

**Proposed amendments to SEBI (Substantial Acquisition of Shares and Takeovers)
Regulations, 1997**

1.0 This memorandum places before the Board, certain proposals for amendment to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (The Takeover Regulations).

2.0 **Proposed amendments to regulation 3 (2)**

2.1 **Existing provisions**

2.1.1 Regulation 3 (2) reads as under:

“Nothing contained in Chapter III of the Regulations shall apply to the acquisition of Global Depository Receipts or American Depository Receipts so long as they are not converted into shares carrying voting rights.”

2.1.2 Regulation 14 (2) reads as under:

“In case of an acquirer acquiring securities, including Global Depositories Receipts or American Depository Receipts which, when taken together with the voting rights, if any already held by him or persons acting in concert with him, would entitle him to voting rights, exceeding the percentage specified in Regulation 10 or Regulation 11, the public announcement referred to in sub-regulation (1) shall be made not later than four working days before he acquires voting rights on such securities upon conversion, or exercise of option, as the case may be.”

2.1.3 Chapter III of the Takeover Regulations details the percentage of shares or voting rights, which when acquired, trigger open offer obligations of the acquirer and also the procedure to be followed on trigger of offer obligations.

Regulation 3 (2) provides an exemption from the applicability of Chapter III in case of acquisition of GDRs / ADRs so long as they are not converted into shares carrying voting rights. Regulation 14 (2) spells out when the public announcement by an acquirer of securities, including ADRs / GDRs, is to be made.

2.2 Rationale for proposing the amendment to regulation 3 (2)

2.2.1 SEBI has from time to time received various queries / requests for informal guidance from listed companies and intermediaries regarding applicability of the provisions of the Takeover Regulations to the issuance of GDRs / ADRs.

2.2.2 In regard to GDR / ADR issuances, it is noted that there are various type of agreements which are entered into between an overseas depository bank (ODB) and the issuer company (referred as depository agreement hereinafter), pursuant to which ODB issues GDRs/ ADRs. Some depository agreements provide that GDR / ADR holders have right to issue instructions to the ODB concerning the exercise of voting rights in relation to the underlying shares, while some depository agreements do not provide any voting right to GDR/ ADR holders but the voting rights remain with the ODB, who vote as per instructions of the management. Thus, it may be seen that there is no uniformity regarding exercise of voting rights in the depository agreement.

2.2.3 It may be seen that the regulation 3 (2) does not distinguish between acquisition of GDRs / ADRs which enables holders to exercise voting rights from those which do not. SEBI has thus so far replied to the above-mentioned queries / informal guidance by stating that in terms of regulation 3 (2) read with regulation 14 (2), the acquirers of GDRs / ADRs would be required to comply with the requirements of Chapter III only upon the conversion of GDRs / ADRs into equity shares with voting rights.

2.2.4 However, it may be pertinent to note here that the provisions contained in Chapter III become applicable to any transaction upon acquisition of the requisite number of shares or voting rights. This exemplifies the fact that the status of “voting rights” in any transaction is equally important while determining the applicability of the Takeover Regulations to that transaction. In case of GDR / ADR issues, although GDRs / ADRs are converted at a later date, the GDR / ADR holders may acquire voting rights even before conversion of GDRs / ADRs into equity shares, by virtue of a provision contained in the depositary agreement.

2.3 **Proposal :** In order to remove ambiguity and to bring consistency in applicability of Takeover Regulations based on acquisition of “voting rights”, it is proposed that the relevant regulations, including regulations 3 (2), may be suitably amended to reflect the following:

- a. Benefit of the exemption granted by regulation 3 (2) is available only if no voting rights are conferred to GDR / ADR holders against the shares underlying the GDRs / ADRs, either through depositary agreement or otherwise.
- b. Where any entity gets the benefit of exercising voting rights on the shares underlying GDRs / ADRs by virtue of clauses in the depositary agreement or otherwise, open offer obligations in terms of Chapter III of the Takeover Regulations shall be triggered.

3.0 **Proposed amendments to regulation 7 (1A) and regulation 11 (1)**

3.1 **Background**

3.1.1 The Takeover Regulations were amended on October 30, 2008, thereby inserting second proviso to Regulation 11 (2) to provide for creeping acquisition

of up to 5 % to an acquirer alongwith persons acting in concert (PACs) holding 55 % or more but less than 75 % of the shares or voting rights in a target company, subject to the following –

- a. Acquisition is through open market purchase or increase in holding is pursuant to buy back of shares; and
- b. The post acquisition shareholding of acquirer alongwith PACs does not exceed 75 %.

3.1.2 The aforesaid amendment has necessitated certain rationalisation across the Takeover Regulations which mainly include amendments to regulations 7 (1A) and 11 (1) of the Takeover Regulation. The same are discussed hereinbelow.

3.2 **Existing provisions of regulation 7 (1A) and rationale for the proposed amendment**

3.2.1 Regulation 7 (1A) reads as under :

“Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11 shall disclose purchase or sale aggregating two per cent. or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days for such purchase or sale alongwith the aggregate shareholding after such acquisition or sale.”

3.2.2 Thus, regulation 7 (1A) requires the disclosure of information about (+ /-) 2 % acquisition / divestment by acquirers holding shares / voting rights between 15 % to 55 %, i.e. covered under regulation 11 (1) only. However, pursuant to the aforesaid amendment to regulation 11 (2), this information has become equally important in respect of acquisitions under regulation 11 (2) as well.

3.2.3 **Proposal:** It is therefore proposed to suitably amend regulation 7 (1A) to also include acquirers falling under the purview of regulation (11) (2).

3.3 **Existing provisions of Regulation 11 (1) and 11 (2) and rationale for the proposed amendment to Regulation 11 (1)**

3.3.1 Regulation 11 (1) reads as under :

“No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15% or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, in any financial year ending on 31st March, unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations.”

3.3.2 The amended regulations 11(2) reads as under :

“No acquirer, who together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through persons acting in concert with him any additional shares [entitling him to exercise voting rights] or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:

Provided that

Provided further that such acquirer may, without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto

five per cent.(5%) voting rights in the target company subject to the following:-

- (i) the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buy back of shares by the target company;
- (ii) the post acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent. (75%)”

3.3.3 Pursuant to the aforesaid amendment to regulation 11 (2), queries have been raised as to –

- a. Whether an acquirer, together with PACs, holding more than 50 % but less than 55 % equity shares, can straight away acquire 5 %, which may take his holding beyond 55 %, given the fact that the amended regulation 11 (2) now permits an acquirer holding more than 55 % to acquire another 5 % without making an open offer.
- b. Whether an acquirer who has acquired 5 % under regulation 11 (1) and consequently goes beyond 55 %, can further acquire another 5 % under regulation 11 (2) in the same financial year, since the two regulations are independent.

3.3.4 The above issues had not arisen prior to the amendment to regulation 11 (2) since earlier, the open offer obligations were triggered on acquisition of even a single share beyond 55 %. Further, it may be stated that it has never been the intention of SEBI to permit creeping beyond 5 % in a single financial year.

- 3.3.5 The erstwhile regulation 11 (2) prohibited the acquisition of even a single share beyond 55 % and therefore, no need was felt to provide an upper limit on the post acquisition holding under Regulation 11(1). However with the amendment to Regulation 11(2) which permits 5% creeping with restriction on the modes of acquisition, a need has been felt to provide a ceiling on the post acquisition holding for availing 5% creeping in a financial year, by suitably amending regulation 11(1).
- 3.3.6 **Proposal :** In view of the above, it is proposed that Takeover Regulations may be amended to clarify that under regulation 11 (1), the creeping acquisition of 5 % would be available subject to the condition that post-acquisition, the shareholding / voting rights of the acquirer together with persons acting in concert with him, shall not increase beyond 55 %. However such acquisition upto 55 % shall not be a bar on further acquisition up to 5% as envisaged under the second proviso to regulation 11(2).
- 4.0 The Board is requested to consider and approve the proposal contained in Paras 2.3, 3.2.3 and 3.3.6 above. The Board is also requested to authorize the Chairman to take necessary consequent steps to give effect to the decision of the Board.