

SECURITIES AND EXCHANGE BOARD OF INDIA

Memorandum to the Board

Revision of provisions pertaining to re-classification of promoter / public

1. Objective

1.1 This memorandum seeks approval of the Board for the proposal to revise the provisions pertaining to re-classification of person(s) as promoter(s) / public i.e. Regulation 31A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR Regulations).

2. Background

2.1. Presently, regulation 31A of SEBI LODR Regulations provides for conditions with respect to re-classification of shareholders of listed entities. (Provisions of the current regulation 31A of SEBI LODR Regulations are placed at **Annex-A**).

2.2. Based on representations (including multiple informal guidance requests) received by SEBI and discussions with stock exchanges, it has been felt that there is a need to re-visit the existing regulation 31A of SEBI LODR Regulations with an aim to simplify, streamline and bring greater clarity in the provisions specified therein.

2.3. The Kotak Committee on Corporate Governance, in its report to SEBI dated October 5, 2017, also provided certain recommendations for rationalizing the existing requirements under regulation 31A of SEBI LODR Regulations for certain specific situations. (Recommendations of Kotak Committee on this aspect are placed at **Annex-B**). The Board, in its meeting held on March 28, 2018, noted, with respect to the Kotak Committee recommendations on regulation 31A of SEBI LODR Regulations, that “due to several policy concerns raised on the issue, a revamp of the provision is being proposed separately.”

2.4. In view of the above, a proposal for revision of regulation 31A of SEBI LODR Regulations was placed before the Primary Market Advisory Committee (PMAC)

in its meeting held on July 10, 2018. PMAC deliberated on the proposal and accepted the proposal with certain additions/modifications.

3. Public comments and consultation with stakeholders

3.1. A consultative paper, based on the recommendation of PMAC was placed on the SEBI website for public comments, to be submitted by August 16, 2018. A copy of the same is placed as **Annex-C**.

3.2. Comments were received from various stakeholders including listed entities, industry associations, global associations, lawyers, stock exchanges, etc. A summary of the comments is placed at **Annex-D**. The comments, largely, are in favour of the proposals.

4. Proposal based on the analysis of public comments

Based on an analysis of the public comments received and discussions with the stock exchanges, a detailed proposal on revision of the existing regulation 31A of SEBI LODR Regulations is as follows:

4.1. Simplification of conditions for classification:

- a. Under the current provisions, certain conditions for re-classification of promoters as public shareholders have been laid down for two specific scenarios, as follows:
 - i. When a new promoter replaces the previous promoter subsequent to an open offer or in any other manner and
 - ii. Where an entity becomes professionally managed and does not have any promoters.

Further, certain general conditions for re-classification of promoters as public shareholders have also been specified.

- b. The Kotak Committee has also recommended insertion of a third scenario i.e. a situation where there are multiple and distinct parties classified as promoters, and one of them wishes to be reclassified.

- c. It is felt that having different sets of conditions for different scenarios might be confusing. Hence, in order to simplify the existing provisions, one integrated set of conditions is being proposed.

4.2. Definitions:

In order to simplify and standardize terminologies the following terms are defined in relation to the proposed regulation:

- a) **Promoter(s) seeking re-classification:**

This would mean all such promoters/persons belonging to the promoter group seeking re-classification of status as 'public'.

- b) **Persons related to the promoter(s) seeking re-classification:**

Definition: This would include persons falling under clauses (ii), (iii) and (iv) of regulation 2(1)(zb) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("ICDR") like immediate relative, subsidiary, holding company etc. (Relevant extract of the ICDR at **Annex E**)

Rationale: Where there are multiple and unrelated promoters and one of them wishes to be reclassified, the conditions are to be applied only on the promoter seeking reclassification and the parties related to him (and not to those related to the other promoters). Hence, for the purpose of this regulation, it is proposed to not include the following clauses from the said definition:

- a. Clause (i), which includes the promoter himself – this is not required for the purpose of defining persons related to the promoter.
- b. Clause (v), which includes all persons belonging to the promoter group of the listed entity as a whole (and not exclusively for the promoter)

4.3. Conditions applicable for promoters/persons belonging to promoter group to be eligible for re-classification as public:

- a. In all cases of promoter re-classification, it is proposed that, the promoter(s) seeking re-classification and persons related to him shall not:
 - i. together hold more than 10% of the total voting power in the listed entity;

- ii. exercise control over the affairs of the listed entity directly or indirectly;
 - iii. have any special rights with respect to the listed entity through formal or informal arrangements including through any shareholder agreements;
 - iv. be represented on the Board of Directors (including by way of a nominee director) of the listed entity for a period of 3 years from the date of re-classification;
 - v. act as key managerial persons in the listed entity for a period of 3 years from the date of re-classification;
 - vi. be 'wilful defaulters' as defined by Reserve Bank of India;
- b. Post re-classification, in order to ensure that the aforesaid conditions pertaining to shareholding, control and special rights (mentioned at 4.3(a) (i, ii and iii above)) are satisfied at all times, it is proposed to insert a provision stating that in case of any breach of these conditions, such persons shall automatically be reclassified as 'promoter/promoter group'.

4.4. Re-classification to be permitted only by compliant listed entities: In order to ensure that only compliant listed entities are eligible to apply for re-classification, such listed entities shall, as on the date of application:

- a. Be compliant with minimum public shareholding requirement as required under Regulation 38 of SEBI LODR Regulations;
- b. Not have their shares suspended from trading by the stock exchanges;
- c. Not have any outstanding dues to SEBI / stock exchanges / depositories;

4.5. Process to be followed for re-classification of promoters as public:

Under the current provisions, the process to be followed in each scenario is different. Further, shareholder approval is required only in certain specified cases. It is proposed to lay down a uniform process of clear stages to be followed by the listed entity and the promoters / public in all cases of re-classification, as under:

- a. Stage I: Application by the promoters/ persons belonging to the promoter group to the listed entity for re-classification as a public:
 - i. Currently, the application for re-classification may be filed either by the listed entity or concerned shareholder to the stock exchange.
 - ii. It has been observed that permitting the listed entity to re-classify a promoter as a public shareholder without any application for such re-classification from the promoter concerned is prone to misuse. Further, there is no specific requirement for the promoter to apply for re-classification through the listed entity.
 - iii. Therefore, it is proposed that re-classification is to be permitted only upon the request of the promoter(s)/persons belonging to the promoter group to the listed entity. Such request may be required to specify rationale for seeking such re-classification and how the conditions specified in the Regulations for such re-classification are satisfied.

- b. Stage II: Placing the request of the promoter/promoter belonging to the promoter group before the Board of Directors of the listed entity:
 - i. There is no clear role of the Board of Directors of the listed entity under the current provisions of SEBI LODR Regulations in the matter of re-classification of a promoter into public.
 - ii. It is proposed that the Board of Directors of the listed entity may be required to analyse the promoter request and place the same before the shareholders in a general meeting for approval along with the views (positive/negative) of the Board of Directors on such request.

- c. Stage III: Approval by the shareholders:
 - i. Shareholder approval is currently required only in certain specified cases of re-classification. The profile of promoters/ promoter group is generally a significant criteria for investors to base their investment decisions. Therefore, it is critical that investors have a say in all requests for re-classification by promoters/persons belonging to the promoter group.

- ii. Accordingly, it is proposed that all cases of re-classification of promoters/persons belonging to the promoter group shall be required to be placed by a listed entity before its shareholders in a general meeting along with the views of the Board and approved through an ordinary resolution. In order to avoid conflicts of interest, it is proposed that the promoter(s) seeking re-classification and other shareholders related to such promoters shall not vote to approve such requests.
- iii. The PMAC had suggested that the listed entity may be required to ensure a time gap (a cooling off period) of atleast 6 months between the date of the board Meeting and the shareholders' meeting considering the promoter's request to enable the shareholders to take a considered decision. However, there are several public comments suggesting that 6 months is too long and to reduce the period to 3 months. Since the purpose of a 'cooling off period' to enable the shareholders to take a considered decision is met with 3 months, it is proposed to adopt 3 months as the minimum cooling period.
- iv. Since the consultative paper only proposed a minimum cooling off period without an upper time limit, there are also public comments suggesting a maximum time period in order to avoid misuse by the listed entity. Accordingly, a maximum time gap of 6 months has been proposed.

It may be noted that the stages mentioned above are largely on the lines of the recommendations made by Kotak Committee and PMAC on the matter. This, apart from ensuring a uniform streamlined process, will also ensure that enough checks to safeguard the interests of all stakeholders.

4.6. Applicability of re-classification provisions in case of transmission, succession, inheritance and gift of shares held by a promoter/ person belonging to the promoter group:

In order to have greater clarity in case of transmission / succession / inheritance/ gift of shares held by a promoter/ person belonging to the promoter group, it is proposed to include the following provisions:

- i. Immediately on occurrence of such event, the recipient of such shares shall be classified as a promoter/ person belonging to the promoter group, as applicable.
- ii. Subsequently, in case the recipient classified as a promoter/person belonging to the promoter group proposes to seek re-classification of status as 'public', it may do so subject to the procedure and compliance with the conditions for re-classification as specified above.
- iii. In case of death of a promoter/person belonging to the promoter group, such person shall automatically cease to be included as a promoter/person belonging to the promoter group.

4.7. Listed entities with no promoters:

- a. Currently, regulation 31A provides for several conditions to be satisfied by a listed entity to be considered as 'professionally managed'.
- b. It is proposed to simplify the provisions as under:
 - i. Rather than terming the entity as 'professionally managed', we may replace the term with 'listed entity with no promoter' which may be more appropriate.
 - ii. A listed entity shall be considered as a 'listed entity with no promoter', if, due to re-classification or otherwise, the entity does not have any promoter. The multiple conditions for such entities as currently specified in regulation 31A, are proposed to be removed.

4.8. Role of the stock exchanges:

- a. Currently, the authority to allow re-classification of any shareholder lies with the stock exchanges. It is proposed to continue the said process and in line with the same, the following provisions are proposed to be specified:
 - i. Re-classification/modification of the status of any person as a promoter/ public shall be permitted by the stock exchanges only upon receipt of a request from the listed entity along with all relevant documents subject to compliance with conditions as specified above.
 - ii. In case of entities listed on more than one stock exchange, the concerned stock exchanges shall jointly decide on the application.

- b. Further, in order to bring in greater transparency in the process of re-classification, it is proposed that the following events be required to be disclosed by the entity to the stock exchanges as material events as soon as reasonably possible and not later than twenty four hours from the occurrence of the event:
- i. receipt of request for re-classification by the listed entity from the promoter(s) seeking re-classification;
 - ii. minutes of the board meeting considering such request which would include the views of the board on the request;
 - iii. submission of application for re-classification of status as promoter/public by the listed entity to the stock exchanges;
 - iv. decision of the stock exchanges on such application as communicated to the listed entity;

(Under regulation 44(3) of SEBI LODR Regulations, the listed entity is already required to submit to the stock exchanges, details regarding the voting results within 48 hours of conclusion of its General Meeting. Therefore, the requirement for disclosure of shareholder decision has not been included here.)

4.9. Other existing provisions

- a. It is proposed that a couple of conditions existing currently under regulation 31A may continue as specified hereunder:
- i. Conditions for re-classification of public shareholders as promoters: If any public shareholder seeks to re-classify itself as promoter, it shall be required to make an open offer in accordance with the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
 - ii. Relaxations for listed entities where insolvency proceedings have been initiated: The current relaxations from procedure and re-classification conditions applicable to the companies whose resolution plans have been approved under section 31 of the Insolvency Code (subject to the

condition that the outgoing promoters shall not remain in control of the listed entity) shall continue.

- b. It is, however, proposed that the existing condition providing for power to SEBI to grant exemptions specifically from re-classification applications be removed since SEBI already has power to grant relaxations / exemptions under regulation 102 of SEBI LODR Regulations.

4.10. Draft Regulation

In view of the above, it is proposed that the present regulation 31A may be replaced with new regulation on the above lines. Accordingly, a draft of the proposed regulation 31A is placed at **Annex-F**.

5. Proposal

The Board is requested to approve the aforesaid proposal and draft amendments to SEBI LODR Regulations as placed above and authorize the Chairman to make the consequential changes, as may be necessary, to give effect to the decision.

Annex A: Present provisions of Reg 31A of SEBI LODR Regulations

31A. Disclosure of Class of shareholders and Conditions for Reclassification.

1. All entities falling under promoter and promoter group shall be disclosed separately in the shareholding pattern appearing on the website of all stock exchanges having nationwide trading terminals where the specified securities of the entity are listed, in accordance with the formats specified by SEBI.
2. The stock exchange, specified in sub-regulation (1), shall allow modification or reclassification of the status of the shareholders, only upon receipt of a request from the concerned listed entity or the concerned shareholders along with all relevant evidence and on being satisfied with the compliance of conditions mentioned in this regulation.
3. In case of entities listed on more than one stock exchange, the concerned stock exchanges shall jointly decide on the application of the concerned listed entity as specified in sub-regulation(2).
4. In case of transmission/succession/inheritance, the inheritor shall be classified as promoter.
5. When a new promoter replaces the previous promoter subsequent to an open offer or in any other manner, re-classification may be permitted subject to approval of shareholders in the general meeting and compliance of the following conditions.
 - a. Such promoter along with the promoter group and the Persons Acting in Concert shall not hold more than ten per cent of the paid-up equity capital of the entity.
 - b. Such promoter shall not continue to have any special rights through formal or informal arrangements. All shareholding agreements granting special rights to such entities shall be terminated.

- c. Such promoters and their relatives shall not act as key managerial person for a period of more than three years from the date of shareholders' approval

Provided that the resolution of the said shareholders' meeting must specifically grant approval for such promoter to act as key managerial person.

6. Where an entity becomes professionally managed and does not have any identifiable promoter the existing promoters may be re-classified as public shareholders subject to approval of the shareholders in a general meeting

Explanation.- For the purposes of this sub-regulation an entity may be considered as Professionally managed, if-

- i. No person or group along with persons acting in concert taken together shall hold more than one per cent paid-up equity capital of the entity including any holding of convertibles/outstanding warrants/ Depository Receipts:

Provided that any mutual fund, bank, insurance company, financial institution, foreign portfolio investor may individually hold up to ten per cent paid-up equity capital of the entity including any holding of convertibles/outstanding warrants/Depository Receipts

- ii. The promoters seeking reclassification and their relatives may act as key managerial personnel in the entity only subject to shareholders' approval and for a period not exceeding three years from the date of shareholders' approval.
- iii. The promoter seeking reclassification along with his promoter group entities and the persons acting in concert shall not have any special right through formal or informal arrangements. All shareholding agreements granting special rights to such outgoing entities shall be terminated.

7. Without prejudice to sub-regulations (5) and (6), re-classification of promoter as public shareholders shall be subject to the following conditions:

- a. Such promoter shall not, directly or indirectly, exercise control, over the affairs of the entity.
 - b. Increase in the level of public shareholding pursuant to re-classification of promoter shall not be counted towards achieving compliance with minimum public shareholding requirement under rule 19A of the Securities Contracts (Regulation) Rules, 1957, and the provisions of these regulations.
 - c. The event of re-classification shall be disclosed to the stock exchanges as a material event in accordance with the provisions of these regulations.
 - d. Board may relax any condition for re-classification in specific cases, if it is satisfied about non-exercise of control by the outgoing promoter or its persons acting in concert.
8. If any public shareholder seeks to re-classify itself as promoter, it shall be required to make an open offer in accordance with the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
9. The provisions of sub-regulations (2) of this regulation shall not apply, if re-classification of existing promoter or promoter group of the listed entity is as per the resolution plan approved under section 31 of the Insolvency Code, subject to the following conditions:
 - i. the existing promoter and promoter group seeking re-classification shall not remain in control of the listed entity; and
 - ii. such re-classification along with the underlying rationale shall be disclosed to the stock exchanges within one day of the resolution plan being approved."

Annex- B- Extract of Kotak Committee recommendations pertaining to Re-classification of shareholders

Re-classification of Promoters/Classification of Entities as Professionally Managed

Current regulatory provisions:

Presently, the Companies Act is silent on reclassification of promoters, while the SEBI LODR Regulations permit reclassification of promoters in limited circumstances.

SEBI LODR Regulations cover mainly four aspects on the subject: (i) requirement of approval of stock exchanges, (ii) reclassification when a promoter is replaced by a new promoter, (iii) reclassification where a company ceases to have any promoters (i.e. becomes professionally managed) and (iv) general conditions. The specific categories of reclassification as specified in points (ii) and (iii) require the approval of shareholders. In addition, in cases where the entity becomes professionally managed, the aggregate shareholding of a person or group along with persons acting in concert (hereinafter referred to as "PACs") should not exceed 1%.

Recommendation and rationale:

The Committee is of the opinion that where there is no identifiable promoter/promoter group, the 1% threshold to be able to classify the entity as professionally managed is too low and merits an increase to 10% for the following reasons:

- from the listed entity's perspective, if a promoter (being sole promoter) along with its promoter group/PAC in aggregate holds less than 10%, it is unlikely to be able to exercise de-facto control; and
- from the promoter's perspective, even after ceasing to be in control, a 'promoter' may want to continue as a financial investor with a shareholding of more than 1%, and in such cases, should not be required to reduce his/her shareholding to 1% or lower.

In addition, the SEBI LODR Regulations also do not deal with a situation where there are multiple and distinct parties classified as promoters, and one of them wishes to be reclassified. The Committee is of the opinion that there ought to be a mechanism to

enable such reclassification, to ensure that persons who may have been promoters but are no longer in day-to-day control and management and have a low shareholding, should have an “opt-out” from being classified as “promoters”. The Committee is also of the view that any reclassification would have to be done in a fair and transparent manner, keeping in mind the interests of public shareholders.

The Committee accordingly recommends the following:

- **Where there are multiple promoters/promoter groups and a specific promoter/promoter group wishes to undergo re-classification**

In case the following conditions are met:

- (i) promoters, promoter group and PACs cumulatively hold 10% or more of the aggregate shareholding and voting rights in a listed entity;
- (ii) a specific person/entity therein (classified as a “specific promoter”), its promoter group and PACs cumulatively hold less than 5% of the aggregate shareholding and voting rights; and
- (iii) the specific promoter or its promoter group or PAC are neither on the board of directors of the listed entity (“Listed Entity Board”) (including not having a nominee director) nor in the management of the listed entity and are not acting in concert with other persons forming part of the promoter and promoter group, then, on request for reclassification being received from the specific promoter, the Listed Entity Board shall consider the same.

Post the Listed Entity Board’s consent, reclassification would require shareholder approval based on the Listed Entity Board’s (positive) recommendation. The specific promoter, its promoter group and PAC shall abstain from voting on such a resolution placed before the shareholders for approval.

- **Where there is only one specific promoter/ promoter group who/ which wishes to be re-classified and the entity wishes to be classified as professionally managed**

In the case of a promoter, where:

- (i) such promoter or its promoter group or PAC for that promoter is/are neither on the Listed Entity Board nor in management of the company nor has a nominee director;
- (ii) cumulative shareholding and voting rights of such promoter and its promoter group and PACs goes below 10%; and
- (iii) there are no other persons qualifying as promoters of the company,

then, on request for reclassification being received from the promoter, the Listed Entity Board shall consider the same.

Post the Listed Entity Board's consent, reclassification would require shareholder approval based on the Listed Entity Board's (positive) recommendation. All members of promoter, promoter group and PAC shall abstain from voting on such a resolution placed before the shareholders for approval.

Proposed amendments to SEBI LODR Regulations (with immediate effect):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>Reg 31A. Disclosure of Class of shareholders and Conditions for Reclassification.</p> <p>(6) Where an entity becomes professionally managed and does not have any identifiable promoter the existing promoters may be re-classified as public shareholders subject to approval of the shareholders in a general meeting.</p> <p><u>Explanation.</u>- For the purposes of this sub-regulation an entity may be considered as professionally managed, if-</p>	<p>Reg 31A. Disclosure of Class of shareholders and Conditions for Reclassification.</p> <p>(6) Where an entity becomes professionally managed and does not have any identifiable promoter then existing promoter(s) may be re-classified as public shareholders, <u>on receipt of request in this regard from the promoter(s), subject to approval of the board of directors and the shareholders in a general meeting in which the promoter, promoter group and persons acting in concert shall not vote.</u></p>

<p>(i) No person or group along with persons acting in concert taken together shall hold more than one per cent paid-up equity capital of the entity including any holding of convertibles/outstanding warrants/ Depository Receipts: Provided that any mutual fund, bank, insurance company, financial institution, foreign portfolio investor may individually hold up to ten per cent paid-up equity capital of the entity including any holding of convertibles/outstanding warrants/Depository Receipts.</p> <p>(ii) The promoters seeking reclassification and their relatives may act as key managerial personnel in the entity only subject to shareholders' approval and for a period not exceeding three years from the date of shareholders' approval.</p> <p>(iii) The promoter seeking reclassification along with his promoter group entities and the persons acting in concert shall not have any special right through formal or informal arrangements. All shareholding agreements granting special rights to such outgoing entities shall be terminated.</p>	<p><u>Explanation.-</u> For the purposes of this sub-regulation, an entity may be considered as professionally managed, if-</p> <p>(i) No person <u>promoter</u> or <u>promoter</u> group along with persons acting in concert taken together shall hold more than one <u>ten</u> per cent paid-up equity capital of the entity including any holding of convertibles/outstanding warrants/Depository Receipts: Provided that any mutual fund, bank, insurance company, financial institution, foreign portfolio investor may individually hold up to ten per cent paid-up equity capital of the entity including any holding of convertibles/outstanding warrants/Depository Receipts.</p> <p>(ii) The promoter(s) seeking reclassification and their relatives may act as key managerial personnel in the entity only subject to shareholders' approval and for a period not exceeding three years from the date of shareholders' approval. <u>shall not be on the board of directors of the listed entity or in management of the listed entity or have a nominee director on the board of the listed entity.</u></p> <p>(iii) The promoter(s) seeking reclassification along with his promoter group entities and the persons acting</p>
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in concert shall not have any special right through formal or informal arrangements. All shareholding agreements granting special rights to such outgoing entities shall have been ~~be~~ terminated.

Insertion of a new sub-Regulation (6A):

(6A) Any person/entity (“Specific Promoter”) which is a part of promoters, promoter group or persons acting in concert with them may be re-classified as public shareholders, on receipt of request in this regard from the Specific Promoter, subject to the approval of the board of directors and approval of the shareholders in a general meeting, wherein the Specific Promoter(s), along with its promoter group and persons acting in concert shall abstain from voting on such resolution placed before the shareholders for approval, and provided the following conditions are met:

- (i)** promoters, promoter group and persons acting in concert of the listed entity cumulatively hold 10% or more of the paid-up equity capital of the entity;
and
- (ii)** the Specific Promoter, its promoter group and persons acting in concert

cumulatively hold less than 5% of the paid-up equity capital of the entity;

(iii) Specific Promoter or its promoter group or persons acting in concert (a) is not on the board of directors of the listed entity or in management of the listed entity or have a nominee director on the board of the listed entity, and (b) is not acting in concert with other persons forming part of the promoter and promoter group; and

(iv) The Specific Promoter(s) seeking reclassification along with his promoter group entities and the persons acting in concert shall not have any special right through formal or informal arrangements and all shareholding agreements granting special rights to such outgoing entities shall have been terminated.

(7) Without prejudice to sub-regulations (5), and (6) and (6A), re-classification of promoter as public shareholders shall be subject to the following conditions:

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Annex- C

Consultative paper on revision of provisions pertaining to re-classification of shareholders issued on July 24, 2018 is available on SEBI website.

Annex D

“This Annexure has been excised for reasons of confidentiality”

Annex- E- Relevant extract of the ICDR Regulations

Reg 2(1)(zb) of SEBI ICDR Regulations

zb) —promoter group includes:

- i. the promoter;
- ii. an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse); and
- iii. in case promoter is a body corporate:

(A) a subsidiary or holding company of such body corporate;

(B) any body corporate in which the promoter holds ten per cent. or more of the equity share capital or which holds ten per cent. or more of the equity share capital of the promoter;

(C) any body corporate in which a group of individuals or companies or combinations thereof which hold twenty per cent. or more of the equity share capital in that body corporate also holds twenty per cent. or more of the equity share capital of the issuer; and

- iv. in case the promoter is an individual:

(A) any body corporate in which ten per cent. or more of the equity share capital is held by the promoter or an immediate relative of the promoter or a firm or Hindu Undivided Family in which the promoter or any one or more of his immediate relative is a member;

(B) any body corporate in which a body corporate as provided in (A) above holds ten per cent. or more, of the equity share capital;

(C) any Hindu Undivided Family or firm in which the aggregate shareholding of the promoter and his immediate relatives is equal to or more than ten per cent. of the total; and

- v. all persons whose shareholding is aggregated for the purpose of disclosing in the prospectus under the heading "shareholding of the promoter group":

Provided that a financial institution, scheduled bank, 7[foreign portfolio investor other than Category III foreign portfolio investor] and mutual fund shall not be deemed to be promoter group merely by virtue of the fact that ten per cent. or more of the equity share capital of the issuer is held by such person:

Provided further that such financial institution, scheduled bank and 8[foreign portfolio investor other than Category III foreign portfolio investor] shall be treated as promoter group for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them;

Annex- F- Draft Proposed Regulation 31A

Draft Regulation¹

Reg 31A. Conditions for re-classification of any person as promoter / public

(1) For the purpose of this sub-Regulation:

(a) “promoter(s) seeking re-classification” shall mean all such promoters/persons belonging to the promoter group seeking re-classification of status as public.

(b) “persons related to the promoter(s) seeking re-classification” shall mean such persons with respect to that promoter(s) seeking re-classification who fall under clauses (ii), (iii) and (iv) of Regulation 2(1)(zb) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

(2) Re-classification of the status of any person as a promoter/ public shall be permitted by the stock exchanges only upon receipt of an application from the listed entity along with all relevant documents subject to compliance with conditions specified in these Regulations;

Provided that in case of entities listed on more than one stock exchange, the concerned stock exchanges shall jointly decide on the application.

(3) Re-classification of status of a promoter/ person belonging to promoter group to public shall be permitted by the stock exchanges only upon satisfaction of the following conditions:

(a) An application for re-classification to the stock exchanges has been made by the listed entity consequent to the following procedures and no later than 30 days from the date of approval by shareholders in general meeting:

(i) The promoter(s) seeking re-classification shall make a request for re-classification to the listed entity which shall include rationale for seeking such re-classification and how the conditions specified in clause (b) below are satisfied;

¹ Since the present Regulation 31A(1) of SEBI LODR Regulations refers to shareholding pattern, it is proposed to insert the same under Regulation 31 as sub-Regulation 4.

- (ii) The Board of Directors of the listed entity shall analyse the request and place the same before the shareholders in a general meeting for approval along with the views of the Board of Directors on the request;

Provided that there shall be a time gap of at least 3 months but not exceeding 6 months between the date of Board Meeting and the shareholder's meeting considering the request of the promoter(s) seeking re-classification.

- (iii) The request of the promoter(s) seeking re-classification shall be approved in the general meeting by an ordinary resolution in which the promoter(s) seeking re-classification and persons related to the promoter(s) seeking re-classification shall not vote to approve such re-classification request.

- (b) The promoter(s) seeking re-classification and persons related to the promoter(s) seeking re-classification shall not:

- (i) together, hold more than 10% of the total voting rights in the listed entity;
- (ii) exercise control over the affairs of the listed entity directly or indirectly;
- (iii) have any special rights with respect to the listed entity through formal or informal arrangements including through any shareholder agreements;
- (iv) be represented on the Board of Directors (including not having a nominee director) of the listed entity;
- (v) act as a key managerial person in the listed entity;
- (vi) be a 'wilful defaulter' as per RBI Guidelines;

- (c) The listed entity shall:

- (i) Be compliant with the requirement for minimum public shareholding as required under Regulation 38 of these regulations;
- (ii) Not have trading in its shares suspended by the stock exchanges;
- (iii) Not have any outstanding dues to the Board, the stock exchanges or the depositories;

(4) The promoter(s) seeking re-classification, subsequent to re-classification as public, shall comply with the following conditions:

(a) He shall continue to comply with conditions mentioned at clauses 3 (b) (i), (ii) and (iii) as specified above at all times from the date of such re-classification failing which, he shall automatically be reclassified as promoter/ persons belonging to promoter group, as applicable;

(b) He shall comply with conditions mentioned at 3 (b) (iv) and (v) for a period of not less than three years from the date of such re-classification failing which, he shall automatically be reclassified as promoter/ persons belonging to promoter group, as applicable;

(5) If any public shareholder seeks to re-classify itself as promoter, it shall be required to make an open offer in accordance with the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

(6) In case of transmission, succession, inheritance and gift of shares held by a promoter/ person belonging to the promoter group:

(a) Immediately on such event, the recipient of such shares shall be classified as a promoter/ person belonging to the promoter group, as applicable.

(b) Subsequently, in case the recipient now classified as a promoter/person belonging to the promoter group proposes to seek re-classification of status as public, it may do so subject to compliance with conditions specified in sub-Regulation (3) above.

(c) In case of death of a promoter/person belonging to the promoter group, such person shall automatically cease to be included as a promoter/person belonging to the promoter group.

(7) A listed entity shall be considered as '*listed entity with no promoters*' if due to re-classification or otherwise, the entity does not have any promoter;

(8) The following events shall deemed to be material events and shall be disclosed by the listed entity to the stock exchanges as soon as reasonably possible and not later than twenty four hours from the occurrence of event:

- (a) receipt of request for re-classification by the listed entity from the promoter(s) seeking re-classification;
- (b) minutes of the board meeting considering such request which would include the views of the board on the request;
- (c) submission of application for re-classification of status as promoter/public by the listed entity to the stock exchanges;
- (d) decision of the stock exchanges on such application as communicated to the listed entity;

(9) The provisions of sub-regulations 3, 4, 8(a) and 8(b) of this regulation shall not apply, if re-classification of promoter(s)/ promoter group of the listed entity is as per the resolution plan approved under section 31 of the Insolvency Code, subject to the condition that such promoter(s) seeking re-classification shall not remain in control of the listed entity;