

**THE GAZETTE OF INDIA
EXTRAORDINARY
PART III – SECTION 4
PUBLISHED BY AUTHORITY
NEW DELHI, NOVEMBER 12, 2010
SECURITIES AND EXCHANGE BOARD OF INDIA
NOTIFICATION
Mumbai, 12 November, 2010**

Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2010

No. LAD-NRO/GN/2010-11/19/26456. 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 further 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) (Fourth Amendment) Regulations, 2010.
(ii) These regulations shall come into force on the date of their publication in the Official Gazette.

2. In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, –

- (i) in regulation 2,-

- (a) in sub-regulation (1), in clause (zd), after sub-clause (xi), the following sub-clause shall be inserted, namely:-

“(xii) insurance funds set up and managed by the Department of Posts, India.”

- (b) in sub-regulation (1), in clause (ze), for the words “one lakh” the words “two lakhs” shall be substituted;
 - (c) in sub-regulation (1), in clause (zf), sub-clause (i) shall be omitted;
 - (d) in sub-regulation (1), in clause (zf), in sub-clause (ii), for the words “one lakh”, the words “two lakhs” shall be substituted.
- (ii) in regulation 8, in sub-regulation (1), in clause (e), for the words “Schedule VII”, the words “Schedule VIII” shall be substituted.
 - (iii) in regulation 9, after sub-regulation (2), the following sub-regulation shall be inserted, namely:-

“(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.”

- (iv) in regulation 16, in sub regulation (1), in the proviso, after the words “public financial institution” the words “or an insurance company” shall be inserted;
- (v) in regulation 26, in sub-regulation (5),- ,
 - (a) sub-regulation (5) shall be substituted with the following, namely:-

“(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:”
 - (b) in the proviso, after clause (b), the following clause shall be inserted, namely:-

“(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.”
- (vi) in regulation 29, in clause (a), for the words “one lakh”, the words “two lakhs” shall be substituted;
- (vii) in regulation 34, in clause (b), -
 - (a) after the words “where the equity shares”, the words “of the issuer” shall be inserted;
 - (b) the words “of the same class which are proposed to be allotted pursuant to conversion or exchange of convertible securities offered through the offer or are proposed to be allotted in the offer have been listed and” shall be omitted;
- (viii) in regulation 42, in sub-regulation (4), in clause (g), for the words “one lakh”, the words “two lakhs” shall be substituted.
- (ix) in regulation 43, in sub-regulation (2), in clause (c), the second proviso shall be omitted;
- (x) in regulation 50, in sub-regulation (1), in the proviso, for the words “one lakh” , the words “two lakhs” shall be substituted;
- (xi) in regulation 54, the following sub-regulation shall be inserted, namely:-

“(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, such issuer shall obtain the necessary regulatory approvals to facilitate the same.”

(xii) in regulation 55A, for the words “one lakh” , the words “two lakhs” shall be substituted.

(xiii) in regulation 60, after sub-regulation (13), the following sub-regulation shall be inserted, namely:-

“(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.”

(xiv) in regulation 72,-

(a) after the proviso to sub-regulation (2), the following Explanation shall be inserted,-

“**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.”

(b) after sub-regulation (2), the following sub-regulation shall be inserted ,-

“(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.”

(xv) in Schedule VIII, -

(a) in Part A,-

(I) in item (VIII)

- i. in sub-item (D), in para. (4), in sub-para (c), for the number “(XII)”, the number “(XVI)” shall be substituted.
- ii. in sub-item (E), under the heading “Management”, in para.(1), after sub-para (a), the following clauses shall be inserted, namely:-

“(a)(i) Details of current and past directorship(s) in listed companies whose shares have been / were suspended from being traded on the Bombay Stock Exchange Ltd./National Stock Exchange of India Ltd., as follows:

- Name of the Company:
- Listed on [give name of the Stock Exchange(s)]
- Date of Suspension on stock exchanges:
- Suspended more than three months: Yes/No. If yes, reasons for suspension and period of suspension.
- Whether suspension revoked: Yes/No. If yes, date of revocation of suspension
- Term (alongwith relevant dates) of Director in the above company(ies)

Explanation: The above details shall be given with respect to a period of five years prior to date of filing of draft offer document and ought to be updated up-to the date of filing of RHP. In case of offer documents for fast track issues filed under Regulation 10, the period of five years shall be reckoned on the date of filing of prospectus with Registrar of Companies or letter of offer with the designated stock exchange.

(a)(ii) Details of current and past directorship(s) in listed companies which have been/ were delisted from the stock exchange(s), as follows:

- Name of the Company:
- Listed on [give name of the Stock Exchange(s)]:
- Date of delisting on the Stock Exchange(s):
- Compulsory or voluntary delisting :
- Reasons for delisting:
- Whether relisted: Yes/No. If yes, date of relisting on [give name of the Stock Exchange/(s)]:
- Term (alongwith relevant dates) of Director in the above company/ies:”

- (II) in item (IX), in sub-item (B) under the heading “Financial Information of the issuer” after para. (22), the following para.. shall be inserted as under:

“(23) Proforma Financial Statements

- (1) In addition to other requirements laid down in these regulations and subject to the stipulation in sub-para. (3) of this para., the issuer shall disclose Proforma Financial Statements in the offer document, if -
- (a) an acquisition or divestment is made by the issuer after the end of the latest disclosed annual financial results in the offer document, due to which certain companies become / cease to be direct or indirect subsidiaries of the issuer, and
 - (b) the financial statements of such acquired or divested entity is material to the financial statements of the issuer company.

Explanation: The financial statements of the acquired or divested entity shall be “material” to the financial statements of the issuer if:

- (i) the total book value of the assets of the acquired / divested entity amounts to more than 20% of the pre-acquisition / pre-divestment book value of the assets of the issuer;
 - or
 - (ii) the total income of the acquired / divested entity amounts to more than 20% of the pre-acquisition / pre-divestment total income of the issuer.
- (2) Proforma Financial Statements shall be disclosed in respect of the following, namely:
- i. the last completed accounting year, and
 - ii. the period beginning from the date of the end of the last completed accounting year and ending on the date on which financial statements of the issuer have been disclosed in the offer document.
- (3) Where the said acquisition or divestment does not fulfill the tests of materiality specified in clause 23 (1) (b) above, the fact of the acquisition or divestment along with the consideration paid / received and the mode of financing such acquisition shall be disclosed.

(4) The information disclosed as per sub-clause (2) and (3) above shall be certified by the statutory auditor of the issuer.”

(III) in item (XI), in sub-item (K), after the words “Reserve Bank of India” the words “or Insurance Regulatory and Development Authority” shall be inserted.

(b) in Part E, in item (IX), under para. (A), the following sub-paras. shall be inserted-

“(1) Details of current and past directorship(s) for a period of five years in listed companies whose shares have been / were suspended from being traded on the Bombay Stock Exchange Ltd./National Stock Exchange of India Ltd., as follows:

- Name of the Company:
- Listed on [give name of the Stock Exchange(s)]
- Date of Suspension on stock exchanges:
- Suspended more than three months: Yes/No. If yes, reasons for suspension and period of suspension.
- Whether suspension revoked: Yes/No. If yes, date of revocation of suspension.
- Date and Term of Director in the above company(ies):

Explanation: The above details shall be given for a period of five years prior to date of filing of draft offer document and ought to be updated upto the date of filing of the red herring prospectus. In case of offer documents for fast track issues filed under Regulation 10, the period of five years shall be reckoned on the date of filing of prospectus with Registrar of Companies or letter of offer with the designated stock exchange.

(2) Details of current and past directorship in listed companies who have been/ were delisted from the stock exchange(s):

- Name of the Company:
- Listed on [give name of the Stock Exchange(s)]:
- Date of delisting on the Stock Exchange(s):
- Compulsory or voluntary delisting:
- Reasons for delisting:
- Whether relisted: Yes/No. If yes, date of relisting on [give name of the Stock Exchange(s)].
- Date and Term of Director in the above company/ies.”

(xvi) in Schedule XIII, after Part C, the following Part shall be inserted, namely:-

“Part D

[See regulation 60(14)]

COMPLIANCE CERTIFICATE IN RESPECT OF NEWS REPORTS

Sl. No	News report details (Newspaper, date, etc)	Subject Matter	Whether contents of the news report are supported by disclosures in the offer document		If yes, page numbers in the draft offer document where the disclosures are made	If no, action taken by the merchant bankers
			Yes	No		

”

(xvii) in Schedule XV, in reference heading, for the number “107”, the number “106” shall be substituted;

(xviii) in Schedule XIX, in Part C, in reference heading, for the number “101(6)”, the number “101(5)” shall be substituted.

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.
2. The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 were subsequently amended on:-
 - (a) 11th December, 2009 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2009 vide No. LAD-NRO/GN/2009-10/23/186926.
 - (b) 1st January, 2010 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2010 vide No. LAD-NRO/GN/2009-2010/25/189240.
 - (c) 8th January, 2010 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2010 vide No. LAD-NRO/GN/2009-10/26/190146.
 - (d) 13th April, 2010 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2010 vide No. LAD-NRO/GN/2009-10/15/174471.
