

**THE GAZETTE OF INDIA
EXTRAORDINARY
PART III – SECTION 4
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NEW DELHI, DECEMBER 11, 2009
SECURITIES AND EXCHANGE BOARD OF INDIA
NOTIFICATION
Mumbai, 11th December, 2009**

Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2009

No. LAD-NRO/GN/2009-10/23/186926. In exercise of the powers conferred by Section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to amend the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, namely:-

1. (i) These regulations may be called the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2009.
(ii) These regulations except clauses (a) and (b) of sub-regulation (ix) of regulation 2 shall come into force on the date of their publication in the Official Gazette.
(iii) Clause (a) of sub-regulation (ix) of regulation 2 of these regulations shall come into force on 1st April, 2010.
(iv) Clause (b) of sub-regulation (ix) of regulation 2 of these regulations shall come into force on 1st January, 2010.
2. In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 –
 - (i) in regulation 2, in sub-regulation (1),-
 - (a) for clause (k), the following clause shall be substituted, namely:-

‘(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;’
 - (b) in clause (zd), after sub-clause (x), the following sub-clause shall be inserted, namely:-

“(xi) insurance funds set up and managed by army, navy or air force of the Union of India;”
 - (ii) in regulation 10, in sub-regulation (1),
 - (a) in clause (b), for the words “ten thousand crore rupees” occurring towards the end, the words “five thousand crore rupees” shall be substituted;
 - (b) after clause (c), the following proviso shall be inserted, namely:-

“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."

(c) In clause (e), the following proviso shall be inserted, namely:-

"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;"

(iii) in regulation 29, in clause (a), after the words "retail individual shareholders" and before the words "may be offered", the words "or employees of the issuer entitled for reservation made under regulation 42 making an application for specified securities of value not more than one lakh rupees," shall be inserted;

(iv) in regulation 42,-

(a) in sub-regulation (4), in clause (a), for the words "ten per cent. of the issue size" occurring at the end, the words "five per cent. of the post issue capital of the issuer", shall be substituted;

(b) after clause (f), the following clause shall be inserted, namely:-

"(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 one lakh rupees."

(v) in regulation 50, in sub-regulation (1), the following proviso shall be inserted, namely:-

"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 one lakh rupees."

(vi) after regulation 55, the following regulation shall be inserted, namely:-

"Reservation for employees alongwith rights issue.

55A. Subject to other applicable provision of these regulations the issuer may make reservation for its employees alongwith rights issue subject to the condition that value of allotment to any employee shall not exceed one lakh rupees."

(vii) in regulation 96, in sub-regulation (2),-

(a) in clause (e), figure and mark "43," shall be omitted;

(b) after clause (i), the following clause shall be inserted, namely:-

"(ia) regulation 43, except sub-regulation (3) thereof;"

(viii) in regulation 98, in clause (e), the following proviso shall be inserted, namely:-

"Provided that atleast thirty per cent. of the said fifty per cent. IDR issued shall be allocated to retail individual investors and in case of under-

subscription in retail individual investor category, spill over to the extent of under-subscription shall be permitted to other categories.”

(ix) in schedule VIII, in Part A, in para (2), in item (IX),-

(a) after the title “Financial Statements”, the following notes shall be inserted, namely:-

“[Notes:

1. *The financial informations specified in this item shall be certified by only those auditors who have subjected themselves to the peer review process of the Institute of Chartered Accountants of India (ICAI) and hold a valid certificate issued by the ‘Peer Review Board’ of the ICAI.*

2. *All financial informations specified in this item must be reaudited for one full financial year and the stub period, by the auditor certifying them in case where the financial statements were audited by an auditor who had not been subjected to peer review process of ICAI.]”*

(b) in sub-item (B), after clause (21), the following clause shall be inserted, namely:-

“(22) If the issuer has entered into any scheme of arrangement during the period for which the financials are disclosed in the offer document, lead merchant banker to the issue shall ensure that the following disclosure requirements as specified in Accounting Standard 14 has been complied with:-

(a) A description of the accounting treatment followed in respect of financials contained in the schemes of arrangement and the reasons for following the treatment if it is different from those, which has been prescribed in applicable Accounting Standards.

(b) In case of deviations, disclosure of the accounting treatment had the applicable standard been followed.

(c) Impact on the financials, if any, arising due to such deviation.”

(c) after sub-item (B), the following sub-item shall be inserted, namely:-

“(BA) **Alternate Financial Information of the issuer in further public offers:**

(1) An issuer making further public offer may disclose the financial information specified in clause (2) of this sub-item , in lieu of information specified under sub-item (B) if:

(i) the issuer is making further public offer in accordance with provisions of regulation 10;

(ii) the specified securities offered in further public offer are of the same class of those already listed on a recognised stock exchange;

(iii) financial reports of the issuer are available on the website of any recognised stock exchange having

- nationwide trading terminals or on a common e-filing platform specified by the Board;
- (iv) there has not been any change in management of the issuer;
 - (v) specified securities of issuer have not been listed pursuant to relaxation granted from clause (b) of sub-rule (2) of rule 19 of Securities Contracts (Regulation) Rules, 1957.
- (2) The issuer satisfying the conditions specified in clause (1) may disclose its financial statements as under:
- (i) Stand-alone and consolidated financial statements of the issuer:
 - (1) A report by the auditors of the issuer with respect to profit or loss and assets and liabilities (indicating changes in accounting policies, if any) in respect of the last completed accounting year for which audit has been completed.
 - (2) A report by the auditors of the issuer on a limited review of the profit or loss and assets and liabilities (indicating changes in accounting policies, if any), as at a date not earlier than six months prior to the date of the opening of the issue, where audited accounts as at such date are not available.
 - (3) For the purpose of sub-clauses (1) and (2) above, it shall be sufficient if:
 - (a) In the statement of the assets and liabilities, the main heads of assets and liabilities as provided in Part I of Schedule VI of the Companies Act, 1956 have been provided. If an issuer is governed by a statute other than the Companies Act, 1956, the main heads of assets and liabilities as specified in such statute shall be provided in the statement of assets and liabilities.
 - (b) In the statement of profit or loss, the information required to be disclosed under the heads of income and expenditure as per clause 41 of the equity listing agreement in respect of quarterly financial information to be filed with the recognised stock exchanges, has been provided.
 - (ii) In addition, the following information for the period between the last date of the balance sheet and profit and loss account sent to the shareholders and up to

the end of the last but one month preceding the date of the offer document shall be furnished.

- (1) Working results of the issuer under following heads:
 - (a) (i) Sales / turnover
 - (ii) Other income
 - (b) Estimated gross profit / loss (excluding depreciation and taxes)
 - (c) (i) Provision for depreciation
 - (ii) Provision for taxes
 - (d) Estimated net profit / loss
 - (2) Material changes and commitments, if any affecting financial position of the issuer.
 - (3) Week-end prices for the last four weeks; current market price; and highest and lowest prices of equity shares during the period with the relative dates.
- (iii) Stock market quotation of shares/ convertible instruments of the company (high/ low price in each of the last three years and monthly high/low price during the last six months).
- (iv) Accounting and other ratios: The following accounting ratios shall be given for each of the accounting periods for which financial information is given:
- (1) Earnings per share: This ratio shall be calculated after excluding extra ordinary items.
 - (2) Return on Networth: This ratio shall be calculated excluding revaluation reserves.
 - (3) Net Asset Value per share: This ratio shall be calculated excluding revaluation reserves.
 - (4) Accounting and other ratios shall be based on the financial statements prepared on the basis of Indian Accounting Standards.
- (v) Capitalisation Statement:
- (1) A Capitalisation Statement showing total debt, net worth, and the debt/ equity ratios before and after the issue is made shall be incorporated.
 - (2) In case of any change in the share capital since the date as of which the financial information has been disclosed in the prospectus, a note explaining the nature of the change shall be given.
 - (3) An illustrative format of the Capitalisation Statement is specified hereunder:

Particulars	Pre-issue as at 30-6-1995	As Adjusted for issue
(Rupees in lakhs)		
Short-Term Debt	1870	1870
Long Term Debt	4370	4370
Shareholder's Funds		
Share Capital	4000	4450
Reserves	14570	37520
Total Shareholder's Funds	18570	41940
Long Term Debt/Equity	0.24:1	0.10:1
<p>Note: Since 31-3-1995 (which is the last date as of which financial information has been given in para ... of this document), share capital was increased from Rs.3000 lacs to Rs.4000 lacs by the issue of bonus shares in the ratio of 1 share for every 3 shares.</p>		

(vi) One standard financial unit shall be used in the offer document.”

(x) In schedule XI,-

- (a) In Part A, in para (10), in the title, the bracket and the words “(not applicable in case of an IDR issue)” shall be omitted;
- (b) after Part C, the following part shall be inserted, namely:-

“PART D

Alternate method of book building

In case of further public offers, the issuer may opt for an alternate method of book building, as given in this part subject to the following:

- (a) Issuer shall follow the procedure laid down in Part A of this Schedule except clause (13) and clause (15) (a) thereof.
- (b) The issuer shall disclose a floor price in the red herring prospectus.
- (c) Investors other than retail individual investors shall bid at any price above the floor price.
- (d) The bidder who bids at the highest price shall be allotted the number of securities that he has bided for and then the bidder who has bided at the second highest price and so on, until all the specified securities on offer are exhausted.

- (e) Allotment shall be on price priority basis for investors other than retail individual investors.
- (f) Allotment to retail individual investors shall be made proportionately as illustrated in this Schedule.
- (g) Where, however the number of specified securities bided for at a price is more than available quantity, then allotment shall be done on proportionate basis.
- (h) Retail individual investors shall be allotted specified securities at the floor price.
- (i) The issuer may place a cap either in terms of number of specified securities or percentage of issued capital of the issuer that may be allotted to a single bidder.”

C. B. BHAVE
CHAIRMAN

Footnote:

1. The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 were published in the Gazette of India on 26th August, 2009 vide No. LAD-NRO/GN/2009-10/15/174471.
