

Corpsec Hotline

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SEBI ON A 'FAST TRACK' – PUBLIC ISSUES AND IDRS!!!

The Securities Exchange Board of India ("SEBI") has recently vide [Circular dated November 29, 2007 \("Circular"\)](#) liberalized the rules for raising capital for issuer companies, so as to allow listed companies speedier access to capital through follow-on public issues and right issues. The said Circular makes certain amendments to the SEBI (Disclosure of Investor Protection) Guidelines, 2000 ("DIP Guidelines"). Besides, other significant changes, SEBI has introduced a concept of fast track issue on the lines of the well known seasoned issuers model of the United States of America, where established and compliant listed companies only need to make rationalized disclosures rather than comprehensive ones, for follow-on public offers and rights issue. SEBI in the said Circular has also proposed changes to the norms governing the issuance of Indian Depository Receipts ("IDRs") contained in the DIP Guidelines.

The highlights of the amendment to the DIP Guidelines are as follows:

1. Fast Track Issues ("FTI"):

The DIP Guidelines presently enables a listed company to go for Follow-On Public Offerings ("FPO"), on satisfying certain specified requirements and complying with comprehensive disclosures, as contained in Initial Public Offering ("IPO") document. The draft offer document is, processed by SEBI and stock exchanges in a manner similar to that of a draft IPO document.

The amendment has introduced the definition of "Fast Track Issue" to mean a public issue or rights issue made by a listed company which satisfies certain eligibility requirements contained in the DIP Guidelines. The amendment will allow listed companies to make FTI through FPO and rights issue exceeding Rs. 50 lakhs subject to the fulfillment of the certain parameters such as minimum three years of listing of securities, average minimum market capitalization of public shareholding, trading turnover, on-going compliance with the listing agreement, redressal of investor grievances, promoters shareholding to be in dematerialized form and no proceedings and show cause notices issued by SEBI to the listed company and / or promoters and /or directors of the listed company.

The amendment also proposes several relaxations and non-applicability of certain provisions of the DIP Guidelines for FTI.

Implication: The amendment will enable the listed companies to proceed with the FPO and rights issue only by filing a copy of the red herring prospectus (in case of book built issue) / prospectus (in case of fixed price issue) with SEBI and stock exchanges and such listed companies will not be required to file DRHP with the SEBI and stock exchanges. The amendments would enable the listed companies' quicker access to further capital through an FPO or rights issue.

1. Indian Depository Receipts (IDR):

Currently the DIP Guidelines provide that only Qualified Institutional Buyers ("QIBs") can apply for IDRs.

The amendment is a major relaxation to the requirements for eligible investors for subscription to an IDR. This amendment now allows all categories of investors to apply for IDRs provided at least 50% of the issue of the IDRs shall be subscribed by the QIBs and the balance 50% shall be made available for subscription by non-institutional investors, retail individual investors and employees. Further, the minimum application value in IDRs has been reduced to Rs. 20,000 from Rs. 200,000

Implications: The rules of IDRs have been in existence since 2004 and earlier this year on [July 18, 2007](#) the Ministry of Corporate Affairs had also liberalized the criteria for the issuances of IDRs. However, no company has yet gone through this route. It has been observed that the Indian companies have time and again mobilized funds through American Depository Receipts and Global Depository Receipt but now its time for the multinational companies to tap the untapped potential from India through the IDRs.

1. Retail investors:

The present DIP Guidelines do not provide for issuance of shares at differential prices to the investors.

The amendment now permits companies making public issues to issue securities to retail investors at a discounted price not exceeding 10% of the price at which securities are issued to other category of investors.

Also, the DIP Guidelines define 'Retail Individual Shareholder' to mean, an investor who applies or bids for securities for value not more than Rs 100,000/-. Under the DIP Guidelines listed companies making public issues can make reservation on competitive basis for its existing shareholders who, as on the record date, are holding shares worth up to Rs. 50,000. However, no limit had been set on the value of the application that can be made by such shareholders

The amendment has amended the definition of "Retail Individual Shareholder" to mean a shareholder (i) whose

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shareholding is of value not exceeding Rs. 1,00,000/- as on the day immediately preceding the record date, and (ii) who makes application or bids in a public issue for value not exceeding Rs 100,000.

Implications: It appears that by way of this amendment SEBI intends to increase retail participation in the Indian capital market. This would also give a cutting edge to the retail investors over other investors.

1. Quoting of PAN Mandatory:

Presently, as per the DIP Guidelines, all applicants of public and rights issues are required to disclose their Permanent Account Number ("**PAN**") in the application form in case the application value exceeds Rs. 50,000.

With the coming into effect of the amended DIP Guidelines, SEBI has been decided to extend the requirement of quoting PAN for all applicants, irrespective of the application value in public and rights issues as well as preferential allotment.

Implications: This is in line with the policy of SEBI for bringing more transparency in the capital market and ensures compliance of KYC requirements for each applicant in a public issue. This would also allow SEBI to closely monitor and curb multiple applications made by a single applicant in a public issue.

2. Deletion of the chapter on "Guidelines for Issue of Capital by Designated Financial Institution ("DFIs"):

SEBI had introduced separate guidelines in 1992, i.e. 'Guidelines for Issue of Capital by DFIs' for primary issuances by DFIs, to place companies / corporations / institutions engaged mainly in financing of developmental activities and playing a catalytic role in the infrastructure development of the country on a different footing. With the view of disallowing the special dispensations given to DFIs, SEBI has deleted the chapter on "Guidelines for Issue of Capital by DFIs" from DIP Guidelines.

Implications: Given the present DFI regime, DFIs operationally compete on equal footing with private entities and it has been felt that DFIs have outlived its utility.

3. Monitoring the issue proceeds:

Presently, as per DIP Guidelines, every issuer making an issue of more than Rs. 500 crores is required to appoint a monitoring agency, which is required to file a monitoring report with SEBI for record purpose.

Under the present amendment the said provision shall not be applicable to (i) issues by banks and public financial institutions and (ii) offers for sale. Further, it has been decided that the monitoring agency shall henceforth be required to file the monitoring report with the issuer company and not with SEBI, so as to enable the issuer company to place the report before its audit committee.

Implications: SEBI by this amendment is reposing its trust and making the issuer company and the audit committee responsible and accountable rather than exercising external control and monitoring the issue proceeds. This may be a first step towards allowing the issuer companies to be self regulated.

4. Clarification on the term CFO /CEO:

The present DIP Guidelines requires all directors, CEO and CFO of the issuer company to certify that disclosures made in the offer document are true and correct. It is now clarified that the terms "CEO" and "CFO" in DIP Guidelines shall have the same meaning as assigned to them in clause 49 of the equity listing agreement.

5. Other Provisions

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❖ As a matter of practice, SEBI issues standard observations as a supplement to issue-specific observations on each and every Draft Red Herring Prospectus ("**DRHP**") filed with SEBI.

Pursuant to this amendment, certain clauses from the standard observations, essentially those pertaining to confirmations, undertakings, documents, information, etc., to be submitted by the book running lead manager/s ("**BRLMs**") to the issue while filing the DRHP with the SEBI now will be incorporated as a part of the amended DIP Guidelines. With this amendment the BRLMs shall also be required to file as an annexure to the due diligence certificate, a detailed check list indicating compliance of each of the clauses of the relevant chapters of DIP Guidelines.

❖ Under the present amendment the promoters contribution and lock-in requirements are required to be complied with, at the time of filing the Red Herring Prospectus in case of book built issue or prospectus in case of fixed price issue, while, earlier such requirements were to be fulfilled at the time of filing DRHP.

❖ SEBI has also reduced the time of making the DRHP public from 30 days to 15 days from the date of filing it with SEBI.

Implications: The amendments would allow the issuer company to fasten the process and reduce the time frame within which a company can go public from the kick-off date. The inclusion of the standard observations in the DIP Guidelines would make it clearer for the BRLMs to ensure the compliance of the DIP Guidelines at the DRHP stage only and not wait till the observations / comments are received from SEBI after the filing of the DRHP. This would result in a quicker turn around time

Source: SEBI Circular No. SEBI/CFD/DIL/DIP/28/2007/29/11 dated November 29, 2007

Vaibhav Parikh, Partner, Nishith Desai Associate on Tech, M&A, and Ease of Doing Business

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