Corpsec Hotline

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SEBI AMENDS DISCLOSURE AND INVESTOR PROTECTION GUIDELINES

On August 28, 2008 the Securities and Exchange Board of India ("**SEBI**") amended the SEBI (Disclosure and Investor Protection) Guidelines, 2000 ("**DIP Guidelines**") to inter-alia:

- Define "Convertible Debt Instrument";
- Reduce the timelines involved in a rights issue (**"Rights Issue"**) process;
- Modify eligibility of shares for promoter' contribution and offer for sale;
- Introduce lock- in on shares on exercise of warrants;
- Modify definition of Qualified Institutional Buyers (**"QIBs"**);
- Modify pricing and eligibility provisions for Qualified Institutions Placement (**"QIP"**); and
- Modify pricing provisions for preferential allotment to QIBs.

The said amendments to the DIP Guidelines ("**Amendment**") are briefly mentioned as under:

Promoters' Contribution and Lock-in-requirements: Prior to the Amendment, in case of a public issue, securities which have been acquired by the shareholders / promoters during the preceding one year were not considered eligible to be offered for sale or for computation of promoters' contribution. In 2007, an exemption was introduced, and shares acquired by promoters during the preceding year at a price equal or higher to the price at which equity is being offered to public were made eligible for inclusion in promoter's contribution. With the present Amendment, shares acquired by shareholders pursuant to a restructuring scheme approved by the High Court(s), in lieu of business and invested capital which had been in existence for a period of more than one year prior to the restructuring will be eligible for inclusion in promoter's contribution as well as for an offer for sale.

Timeline for Rights Issues: By virtue of the Amendment, the timelines for a Rights Issue at various stages have been reduced in order to facilitate completion of the issue in a time efficient manner. For instance, the timeline for issuing advertisement has been reduced from seven days to three (3) days. Further, the timeline for the Rights Issue starting from the notice period required for convening a board meeting to consider the rights issue up to the allotment and commencement of listing and trading of the shares so issued has been reduced from minimum of 30 days and maximum of 60 days to 15 days and 30 days respectively.

Lock-in on shares on exercise of warrants issued on preferential basis: Prior to the Amendment, warrants issued on preferential basis were subject to lock-in for a period of one year or three years, as the case may be, and lock-in on shares allotted on exercise of such warrants is reduced to the extent such warrants have already been locked-in. In terms of the present Amendment, shares allotted pursuant to exercise of warrants, shall be subject to full lock-in period of one year or three years, as the case may be, from the date of allotment of such shares.

Qualified Institutional Buyers: Prior to the Amendment, foreign institutional investors ("**FIIs**") and their sub accounts registered with SEBI were included in the definition of QIBs. Pursuant to the Amendment the definition of QIB has been modified to exclude a sub-account of an FII if such sub account is a "foreign corporate" or "foreign individual".

Pricing of preferential allotment to QIBs: The pricing norms for a preferential allotment to QIBs not exceeding five (5) in number have been modified. Accordingly such preferential issue to QIBs will be made at a price not less than the average of the weekly high and low of the closing prices of the related shares quoted on a stock exchange during the two weeks preceding the relevant date.

Eligibility for making Qualified Institutions Placement: Under the DIP Guidelines, the eligibility criteria for listed companies desirous of making QIP include a condition that the equity shares of the same class of such companies shall have been listed on a stock exchange having nationwide terminals, for a period of at least one year as on the date of issuance of notice to shareholders for considering the QIP.

Pursuant to the Amendment, a new proviso has been added to the existing provision. This proviso pertains to companies, which have been listed during the preceding one year pursuant to approved scheme(s) of merger/ demerger/ arrangement entered into by such companies with companies which have been listed for more than one year in such stock exchange(s). It has been stated that for the purpose of fulfillment of the abovementioned eligibility criterion, such companies may take into account the listing history of the listed companies with which they have entered into the approved scheme(s) of merger/ demerger/ arrangement.

Pricing norms for QIP: The pricing norms for QIP have been modified by bringing the issue price of the securities offered closer to their market price. This has been effected through the following change in the floor price formula and

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the definition of relevant date.

"*An issue of specified securities made under this Chapter shall be made at a price not less than the average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the **two weeks** preceding the relevant date.*" – period of "six months" has been replaced by "two weeks".

"*Relevant Date" for the purpose of this clause means the date of the meeting in which the Board of the company or the Committee of Directors duly authorised by the Board of the company decides to open the proposed issue.*" – prior to this amendment, the relevant date was 30 days prior to the shareholders meeting approving the allotment.

Convertible Debt Instrument: By virtue of the Amendment the definition of "*debt instruments*" has been omitted and a definition of "*convertible debt instruments*" has been inserted. "*Convertible Debt Instruments*" has been defined to mean "*an instrument or security which creates or acknowledges indebtedness and are convertible into equity shares at a later date, at or without the option of the holder of the instrument or the security of a body corporate, whether constituting a charge on the assets of the body corporate or not.*" Necessary changes have been made through the Guidelines to reflect the above change; reference to "*debt instrument*" has been replaced by "*convertible debt instrument*" and provisions pertaining to non-convertible debentures have been omitted. The SEBI (Issue and Listing of Debt Securities) Regulations, 2008 notified on June 6, 2008, would be applicable to public issue of debt securities and listing of debt securities issued through public issue or on private placement basis on a recognised stock exchange.

Filing of offer documents at SEBI Regional Offices: With this Amendment, draft offer documents of issue size up to Rs.500,000,000 (as opposed to the earlier limit of Rs. 200,000,000) can be filed with SEBI Regional Offices.

Implications: The changes introduced by the Amendment to the Rights Issue timeline are expected to mitigate the market risks to which investors and companies are exposed and will help in completing such issues in a time-efficient manner. Further, the amendments to the pricing norms for QIPs as well as for preferential allotment to QIBs, will facilitate listed companies to raise funds from QIBs. However, the amendment to the lock-in requirement of warrants would, to that extent limit the exit possibilities of warrant-holders. Pursuant to the exclusion of sub-accounts which fall in the categories of "foreign corporate" and "foreign individual" from the definition of QIB, such sub-accounts will not be permitted to invest in the primary market with other "QIBs".

Source: DIP Guidelines dated August 28, 2008

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You can direct your queries or comments to the authors

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