the purpose of calculation of one year period and the convertible securities shall be deemed to be fully paid-up, if the entire consideration payable thereon has been paid at the time of their conversion.

- (2) The specified securities held by promoters and locked-in may be pledged with any scheduled commercial bank or public financial institution as collateral security for loan granted by such bank or institution if the pledge of specified securities is one of the terms

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of sanction of the loan.

- (3) The specified securities that are locked-in may be transferable in accordance with regulation 40 of these regulations.
- (4) All specified securities allotted on a discretionary basis shall be locked-in in accordance with the requirements for lock-in by Anchor Investors on main board of the stock exchange, as specified under clause 10(j) in Part A of Schedule XI.

### **Trading lot [Regulation 106ZC]**

The minimum trading lot shall be ten lakh rupees.

### **Exit of entities listed without making a public issue [Regulation 106ZD]**

- (1) An entity whose specified securities are listed on the institutional trading platform without making a public issue may exit from that platform, if-
  - (a) its shareholders approve such exit by passing a special resolution through postal ballot where ninety per cent of the total votes and the majority of non-promoter votes have been cast in favor of such proposal; and
  - (b) the recognised stock exchange where its shares are listed approve of such an exit.
- (2) The recognised stock exchange may delist the specified securities of an entity listed without making a public issue upon non-compliance of the conditions of listing and in the manner as specified by the stock exchange.
- (3) No entity promoted by promoters and directors of an entity delisted under sub-regulation (2), shall be permitted to list on institutional trading platform for a period of five years from the date of such delisting:

Provided that the provisions of this regulation shall not apply to another entity promoted by the independent directors of such a delisted entity.

### **Migration to main board [Regulation 106ZE]**

An entity that has listed its specified securities on a recognised stock exchange in accordance with the provisions of this Chapter may at its option migrate to the main board of that recognised stock exchange after expiry of three years from the date of listing subject to compliance with the eligibility requirements of the stock exchange.

### **Repeal and saving [Regulation 106ZF]**

The provisions of Chapter XC and all directions, guidelines, instructions or circulars, issued by the Board as applicable to small and medium enterprises which are listed on the institutional trading platform, as on the date of commencement of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2015 shall continue to remain in force for the period such companies are listed on the institutional trading platform or till such time as specified by the Board, whichever is earlier, as if Chapter XC had not been repealed.

Explanation.- Under this Chapter, the phrases 'pre-issue' and 'post-issue', wherever they occur shall be construed as 'pre-listing' and 'post-listing', respectively, in case of listing without public issue.

## **17. Listing of Securities on Stock Exchanges**

### **In-principle approval of recognized stock exchange(s) [Regulation 107]**

- (1) The issuer or the issuing company, as the case may be, shall obtain in-principle approval from recognised stock exchange as follows:
  - (a) in case of an initial public offer or an issue of Indian Depository Receipts (hereinafter referred to as 'IDRs') , from all the recognised stock exchange(s) on which the issuer or the issuing company, proposes to get its specified securities or IDRs, as the case may be, listed; and
  - (b) in case of other issues, before issuance of further securities, as follows:
    - (i) where the securities are listed only on recognised stock exchange(s) having nationwide trading terminals, from all such stock exchange(s);
    - (ii) where the securities are not listed on any recognised stock exchange having nationwide trading terminals, from all the stock exchange(s) on which the securities of the issuer are proposed to be listed;
    - (iii) where the specified are listed on recognised stock exchange(s) having nationwide trading terminals as well as on the recognised stock exchange(s) not having nationwide trading terminals, from all recognised stock exchange(s) having nationwide trading terminals.

### **Application for Listing [Regulation 108]**

- (1) The issuer or the issuing company, as the case may be, shall complete the pre-listing formalities within the time lines specified by the Board from time to time.
- (2) The issuer or the issuing company, as the case may be, shall, make an application for listing, within twenty days from the date of allotment, to one or more recognized stock exchange(s) along with the documents specified by stock exchange(s) from time to time.
- (3) In case of delay in making application for listing beyond twenty days from the date of allotment, the issuer or the issuing company, as the case may be, shall pay penal interest to allottees for each day of delay at the rate of atleast ten per cent. per annum from the expiry of thirty days from date of allotment till the listing of such securities to the allottees.
- (4) In the event of non-receipt of listing permission from the stock exchange(s) by the issuer or the issuing company, as the case may be, or withdrawal of Observation Letter issued by the Board, wherever applicable, the securities shall not be eligible for listing and the issuer or the issuing company, as the case may be, shall be liable to refund the subscription monies, if any, to the respective allottees immediately alongwith interest at the rate of ten per cent. per annum from the date of allotment.

**Listing Agreement [Regulation 109]**

- (1) Every issuer or the issuing company desirous of listing its securities on a recognised stock exchange shall execute a listing agreement with such stock exchange.
- (2) Every issuer or the issuing company which has previously entered into agreement(s) with a recognised stock exchange to list its securities shall execute a fresh listing agreement with such stock exchange within six months of the date of notification of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

**Obligation of stock exchange(s) [Regulation 110]**

The stock exchange(s) shall grant in-principle approval/list the securities or reject the application for in-principle approval /listing by the issuer or issuing company, as the case maybe, within thirty days from the later of the following dates:

- (a) the date of receipt of application for in-principle approval/listing from issuer or the issuing company, as the case may be,;
- (b) the date of receipt of satisfactory reply from the issuer or the issuing company, as the case may be, in cases where the stock exchange(s) has sought any clarification from them.

**18. Miscellaneous**

**Directions by the Board [Regulation 111]**

Without prejudice to the power under sections 11, 11A, 11B, 11D, sub-section (3) of section 12, Chapter VIA and section 24 of the Act or section 621 of the Companies Act, 1956, the Board may either suo motu or on receipt of information or on completion or pendency of any inspection, inquiry or investigation, in the interests of investors or the securities market, issue such directions or orders as it deems fit including any or all of the following:

- (a) directing the persons concerned not to access the securities market for a specified period;
- (b) directing the person concerned to sell or divest the securities;
- (c) any other direction which Board may deem fit and proper in the circumstances of the case:

Provided that the Board shall, either before or after issuing such direction or order, give a reasonable opportunity of being heard to the person concerned:

Provided further that if any interim direction or order is required to be issued, the Board may give post-decisional hearing to the person concerned.

**Liability for contravention of the Act, rules or the regulations [Regulation 111A]**

- (1) The listed entity or any other person thereof who contravenes any of the provisions of these regulations, shall, in addition to the liability for action in terms of the securities laws, be liable for the following actions by the respective stock exchange(s), in the

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manner specified in the circulars or guidelines issued by the Board:

- (a) imposition of fines;
  - (b) suspension of trading;
  - (c) freezing of promoter/promoter group holding of designated securities, as may be applicable, in coordination with depositories;
  - (d) any other action as may be specified by the Board from time to time.
- (3) The manner of revocation of actions specified in clauses (b) and (c) of sub-regulation (1), shall be as specified in the circulars or guidelines issued by the Board.

### **Failure to pay fine [Regulation 111B]**

If the listed entity fails to pay any fine imposed upon it by the recognised stock exchange(s), within the period as specified from time to time, the stock exchange may initiate such other action in accordance with law, after giving a notice in writing.

### **Power to remove difficulty [Regulation 112]**

In order to remove any difficulties in the application or interpretation of these regulations, the Board may issue clarifications through guidance notes or circulars after recording reasons in writing.

### **Power to relax strict enforcement of the regulations [Regulation 113]**

- (1) The Board may, in the interest of investors or for the development of the securities market, relax the strict enforcement of any requirement of these regulations, if the Board is satisfied that:
  - (a) the requirement is procedural in nature; or
  - (b) any disclosure requirement is not relevant for a particular class of industry or issuer; or
  - (c) the non-compliance was caused due to factors beyond the control of the issuer.
- (2) For seeking relaxation under sub-regulation (1), an application, giving details and the grounds on which such relaxation has been sought, shall be filed with the Board.
- (3) The application referred to under sub-regulation (2) shall be accompanied by a non-refundable fee of rupees one lakh payable by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or by way of a demand draft in favour of the Board payable in Mumbai.

### **Amendments to other regulations [Regulation 114]**

On and from the commencement of these regulations, the regulations mentioned in **Schedule XX** shall stand amended to the extent specified therein.

### **Repeal and Savings [Regulation 115]**

- (1) On and from the commencement of these regulations, the Securities and Exchange

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Board of India (Disclosure and Investor Protection) Guidelines, 2000 shall stand rescinded.

- (2) Notwithstanding such rescission:
- (a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Guidelines shall be deemed to have been done or taken under the corresponding provisions of these regulations;
  - (b) any offer document, whether draft or otherwise, filed or application made to the Board under the said Guidelines and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations.