

Neelam Bhardwaj
General Manager
Corporation Finance Department
Phone: +91 22 26449350 (D), Email: neelamb@sebi.gov.in

SEBI/CFD/SCRR/01/2009/03/09

September 3, 2009

The Managing Director/ Executive Director/ Administrator of all the Stock Exchanges

Dear Sirs,

Sub.: Application under sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957 for relaxing strict enforcement of clause (b) to sub-rule (2) of rule 19 thereof

1. The matters relating to issue of capital, the manner of disclosure of such matters and other matters incidental thereto have been provided in the SEBI (Issue of **C**apital and **D**isclosure **R**equirements) Regulations, 2009 (hereinafter referred to as “the ICDR Regulations”). The ICDR Regulations have been notified on August 26, 2009.
2. Clause 8.3.5 of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 (since rescinded) contained provisions for considering the applications under sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as “the SCRR”) in certain cases. Since this clause pertained to the matters relating to listing of securities under SCRR, it was decided not to incorporate it in the ICDR Regulations but to issue the same by way of a circular under section 11 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “the SEBI Act), read with sub-rule (7) of rule 19 of the SCRR.

3. Accordingly, this circular is issued in exercise of powers conferred by section 11 of the SEBI Act, read with sub-rule (7) of rule 19 of the SCRR, to specify the requirements for considering applications seeking relaxation from strict enforcement of clause (b) to sub-rule (2) of rule 19 thereof under sub-rule (7) of rule 19 of the SCRR. These requirements are contained in **Annexure** to this circular.
4. Stock exchanges are advised to take into account the requirements of this circular while making their recommendations on the applications filed with them. Stock exchanges are further advised to bring the requirements of this circular to the notice of the companies listed therein.
5. It is hereby clarified that the applications pending as on the date of this circular shall be considered in accordance with this circular.
6. This circular is available on SEBI website at www.sebi.gov.in under the categories “Legal Framework” and “Issues and Listing”

Yours faithfully,

Neelam Bhardwaj

Encl.: As above

ANNEXURE

Requirements for considering applications seeking relaxation from strict enforcement of clause (b) to sub-rule (2) of rule 19 thereof under sub-rule (7) of rule 19 of the SCRR

PART A

Application by an unlisted issuer for listing of equity shares pursuant to Scheme sanctioned by a High Court

1. An unlisted issuer may make an application to the Board under sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as "the SCRR"), seeking relaxation from the strict enforcement of clause (b) to sub-rule (2) of rule 19 thereof for listing of its equity shares on a recognised stock exchange without making an initial public offer if it satisfies the following conditions:
 - (a) The equity shares sought to be listed have been allotted by the unlisted issuer (transferee entity) to the holders of securities of a listed entity (transferor entity) pursuant to a scheme of reconstruction or amalgamation (Scheme) sanctioned by a High Court under section 391-394 of the Companies Act, 1956;
 - (b) The listing of the equity shares of the transferee entity is in terms of the Scheme sanctioned by the High Court or its order whereby the Scheme has been sanctioned;
 - (c) At least twenty five per cent. of the post-scheme paid up share capital of the transferee entity comprises shares allotted to the public shareholders in the transferor entity;
 - (d) The transferee entity has not issued/ reissued any shares, not covered under the Scheme;
 - (e) As on date of application, there are no outstanding warrants/ instruments/ agreements which give right to any person to take the equity shares in the transferee entity at any future date. If there are such instruments stipulated in the Scheme sanctioned by the High Court, the percentage referred to in point (c) above shall be computed after giving effect to the consequent increase of capital on account of compulsory conversions outstanding as well as on the assumption

that the options outstanding, if any, to subscribe for additional capital will be exercised;

- (f) The share certificates have been despatched to the allottees pursuant to the Scheme or their names have been entered as beneficial owner in the records of the depositories;
 - (g) The shares of the transferee entity issued in lieu of the locked-in shares of the transferor entity are subjected to lock-in for the remaining period.
2. The transferee entity shall also confirm that it has taken steps for listing of its equity shares, within thirty days of the date of the order of the High Court sanctioning the Scheme, simultaneously on all the stock exchanges where the equity shares of the transferor entity are/were listed.
 3. In case of a hiving off of a division of a listed entity (say, "entity A") and its merger with a newly formed or existing unlisted issuer (say, "entity B") there will not be any additional lock-in, if the paid-up share capital of the unlisted issuer 'B' is only to the extent of requirement for incorporation purposes.
 4. In case of merger where the paid-up share capital of the unlisted issuer seeking listing (say, "entity B") is more than the requirement for incorporation, the promoters' shares shall be locked-in to the extent twenty per cent. of the post merger paid-up capital of the unlisted issuer, for a period of three years from the date of listing of the shares of the unlisted issuer. The balance of the entire pre-merger capital of the unlisted issuer shall also be locked-in for a period of three years from the date of listing of the shares of the unlisted issuer.
 5. The formalities for commencing of trading shall be completed within forty five days of the date of final order of the High Court. Before commencement of trading, the transferee entity shall give an advertisement in one English and one Hindi newspaper with nationwide circulation and one regional newspaper with wide circulation at the place where the registered office of the transferee entity is situated, giving following details:
 - (a) Name and address of its registered office.
 - (b) Details of change of name and/or object clause.
 - (c) Capital structure - pre and post scheme of amalgamation. This shall provide details of the authorized, issued, subscribed and paid up capital (Number of instruments, description, and aggregate nominal value).

- (d) Shareholding pattern giving details of its promoter group shareholding, group companies.
- (e) Names of its ten largest shareholders - number and percentage of shares held by each of them, their interest, if any.
- (f) Details of its promoters - educational qualifications, experience, address.
- (g) Business and its management.
- (h) Reason for the amalgamation.
- (i) Financial statements for the previous three years prior to the date of listing.
- (j) Latest audited financial statements along with notes to accounts and any audit qualifications. Change in accounting policies in the last three years and their effect on profits and reserves (Financial statements should not be later than six months prior to the date of listing).
- (k) Details of its other group companies including their capital structure and financial statements.
- (l) Outstanding litigations and defaults of the transferee entity, promoters, directors or any of the group companies.
- (m) Particulars of high, low and average prices of the shares of the listed transferor entity during the preceding three years.
- (n) Any material development after the date of the balance sheet.
- (o) Such other information as may be specified by the Board from time to time.

PART B**Application by a listed issuer for listing of equity shares with differential rights as to dividend, voting or otherwise**

A listed issuer desirous of listing of its equity shares with differential rights as to dividend, voting or otherwise, without making an initial public offer of such equity shares, may make an application to the Board under sub-rule (7) of rule 19 of the SCRR seeking relaxation from strict enforcement of clause (b) to sub-rule (2) of rule 19 thereof if it satisfies the following conditions:

- (a) such equity shares are issued to all the existing shareholders as on record date by way of rights or bonus issue;
- (b) the issuer is in compliance with the conditions of minimum public shareholding requirement stipulated in the equity listing agreement, with reference to the equity shares already listed and the equity shares with differential rights proposed to be listed;
- (c) the issuer undertakes to disclose the shareholding pattern of the equity shares with differential rights separately in terms of the equity listing agreement.

PART C**Application by a listed issuer for listing of warrants offered along with Non-Convertible Debentures (NCDs)**

A listed issuer, desirous of listing of its warrants without making an initial public offer of warrants, may make an application to the Board under sub-Rule (7) of rule 19 of the SCRR seeking relaxation from strict enforcement of clause (b) to sub-rule (2) of rule 19 if it satisfies the following conditions:

- (a) warrants are issued as combined offering of NCDs and warrants through qualified intuitions placement under Chapter VIII of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as “the ICDR Regulations”);
- (b) the issuer is in compliance with all the provisions of Chapter VIII of the ICDR Regulations ;
- (c) NCDs and warrants shall be traded in the minimum trade lot of one lakh rupees.

PART D
Miscellaneous

1. An application to the Board under Part A, Part B or Part C shall be made through the designated stock exchange of the listed entity and the designated stock exchange shall forward the application along with its recommendations, giving reasons in writing to the Board.
2. The Board may, while granting relaxation, if any, under sub-rule (7) of rule 19 of SCRR, stipulate any other conditions as may be deemed necessary in the interest of investors and securities market, under the facts and circumstances of the specific case.