

Corpsec Hotline

April 03, 2006

LOCK IN AND DISCLOSURE REQUIREMENTS UNDER SEBI (DISCLOSURE AND INVESTOR PROTECTION) GUIDELINES, 2000. ("DIP GUIDELINES") AMENDED

Securities and Exchange Board of India ("SEBI"), with a view to make Indian primary market more efficient and transparent and rationalize the disclosure requirements, has introduced certain amendments on March 31, 2006 to the DIP Guidelines vide circular dated March 31, 2006 bearing no.SEBI/CFD/DIL/DIP/19/2006/31/3.

As per the new provisions under clause 4.14.1 of the DIP Guidelines, the entire pre-issue capital, other than that locked-in as minimum promoters' contribution, shall be locked-in for a period of one year from the date of allotment except the shares lent to the stabilizing agent by the promoter starting from the date of such lending and ending on the date on which they are returned to the same lenders. The minimum promoter holding, however, will continue to attract the lock-in period of three years. Under the earlier provisions, the period of one year for lock-in of such pre issue capital was from the date of commencement of commercial production or the date of allotment in the public issue, whichever is later.

Implications: We believe that the purpose of using the date of commencement of commercial production as a reference point for lock-in had proved redundant since in almost all cases the date of allotment was always later than the date of commercial production. This amendment streamlines the process by using the single point reference date for the purpose of calculating the lock-up.

With a view to rationalize the disclosure requirements for the listed companies, under the new provisions, the company at the time of making a rights issue is now allowed to dispatch a abridged prospectus instead of letter of offer as required under the earlier provisions. The abridged prospectus shall contain disclosures as required to be given in the case of an abridged prospectus and the company then shall provide the detailed letter of offer to any shareholder upon request. Presently, only in case of public issues, company is allowed to dispatch abridged prospectus along with the application form and not in case where company is offering a right issue.

Implications: This amendment is likely to reduce the cost and time involved in respect of rights issues and streamlines the rights issue process with that of the public issues.

Further, the amendments also allow a listed company to fix and disclose the issue price in case of a rights issue any time prior to fixing of the record date, in consultation with the Designated Stock Exchange and in case of a public issue through fixed price route, at any time prior to filing of the prospectus with the Registrar of Companies ("ROC") instead of disclosing the issue price or the price band in the draft offer document filed with SEBI as required under the earlier provisions. The prospectus filed with ROC shall have one issue price.

Implications: This would give more flexibility to listed companies to price their issue at anytime prior to filing the prospectus with ROC. This could also possibly minimise the risk of the price of the rights or the public issue becoming public prior to the issue thereby creating an artificial market for the shares in the market in anticipation of the forthcoming issue.

SEBI, under the present amendments, also permits a company to issue further shares during the period after filing a draft offer document with SEBI till the listing of shares referred to in the offer document, provided full disclosures in regard to the total capital to be raised from such further issues is given in the draft offer document. Under the earlier provisions, any further issue of capital in any manner during such period was prohibited under clause 8.7.1 of the DIP Guidelines.

Implications: Considering that at times the period between filing of the draft red herring prospectus ("DRHP") and the listing could be long due regulatory compliances and market conditions, a general restriction on issuance of shares which existed in the current guidelines made it difficult for the companies to need their immediate capital requirements since any change in the capital structure would warrant fresh filing of DRHP with SEBI. These amendments would give flexibility to the companies to continue its process of raising capital during such period provided subject to full disclosures in regard to the total capital to be raised from such further issues is given in the draft offer document.

- Vyapak Desai & Siddharth Shah

You can direct your queries or comments to the authors

Source:

1) The Financial Express, dated April 2, 2006

Research Papers

Taxing Offshore Indirect Transfers in India

February 28, 2025

Unlocking Corporate Philanthropy

February 27, 2025

Digital Health in India

February 26, 2025

Research Articles

Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Key changes to Model Concession Agreements in the Road Sector

January 03, 2025

Audio

CCI's Deal Value Test

February 22, 2025

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

SIAC 2025 Rules: Key changes & Implications

February 18, 2025

How Cross Border M&A Will Shape

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.