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भारतीय प्रतिभूति  
और विनिमय बोर्ड  
**Securities and Exchange  
Board of India**

GENERAL MANAGER  
DIVISION OF CORPORATE RESTRUCTURING  
Tel. 022 26449350  
Fax -26449019-22  
E-mail: [neelamb@sebi.gov.in](mailto:neelamb@sebi.gov.in)

CFD/DCR/TO/ 174601/09  
August 26, 2009

Shri S. Subramanian,  
Gulf Oil Corporation Ltd,  
Kukatpally, Post Bag No:1,  
Sanathnagar (IE) P.O,  
Hyderabad- 500 018  
Andhra Pradesh

Dear Sir,

Sub.: Consolidation of shareholding under regulation 11 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (the Takeover Regulations) – Request by Gulf Oil Corporation Ltd. for an Interpretive Letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003

1. Please refer to your letters dated June 03, 2009, June 23, 2009 and July 23, 2009 on the captioned matter.
2. It is inter-alia informed by you vide your letters under reference that:-
  - (a) Gulf Oil Corporation Ltd (GOCL) is an Indian company. Equity shares of GOCL are listed on BSE and NSE. Gulf Oil International (Mauritius) Inc. (GOIMI/acquirer) is the promoter of GOCL.
  - (b) Helvetia Mauritius Ltd (Helvetia) and Swallow Enterprises Mauritius Ltd (Swallow) were overseas corporate bodies (OCBs) based in Mauritius, having shareholding in GOCL to the extent of 2.67% and 0.63%, respectively.
  - (c) GOIMI, Helvetia and Swallow had approved on 13.05.2008, a proposal of amalgamation under the laws of Mauritius. The amalgamation of the said OCBs with GOIMI was proposed with retrospective effect from May 2008. The amalgamation was



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approved by the Registrar of Companies, Republic of Mauritius on April 23, 2009.

- (d) Accordingly, the beneficial ownership in the shares of GOCL would transfer from the OCBs to GOIMI, resulting in an increase in shareholding of GOIMI in GOCL from 45.73% to 49.03% (an increase of 3.3%). Though the approval came into effect in April/May 09, the scheme is with effect from May 08.
- (e) Even though the said OCBs have ceased to exist in Mauritius, transfer of shares in India has not been effected, as the application for the same has been filed with the Reserve Bank of India. On receipt of RBI approval, the transfer will be effected in the records of GOCL.
- (f) Under regulation 11 of the Takeover Regulations, an acquirer can consolidate his holdings by further acquiring 5% in a financial year, till the holding reaches 75%. Whereas, under regulation 3(1)(j) nothing contained in Regulation 10, 11 and 12 shall apply to acquisition of shares pursuant to scheme of arrangement or reconstruction including amalgamation or merger or demerger under any law or regulation, Indian or foreign.
- (g) The increase in shareholding of GOIMI in GOCL on account of amalgamation in Mauritius, is exempted under regulation 3 and as permitted under regulation 11, they have the option of increasing their shareholding in GOCL by way of open market purchases, preferential allotment etc.
3. In the view of the above submissions made, you have sought the interpretive letter on the issue:
- (a) Whether the increase in shareholding of GOIMI on account of the amalgamation of the three Mauritius based companies is exempted under Regulation 3; and
- (b) Whether GOIMI have the option of acquiring further 5% shareholding in GOCL during the current financial year by way



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of open market purchase or by preferential allotment (5% of increased capital in case of allotment of fresh shares) pursuant to Regulation 11, without violating any of the applicable Rules, Regulations or Guidelines in 2009-10?

4. We have considered the submission made by you in your letter under reference and without necessarily agreeing with your analysis, our views on the issue are as under:-
- (a) As per Regulation 11(1) of the Takeover Regulations - *"No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent 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."*
- (b) Under the facts and circumstances represented in your letters under reference it is noted that the transaction described in the request is covered under regulation 11 (1) and under this regulation the GOIMI can consolidate by further acquiring upto 5% in a financial year.
- (c) As per Regulation 3(1)(j) (ii) of the Takeover Regulations *"nothing contained in regulations 10, 11 or 12 of the Takeover Regulations shall apply to acquisition of shares or voting rights pursuant to a scheme of arrangement or reconstruction including amalgamation or merger or demerger under any law or regulation, Indian or foreign"*.
- (d) The exemption under regulation 3 is available from the open offer obligations of regulations 10, 11 and 12. When the acquisition is within the 5% limit as specified in regulation 11 (1), the obligations under regulation 11 is not attracted and the question of availability of exemption under regulation 3 does not arise. Therefore, the increase of 3.3% in the shareholding of



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GOIMI being within the said 5% limit, regulation 11 (1) is not triggered by the said acquisition.

- (e) From the certificate of amalgamation dated April 23, 2009 issued by Registrar of Companies of Republic of Mauritius, it is noted that the amalgamation has come into effect from April 23, 2009. Therefore, if amalgamation is effective from April 23, 2009, the increase (3.3%) will also be effective from the said date and not from May 2008 unless the Registrar of Companies of Republic of Mauritius has provided otherwise with respect to the effective date of such increase.
- (f) Had the increase been beyond 5% limit, it would have been exempted under regulation 3 (1) (j) (ii) automatically. In that case, the acquirer would be entitled to acquire additional upto 5% shares / voting rights in the target company in the same financial year without making a public announcement under regulation 11 (1). With the same logic, if the GOIMI has acquired 3.3% through a scheme or merger or amalgamation contemplated under regulation 3 (1) (j) (ii) of the Takeover Regulations it can increase its shareholding in GOCL by additional 5% within this financial year without triggering Regulation 11 (1). Mode of acquisition is not relevant under regulation 11(1).
5. This position is based on the representation made to the Division in your letters under reference. Different facts or conditions might require a different result. This letter does not express the decision of the Board on the questions referred.
6. You may note that the above views are expressed only with respect to the clarification sought on SEBI (Substantial Acquisition of Shares and Takeovers) regulations, 1997 and do not affect the applicability of any other law or requirement.

Yours faithfully,

**Neelam Bhardwaj**