

## **Pricing norms in Preferential Issue of Equity Shares and Exemption from open offer in case of Companies having stressed assets**

- 1.0 This memorandum seeks to inform the Board with regard to steps taken on the proposal amending the SEBI(Issue of Capital and Disclosure Requirement) Regulations, 2018 (“ICDR Regulations”) and SEBI(Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“Takeover Regulations”), in relation to Pricing norms in Preferential Issue of Equity Shares and Exemption from open offer in case of Companies having stressed assets, which was approved by the Board, by circulation, on June 19, 2020 **(Board Memorandum, Member’s comments are placed at Annexure –A and B respectively).**
- 2.0 As per the decision of the Board, the following proposal has been approved:
- 2.1 A listed entity satisfying any two out of the following three conditions shall be considered as stressed
- (i) Any listed company that has made disclosure of defaults on payment of interest/ repayment of principal amount on loans from banks / financial institutions/ Systemically Important Non-Deposit taking Non-banking financial companies/ Deposit taking Non-banking financial companies and /or listed or unlisted debt securities in terms of SEBI Circular dated November 21, 2019, and such payment default is continuing for a period of at least 90 calendar days after occurrence of such default.
  - (ii) Existence of Inter-creditor agreement in terms of Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019 dated June 07, 2019.
  - (iii) Downgrading of credit rating of the financial instruments (listed or unlisted), credit instruments / borrowings (listed or unlisted) of the listed company to “D”.

2.2 A listed entity complying with conditions mentioned at 2.1 above, shall be eligible for exemptions as follows:

(i) Proposed pricing under ICDR

Exemptions may be provided to eligible listed entities from strict enforcement of pricing related regulations under Chapter V (Preferential Issue) of the ICDR Regulations. The pricing in such cases may be determined as follows:

Pricing in case of frequently traded shares:

not less than the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date

Regulation 165 of ICDR Regulations shall continue to apply in case of infrequently traded shares:

(Explanation: The pricing in case of infrequently traded shares as per regulation 165 of the ICDR Regulation is determined by the issuer taking into account valuation parameters such as book value, comparable trading multiples, and other such customary parameters for valuation, and such valuation is required to be certified by independent valuer)

(ii) Proposed exemption under SAST

Exemption from making an open offer may be provided for the allottees of preferential issue in such aforesaid stressed companies if the acquisition is beyond the limit prescribed in terms of Regulation 3(1) of Takeover Regulations or if the open offer is warranted due to change in control in terms of Regulation 4 of Takeover Regulations. The aforesaid exemptions from making an open offer to the allottee shall be provided only in case of acquisition through preferential issue.

2.3 Listed companies complying with conditions mentioned at 2.1 above, shall ensure the following in order to avail above mentioned exemptions:

(i) The preference issue is made to persons/entities that are not part of the promoter or promoter group on the date of the board meeting to consider the preferential issue. Apart from the above the following shall also be ineligible:

- a. undischarged insolvent in terms of Insolvency and Bankruptcy Code, 2016
- b. wilful defaulter in accordance with guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949
- c. a person disqualified to act as director under the Companies Act, 2013
- d. a person prohibited by the SEBI from trading in securities or accessing the securities market
- e. a person declared fugitive economic offender
- f. A person who has been convicted for any offence punishable with imprisonment-
  - i. For two years or more under any Act specified under the Twelfth Schedule of Insolvency and Bankruptcy Code, 2016
  - ii. For seven years or more under any law for the time being in force  
Provided that such restriction will not be applicable to a person after the expiry of a period two years from the date of his release from imprisonment
- g. A person who has executed a guarantee in favour of a lender of the issuer and such guarantee has been invoked by the lender and remains unpaid in full or part

(ii) The resolution for the preferential issue at the aforesaid pricing and exemption from open offer shall be passed as follows:

The votes cast by the shareholders in the 'public' category in favour of the proposal shall be more than the number of votes cast against it. The proposed allottee(s) in the preferential issue that may already hold

specified securities shall not be included in the category of 'public' for this purpose.

Provided where the company does not have an identifiable promoter, the resolution shall be deemed to have been passed if the votes cast in favour are not less than three times the number of the votes, if any, cast against it.

- (iii) Proposed end-use of proceeds of such preferential issue will be disclosed in the explanatory statement sent for purposes of the shareholder resolution. The proceeds should not be used for any repayment of loans taken from promoters/ promoter group/ group companies.
- (iv) Monitoring agency will be appointed for monitoring end-use of the proceeds of such a preferential issue. The monitoring agency shall not be an associate to the company. The Audit Committee shall also monitor the proceeds of such a preferential issue.  
  
The format for reporting shall be in terms of Schedule XI (with fields as applicable) of the ICDR Regulations.
- (v) The shares issued to the investors in such an issue shall be locked in for a period of three years from the latest date of trading approval granted by all the stock exchanges where the specified securities are listed.
- (vi) The statutory auditor and the Audit Committee shall certify that eligibility as mentioned at 2.1 above and 2.3 (i) to (iii) have been met at the time of dispatch of notice for general meeting proposed for passing the special resolution and also at the time of allotment.

**3.0** Amendments to the ICDR Regulations and Takeover Regulations are being notified.

This is placed for information of the Board.

**Pricing norms in Preferential Issue of Equity Shares and Exemption from open offer in case of Companies having stressed assets**

**1. Objective**

1.1. This memorandum seeks approval of the Board to:

- (i) amend SEBI(Issue of Capital and Disclosure Requirement) Regulations, 2018 (“ICDR Regulations”) in relation to allowing special pricing methodology in case of preferential issue of equity shares to non-promoters in a company having stressed assets; and
- (ii) amend SEBI(Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“Takeover Regulations”) in relation to exemption from open offer obligation under Regulation 3(1) and Regulation 4 of the Takeover Regulations in case of acquisition of shares by way of preferential issue of equity shares to non-promoters in a company having stressed assets.

**2. Background:**

History of the Pricing Methodology in preferential issues:

2.1. The pricing guidelines for preferential issues were first introduced on August 04, 1994 mandating that the issue price shall not be less than average of weekly high and low of the closing prices for six months or average of weekly high and low of the closing prices for two weeks preceding the relevant date.

2.2. Subsequently, SEBI on August 25, 2014 amended the said pricing mechanism under ICDR Regulations to replace ‘closing price’ with ‘volume weighted average price’. This was done as volume weighted average price is a better representative since it eliminates the outlier effects of high and low prices. Such a price is a more accurate determinant of the prices at which shares are actually transacted.

### Existing Pricing Methodology

2.3. Presently, in case of frequently traded shares, in terms of Regulation 164(1) of the ICDR Regulations the price of equity shares allotted pursuant to the preferential issue shall not be less than higher of either of the following:

164(1)(a) the average of weekly high and low of the volume weighted average price of the related equity shares quoted on the recognized stock exchange during the twenty six weeks preceding the relevant date or

164(1)(b) the average of weekly high and low of the volume weighted average prices of the related equity shares quoted on the recognized stock exchange during the two weeks preceding the relevant date.

### Need for review of Existing Pricing Methodology

2.4. It has been observed that listed companies that are facing financial stress are generally, in need of fund infusion to tide over the stress situation and thereby avoid Insolvency/Bankruptcy. Such listed companies face certain difficulties in raising capital through the conventional means. It is observed that, typically, listed companies having “stressed assets” experience progressive fall in their share price. The disclosures that are made by stressed companies such as their financial results, default in servicing debts may also aggravate the fall.

2.5. Such companies are often in urgent need of capital from willing financial investors, as other sources of funds tend to dry up at this stage. One method available for raising capital can be through preferential allotment to help resuscitate the company.

2.6. It has been represented that the pricing guidelines are too onerous for any financial investor to consider investments in a stressed company. The rationale for such representation is that the determination of the pricing covers a period of twenty-six weeks or two weeks whichever is higher for frequently traded shares. This large latency in pricing period especially given the deteriorating financial

condition of the listed company leads to a wide gap in pricing between the price at the beginning of the twenty-six weeks and the current price when funds are required to be raised.

2.7. In view of the continuous fall in prices in companies having stressed assets, the pricing determined by Regulation 164(1)(a) is higher than as determined by Regulation 164(1)(b). This is because Regulation 164(1)(a) takes in to account average of the weekly high and low of volume weighted average price for 26 weeks as compared to only 2 weeks for Regulation 164(1)(b).

2.8. Given these pricing regulations, it is practically difficult if not impossible for such companies to raise funds through preferential allotment route.

2.9. A case is also made out by such investors to have a substantial holding in the company, in order to take control over the operations of the company and guide the company out of the stress. However, this acquisition of substantial holding and control triggers the obligations by such investor to make open offer to the shareholders in terms of the Takeover Regulations which require him to acquire 26% more shareholding.

### 3. Primary Markets Advisory Committee (PMAC)

3.1. The matter was taken to the PMAC to broadly consider the following:

3.1.1. At what stage can a company be considered to be “Stressed”?

3.1.2. What can be the parameters for identifying/ defining such stressed companies

3.1.3. Is there a case for any relaxations for preferential issues in “Stressed” companies? If so, what kind of concessions may be permitted?

#### PMAC Proposal

3.2. The PMAC deliberated on the agenda on January 17, 2020 and March 13, 2020 and made the following recommendation:

3.2.1. A listed entity satisfying any two out of the following three conditions shall be considered as stressed:

- (i) Any listed company that has made disclosure of defaults on payment of interest/ repayment of principal amount on loans from banks / financial institutions and listed and unlisted debt securities for two consequent quarters in terms of SEBI Circular dated November 21, 2019.
- (ii) Existence of Inter-creditor agreement in terms of Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019 dated June 07, 2019.
- (iii) Downgrading of credit rating of the listed instruments of the company to “D”.

3.2.2. A listed entity complying with conditions mentioned at (a) above, shall be eligible for exemptions as follows:

- (i) Proposed pricing under ICDR

Exemptions may be provided to eligible listed entities from strict enforcement of pricing related regulations under Chapter V (Preferential Issue) of the ICDR Regulations. However, the pricing in such cases may be determined as follows:

Pricing:

not less than the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

- (ii) Proposed exemption under SAST

Exemption from making an open offer may be considered for the allottees of preferential issue in such aforesaid stressed companies if the acquisition is beyond the limit prescribed in terms of Regulation 3(1) of SAST Regulations

3.2.3. Listed companies complying with conditions mentioned at (a) above, shall ensure the following in order to avail above mentioned exemptions:

- (i) The preference issue is made to persons/entities that are not part of the promoter or promoter group on the date of the board meeting to consider the preferential issue
- (ii) Resolution for the preferential issue at the aforesaid pricing and exemption from open offer has been approved by the majority of minority shareholders (i.e., excluding the promoters, the promoter group and any proposed allottee in the preferential issue that may already hold specified securities in the listed company prior to the preferential issue)
- (iii) Proposed end-use of proceeds of such preferential issue will be disclosed in the explanatory statement sent for purposes of the shareholder resolution
- (iv) Monitoring agency will be appointed for monitoring the end-use of the proceeds of such a preferential issue
- (v) The shares issued to the investors in such an issue shall be locked in for a period of three years from the latest date of trading approval granted by all the stock exchanges where the specified securities are listed.

#### 4. Public Consultation

4.1. As part of SEBI's consultative approach, a discussion paper was placed on the website of SEBI on April 22, 2020 seeking public comments on the proposal of PMAC. The discussion paper is placed at **Annexure-I** for reference.

4.2. Comments have been received from 45 entities including issuers, law firms, merchant bankers, issuer companies, individuals, consultant and industry associations including AIBI, FICCI etc. on the PMAC recommendations welcoming the initiative to provide exemptions to companies having stressed assets. Further, the commentators have made additional suggestions as well. The

comments relevant to the consultation paper have been analyzed and tabulated at **Annexure-II**.

4.3. The summary of main public comments along with analysis on the same is as follows:

- b. On the eligibility criteria requiring default disclosure for 2 quarters, majority of the comments have suggested that 2 quarters is too long a period and the same may be brought down to one quarter. One commentator has suggested that sufficient checks may be put in place by requiring statutory auditor and Audit Committee to certify existence of default until the time of allotment. One commentator has also suggested that default from NBFCs should also be considered.

**Analysis:** We may agree to the suggestion that default disclosure for 2 quarters may be too long a period for ensuring timely financial intervention. Accordingly, we may reduce the requirement to 90 days of continuous default. In addition, the requirement to make disclosure of defaults will continue. As regards checks to ensure existence of default, we may include the same as a condition for availing exemption. Defaults in systemically important NBFC may also be considered.

- c. On the eligibility criteria pertaining to requirement of Inter-creditor agreement(ICA) in terms of Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019 dated June 07, 2019, many of the commentators have suggested that the requirement of signing ICA by all lenders may be relaxed to majority of lenders.

**Analysis:** The criteria of ICA has been prescribed by the Reserve Bank of India and thus it may be continued without making any change.

- d. On the eligibility criteria pertaining to downgrading of credit rating of listed instruments to “D”, majority of the comments suggested that the same should include unlisted instruments as well. One commentator has suggested including all credit instruments/ borrowing facilities under the ambit of the

criteria. Many have also suggested that the downgrading to “C” may be considered as an eligibility criteria.

**Analysis:** The introduction of unlisted instruments as well as credit instruments/ borrowing facilities may be accepted. As regards downgrading to “C” to be eligible criteria, it is desirable that exemptions should be available for companies which have already defaulted in order for them to avail of the exemptions proposed under this scheme.

- e. Majority of the commentators have suggested that the eligibility criteria may be reduced to any one condition out of three from the proposed any two out of three conditions. Some of the rationale for the suggestion were that not all companies have listed debt instruments and that two quarters is too long a period to become eligible for exemption etc.

**Analysis:** In order to prevent misuse of the exemptions, it is essential that there are strong indicators of stress which are evident by mandating any two out of the three eligibility criteria rather than one of the three eligibility criteria. Further, default against unlisted debt instruments is being added to the criteria.

- f. On the exemption in pricing of preferential issue comments, 3 comments were received seeking additional discount as applicable in QIP route. Some have suggested that an option may be provided in pricing, in the form of valuation report from independent valuers. Some commentators have sought clarity on pricing methodology in case of infrequently traded shares.

**Analysis:** Since the exemptions that are intended to be granted include open offer and considering the fact that such an exemption could be available for non-QIB willing investor as well, it may not be prudent to offer additional discount or option in pricing. As regards, pricing methodology for infrequently traded shares, the same may be governed by existing Regulation 165 of the ICDR Regulations.

- g. With regard to conditions for availing exemptions, on the aspect of not allowing promoter and promoter group to participate in such funding exercise, a majority

of the commentators are of the view that promoters and promoter group may be allowed. One commentator has suggested that preferential issue should not be made to a person who is disqualified under section 29A of the Insolvency and Bankruptcy Code, 2016 (IBC).

**Analysis:** Section 29A of the IBC is vast and makes a wide range of persons ineligible to be resolution applicant. The role of a resolution applicant is apparently much wider than that of a preferential allottee as envisaged in the proposed framework. As such, borrowing the entire provisions of section 29A of IBC may lead to operational difficulties and make the proposed framework too restrictive in terms of the stressed company's ability to raise funds through preferential allotment. Further, section 29A of the IBC allows promoters to be resolution applicant in case all dues relating to non-performing assets have been paid. It is therefore proposed that the following entities shall be ineligible in addition to promoter/ promoter group:

- (i) Undischarged insolvent in terms of Insolvency and Bankruptcy Code, 2016
- (ii) Wilful defaulter in accordance with guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949
- (iii) A person disqualified to act as director under the Companies Act, 2013
- (iv) A person prohibited by the SEBI from trading in securities or accessing the securities market
- (v) A person declared as fugitive economic offender
- (vi) A person who has been convicted for any offence punishable with imprisonment-
  - i. For two years or more under any Act specified under the Twelfth Schedule of Insolvency and Bankruptcy Code, 2016
  - ii. For seven years or more under any law for the time being in forceProvided that such restriction will not be applicable to a person after the expiry of a period two years from the date of his release from imprisonment

- (vii) A person who has executed a guarantee in favour of a lender of the issuer and such guarantee has been invoked by the lender and remains unpaid in full or part
- h. With regard to conditions for availing exemption, on the aspect of use of proceeds to be disclosed in the explanatory statement, two commentators have suggested that raising of funds with the objective of repayment of loan to promoter/ promoter group may not be allowed.

**Analysis:** We may agree with the suggestion that exemptions should not be availed by the incoming investor to help out the existing promoter/ promoter group.

- i. With regard to conditions for availing exemption, on the aspect of monitoring agency, 5 commentators have stated that monitoring agency may be appointed only in cases where the issue size is above a certain threshold (Rs 10 Cr/ Rs 100 Crs). Some commentators have sought clarification on the reporting format of the monitoring agency. Other commentators have suggested dispensing with monitoring agency and entrusting the responsibility with statutory auditor.

**Analysis:** In view of the significant exemptions granted (both pricing and open offer) it is essential that appropriate independent monitoring of funds is undertaken to ensure that the funds are utilized for the stated cause and should not be related to the issue size. We may therefore not agree to the suggestion. Further, we may also mandate that the audit committee monitor the proceeds of such preferential issue.

- j. With regard to conditions for availing exemption, on the aspect of lock-in, 7 commentators have stated that lock-in of 3 years may be made applicable only in case of post issue capital being more than 25% or in case of change in control. Almost all other commentators have suggested that the lock-in may be kept as 1 year.

**Analysis:** In view of the significant exemptions (pricing of preferential issue and open offer) and in order to ensure certain skin in the game for the incoming

investor, 1 year lock-in in case of acquisition less than 25% may be too short. We may therefore not agree to the suggestion.

## 5. **Proposal**

Considering the above recommendations of the PMAC and the public comments received in this regard, the following is proposed:

5.1. A listed entity satisfying any two out of the following three conditions shall be considered as stressed

- (i) Any listed company that has made disclosure of defaults on payment of interest/ repayment of principal amount on loans from banks / financial institutions/ Systemically Important Non-Deposit taking Non-banking financial companies/ Deposit taking Non-banking financial companies and /or listed or unlisted debt securities in terms of SEBI Circular dated November 21, 2019, and such payment default is continuing for a period of at least 90 calendar days after occurrence of such default.
- (ii) Existence of Inter-creditor agreement in terms of Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019 dated June 07, 2019.
- (iii) Downgrading of credit rating of the financial instruments (listed or unlisted), credit instruments / borrowings (listed or unlisted) of the listed company to "D".

5.2. A listed entity complying with conditions mentioned at 5.1 above, shall be eligible for exemptions as follows:

- (i) Proposed pricing under ICDR

Exemptions may be provided to eligible listed entities from strict enforcement of pricing related regulations under Chapter V (Preferential Issue) of the ICDR Regulations. The pricing in such cases may be determined as follows:

Pricing in case of frequently traded shares:

not less than the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date

Regulation 165 of ICDR Regulations shall continue to apply in case of infrequently traded shares:

(Explanation: The pricing in case of infrequently traded shares as per regulation 165 of the ICDR Regulation is determined by the issuer taking into account valuation parameters such as book value, comparable trading multiples, and other such customary parameters for valuation, and such valuation is required to be certified by independent valuer)

(ii) Proposed exemption under SAST

Exemption from making an open offer may be provided for the allottees of preferential issue in such aforesaid stressed companies if the acquisition is beyond the limit prescribed in terms of Regulation 3(1) of Takeover Regulations or if the open offer is warranted due to change in control in terms of Regulation 4 of Takeover Regulations. The aforesaid exemptions from making an open offer to the allottee shall be provided only in case of acquisition through preferential issue.

5.3. Listed companies complying with conditions mentioned at 5.1 above, shall ensure the following in order to avail above mentioned exemptions:

- (i) The preference issue is made to persons/entities that are not part of the promoter or promoter group on the date of the board meeting to consider the preferential issue. Apart from the above the following shall also be ineligible:

- a. undischarged insolvent in terms of Insolvency and Bankruptcy Code, 2016
  - b. wilful defaulter in accordance with guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949
  - c. a person disqualified to act as director under the Companies Act, 2013
  - d. a person prohibited by the SEBI from trading in securities or accessing the securities market
  - e. a person declared fugitive economic offender
  - f. A person who has been convicted for any offence punishable with imprisonment-
    - i. For two years or more under any Act specified under the Twelfth Schedule of Insolvency and Bankruptcy Code, 2016
    - ii. For seven years or more under any law for the time being in force  
Provided that such restriction will not be applicable to a person after the expiry of a period two years from the date of his release from imprisonment
  - g. A person who has executed a guarantee in favour of a lender of the issuer and such guarantee has been invoked by the lender and remains unpaid in full or part
- (ii) The resolution for the preferential issue at the aforesaid pricing and exemption from open offer shall be passed as follows:

The votes cast by the shareholders in the 'public' category in favour of the proposal shall be more than the number of votes cast against it. The proposed allottee(s) in the preferential issue that may already hold specified securities shall not be included in the category of 'public' for this purpose.

Provided where the company does not have an identifiable promoter, the resolution shall be deemed to have been passed if the votes cast in favour are not less than three times the number of the votes, if any, cast against it.

- (iii) Proposed end-use of proceeds of such preferential issue will be disclosed in the explanatory statement sent for purposes of the shareholder resolution. The proceeds should not be used for any repayment of loans taken from promoters/ promoter group/ group companies.
- (iv) Monitoring agency will be appointed for monitoring end-use of the proceeds of such a preferential issue. The monitoring agency shall not be an associate to the company. The Audit Committee shall also monitor the proceeds of such a preferential issue.

The format for reporting shall be in terms of Schedule XI (with fields as applicable) of the ICDR Regulations.

- (v) The shares issued to the investors in such an issue shall be locked in for a period of three years from the latest date of trading approval granted by all the stock exchanges where the specified securities are listed.
- (vi) The statutory auditor and the Audit Committee shall certify that eligibility as mentioned at 5.1 above and 5.3 (i) to (iii) have been met at the time of dispatch of notice for general meeting proposed for passing the special resolution and also at the time of allotment.

5.4. The Board is requested to consider and approve the proposal at paragraphs 5.1, 5.2 and 5.3 above, amendments to SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2018, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, and authorize the Chairman to take consequential and incidental steps to give effect to the decisions of the Board as contained in the draft placed at Annexure III.

**(Consultation paper available on SEBI website)**

**(This has been excised for reasons of confidentiality)**

**Annexure-III**

**THE GAZETTE OF INDIA**

**EXTRAORDINARY**

**PART – III – SECTION 4**

**PUBLISHED BY AUTHORITY**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**NOTIFICATION**

**Mumbai, the .....2020**

**SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND  
DISCLOSURE REQUIREMENTS) (SECOND AMENDMENT) REGULATIONS, 2020**

**No. ....** – In exercise of the powers conferred under 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, 2018, namely:-

1. These regulations may be called the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2020.

2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018,-

I. After regulation 164 the following new regulation shall be inserted, namely, -

**“Pricing in preferential issue of shares of companies having stressed assets**

**164A.** (1) In case of frequently traded shares, the price of the equity shares to be allotted pursuant to the preferential issue shall not be less than the average of the weekly high and low of the volume weighted average price of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

(2) No allotment of equity shares shall be made unless the issuer company meets any two of the following criteria:

- a) the issuer has disclosed all the defaults relating to the payment of interest/ repayment of principal amount on loans from banks / financial institutions/ Systemically Important Non-Deposit taking Non-banking financial companies/ Deposit taking Non-banking financial companies and /or listed or unlisted debt securities in terms of SEBI Circular dated November 21, 2019 and such payment default is continuing for a period of at least 90 calendar days after the occurrence of such default;
- b) there is an Inter-creditor agreement in terms of Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019 dated June 07, 2019;
- c) the credit rating of the financial instruments (listed or unlisted), credit instruments / borrowings (listed or unlisted) of the listed company has been downgraded to “D”.

(3) The issuer company making the preferential issue shall ensure compliance with the following conditions:

- a) The preference issue shall be made to a person not part of the promoter or promoter group as on the date of the board meeting to consider the preferential issue. The preference issue shall not be made to the following entities:

- (i) undischarged insolvent in terms of the Insolvency and Bankruptcy Code, 2016;
- (ii) 'wilful defaulter' as per the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;
- (iii) a person disqualified to act as a director under the Companies Act, 2013;
- (iv) a person debarred from trading in securities or accessing the securities market by the Board;  
Explanation: The restriction under (iv) shall not apply to the persons or entities mentioned therein who were debarred in the past by the Board and the period of debarment is already over as on the date of the board meeting considering the preferential issue.
- (v) a person declared as a fugitive economic offender;
- (vi) a person who has been convicted for any offence punishable with imprisonment-
  - A. For two years or more under any Act specified under the Twelfth Schedule of the Insolvency and Bankruptcy Code, 2016
  - B. For seven years or more under any law for the time being in force:

**Provided** that such restriction shall not be applicable to a person after the expiry of a period two years from the date of his release from imprisonment.
- (vii) A person who has executed a guarantee in favour of a lender of the issuer and such guarantee has been invoked by the lender and remains unpaid in full or part.

(4) The resolution for the preferential issue and exemption from open offer shall provide for the following:

- a) The votes cast by the shareholders in the 'public' category in favour of the proposal shall be more than the number of votes cast against it. The proposed allottee(s) in the preferential issue that already hold specified securities shall not be included in the category of 'public' for this purpose:

**Provided** that where the company does not have an identifiable promoter; the resolution shall be deemed to have been passed if the votes cast in favour are not less than three times the number of the votes, if any, cast against it.

(5) The proceeds of such preferential issue shall not be used for any repayment of loans taken from promoters/ promoter group/ group companies. The proposed use of proceeds shall be disclosed in the explanatory statement sent for the purpose of the shareholder resolution.

(6) a) The issuer shall make arrangements for monitoring the use of proceeds of the issue by a public financial institution or by a scheduled commercial bank, which is not a related party to the issuer:

(i) The monitoring agency shall submit its report to the issuer in the format specified in terms of Schedule XI (with fields as applicable) on a quarterly basis until atleast ninety five percent of the proceeds of the issue have been utilized.

(ii) The board of directors and the management of the issuer shall provide their comments on the findings of the monitoring agency as specified in Schedule XI.

(iii) The issuer shall, within forty five days from the end of each quarter, publicly disseminate the report of the monitoring agency by uploading the same on its website as well as submit the same to the stock exchange(s) on which the equity shares of the issuer are listed.

b) The proceeds of the issue shall also be monitored by the Audit Committee till utilization of the proceeds.

(7) The allotment made shall be locked-in for a period of three years from the last date of trading approval.

(8) The statutory auditor and the audit committee shall certify that all conditions under sub-regulations (1), (2), (3), (4) and (5) of regulation 164A are met at the time of dispatch of notice for general meeting proposed for passing the special resolution and at the time of allotment.”

**AJAY TYAGI**

**CHAIRMAN**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**Footnotes:**

1. The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 was published in the Gazette of India on September 11, 2018, vide notification No. SEBI/LAD-NRO/GN/2018/31.

2. The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 was subsequently amended on -
- (a) December 31, 2018 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2018, vide notification No. SEBI/LAD-NRO/GN/2018/57.
  - (b) March 29, 2019 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2019, vide notification No. SEBI/LAD-NRO/GN/2019/05.
  - (c) April 5, 2019 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2019, vide notification No. SEBI/LAD-NRO/GN/2019/08.
  - (d) July 29, 2019 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2019, vide notification No. SEBI/LAD-NRO/GN/2019/29.
  - (e) September 23, 2019 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2019, vide notification No. SEBI/LAD-NRO/GN/2019/35.
  - (f) December 06, 2019 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2019, vide notification No. SEBI/LAD-NRO/GN/2019/42.
  - (g) December 26, 2019 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Sixth Amendment) Regulations, 2019, vide notification No. SEBI/LAD-NRO/GN/2019/47.
  - (h) January 01, 2020 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Seventh Amendment) Regulations, 2019, vide notification No. SEBI/LAD-NRO/GN/2020/01.

- (i) May 08, 2020 by the Securities and Exchange Board of India (Payment of Fees) (Amendment) Regulations, 2020, vide notification No. SEBI/LAD-NRO/GN/2020/11.
- (j) April 17, 2020 by the Securities and Exchange Board of India (Regulatory Sandbox) (Amendment) Regulations, 2020 vide notification No. SEBI/LAD-NRO/GN/2020/10.
- (k) -----, 2020 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2020, vide notification No. SEBI/LAD-NRO/GN/2020/-----.

THE GAZETTE OF INDIA

EXTRAORDINARY

PART – III – SECTION 4

PUBLISHED BY AUTHORITY

SECURITIES AND EXCHANGE BOARD OF INDIA

NOTIFICATION

Mumbai, the....., 2020

**SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION  
OF SHARES AND TAKEOVERS) (SECOND AMENDMENT) REGULATIONS, 2020**

**No.....** – In exercise of the powers conferred under 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 (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, namely:-

1. These regulations may be called the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2020.

2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011,-

- I. In regulation 10, the following new sub-regulation shall be inserted after sub-regulation 2A, namely –

“(2B) Any acquisition of shares or voting rights or control of the target company by way of preferential issue in compliance with regulation 164A of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 shall be exempt from the obligation to make an open offer under sub-regulation (1) of regulation 3 and regulation 4.

**Explanation-** The above exemption from open offer shall also apply to the target company with infrequently traded shares which is compliant with the provisions of sub-regulations (2), (3), (4), (5),(6), (7) and (8) of regulation 164A of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018. The pricing of such infrequently traded shares shall be in terms of regulation 165 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018. ”

**AJAY TYAGI**

**CHAIRMAN**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

## **Footnotes:**

1. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 were published in the Gazette of India on 23rd September, 2011 vide No. LAD-NRO/GN/2011 12/24/30181.
2. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 were subsequently amended on:
  - a) March 26, 2013 by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2013 vide No. LAD-NRO/GN/2012 13/36/7368.
  - b) October 8, 2013 by the SEBI (Listing of Specified Securities on Institutional Trading Platform) Regulations, 2013 vide No. LAD-NRO/GN/2013-14/28/6720.
  - c) May 23, 2014 by the SEBI (Payment of Fees) (Amendment) Regulations, 2014 vide Notification No. LAD-NRO/GN/2014-15/03/1089.
  - d) March 24, 2015 by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2015 vide No. LAD-NRO/GN/2014-15/28/542.
  - e) May 5, 2015 by the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2015 vide No. SEBI/LAD-NRO/OIAE/GN/2015-16/004.
  - f) August 14, 2015 by the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2015 vide No. SEBI/LAD NRO/GN/2015-16/009.

- g) December 22, 2015 by the SEBI (Substantial Acquisition of Shares and Takeovers) (Fourth Amendment) Regulations, 2015 vide No. SEBI/LAD-NRO/GN/2015-16/026.
- h) February 17, 2016 by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2016 vide No. SEBI/LAD-NRO/GN/2015-16/035.
- i) May 25, 2016 by the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2016 vide No. SEBI/ LAD-NRO/GN/2016-17/002.
- j) March 6, 2017 by SEBI (Payment of Fees and Mode of Payment) (Amendment) Regulations, 2017 vide No. SEBI/LAD/NRO/GN/2016-17/037 read with notification dated March 29, 2017 vide No. SEBI/LAD/NRO/GN/2016-17/38.
- k) August 14, 2017 by SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2017 No. SEBI/LAD-NRO/GN/2017-18/015.
- l) June 01, 2018 by SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2018 No. SEBI/LAD-NRO/GN/2018/20.
- m) September 11, 2018 by SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2018 No. SEBI/LAD-NRO/GN/2018/33.
- n) December 31, 2018 by SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2018 No. SEBI/LAD-NRO /GN/ 2018/55.

- o) March 29, 2019 by SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2019 No. SEBI/LAD-NRO /GN/ 2019/06.
- p) July 29, 2019 by SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2019 No. SEBI/LAD-NRO /GN/ 2019/27.
- q) April 17, 2020 by SEBI (Regulatory Sandbox) (Amendment) Regulations, 2020 No. SEBI/LAD-NRO/GN/2020/10.
- r) June 16, 2020 by SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2020 No. SEBI/LAD-NRO /GN/ 2020/14.

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**(This has been excised for reasons of confidentiality)**