

Corpsec Hotline

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LOCK IN AND DISCLOSURE REQUIREMENTS UNDER SEBI (DISCLOSURE AND INVESTOR PROTECTION) GUIDELINES, 2000. ("DIP GUIDELINES") AMENDED

Securities and Exchange Board of India ("SEBI"), with a view to make Indian primary market more efficient and transparent and rationalize the disclosure requirements, has introduced certain amendments on March 31, 2006 to the DIP Guidelines vide circular dated March 31, 2006 bearing no.SEBI/CFD/DIL/DIP/19/2006/31/3.

As per the new provisions under clause 4.14.1 of the DIP Guidelines, the entire pre-issue capital, other than that locked-in as minimum promoters' contribution, shall be locked-in for a period of one year from the date of allotment except the shares lent to the stabilizing agent by the promoter starting from the date of such lending and ending on the date on which they are returned to the same lenders. The minimum promoter holding, however, will continue to attract the lock-in period of three years. Under the earlier provisions, the period of one year for lock-in of such pre issue capital was from the date of commencement of commercial production or the date of allotment in the public issue, whichever is later.

Implications: We believe that the purpose of using the date of commencement of commercial production as a reference point for lock-in had proved redundant since in almost all cases the date of allotment was always later than the date of commercial production. This amendment streamlines the process by using the single point reference date for the purpose of calculating the lock-up.

With a view to rationalize the disclosure requirements for the listed companies, under the new provisions, the company at the time of making a rights issue is now allowed to dispatch a abridged prospectus instead of letter of offer as required under the earlier provisions. The abridged prospectus shall contain disclosures as required to be given in the case of an abridged prospectus and the company then shall provide the detailed letter of offer to any shareholder upon request. Presently, only in case of public issues, company is allowed to dispatch abridged prospectus along with the application form and not in case where company is offering a right issue.

Implications: This amendment is likely to reduce the cost and time involved in respect of rights issues and streamlines the rights issue process with that of the public issues.

Further, the amendments also allow a listed company to fix and disclose the issue price in case of a rights issue any time prior to fixing of the record date, in consultation with the Designated Stock Exchange and in case of a public issue through fixed price route, at any time prior to filing of the prospectus with the Registrar of Companies ("ROC") instead of disclosing the issue price or the price band in the draft offer document filed with SEBI as required under the earlier provisions. The prospectus filed with ROC shall have one issue price.

Implications: This would give more flexibility to listed companies to price their issue at anytime prior to filing the prospectus with ROC. This could also possibly minimise the risk of the price of the rights or the public issue becoming public prior to the issue thereby creating an artificial market for the shares in the market in anticipation of the forthcoming issue.

SEBI, under the present amendments, also permits a company to issue further shares during the period after filing a draft offer document with SEBI till the listing of shares referred to in the offer document, provided full disclosures in regard to the total capital to be raised from such further issues is given in the draft offer document. Under the earlier provisions, any further issue of capital in any manner during such period was prohibited under clause 8.7.1 of the DIP Guidelines.

Implications: Considering that at times the period between filing of the draft red herring prospectus ("DRHP") and the listing could be long due regulatory compliances and market conditions, a general restriction on issuance of shares which existed in the current guidelines made it difficult for the companies to need their immediate capital requirements since any change in the capital structure would warrant fresh filing of DRHP with SEBI. These amendments would give flexibility to the companies to continue its process of raising capital during such period provided subject to full disclosures in regard to the total capital to be raised from such further issues is given in the draft offer document.

- Vyapak Desai & Siddharth Shah

You can direct your queries or comments to the authors

Source:

1) The Financial Express, dated April 2, 2006

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