AMENDMENTS IN SEBI (DIP) GUIDELINES 2000: AN ANALYSIS

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Securities and Exchange Board of India has issued Circular No. SEBI/CFD/DIL/DIP/32/2008/28/08, dated 28.8.2008 amending SEBI (Disclosure and Investor Protection) Guidelines, 2000 so as to make them more user-friendly and at the same time providing enhanced protection to the investors. These amendments have touched upon a number of vital issues as discussed in the following paragraphs.

Convertible Debt Instruments – Consequential Amendments

DIP Guidelines have been amended to incorporate consequential amendments arising due to notifying of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008[1] applicable to public issue of debt securities and listing of debt securities issued through public issue or on private placement basis on a recognised stock exchange. Following definition of '**Convertible Debt Instruments'** has been incorporated in the Guidelines:

> *"Convertible Debt Instrument" means an instrument or security which creates or acknowledges indebtedness and is convertible into equity shares at a later date, at or without the option of the holder of the instrument or the security of a body corporate, whether constituting a charge on the assets of the body corporate or not."*

Qualified Institutional Buyers (QIBs) – Change in Definition

The new definition of QIBs incorporated in the Guidelines excludes sub-accounts of registered FIIs falling in the categories of "foreign corporate" and "foreign individual". Earlier, foreign institutional investors (FIIs) registered with SEBI were considered as QIBs and such FIIs could invest in securities in the primary market, either on their account or on behalf of their sub-account(s), in terms of the SEBI (Foreign Institutional Investors) Regulations, 1995. However, in the present definition, though registered FIIs are included but their sub-accounts falling in the categories of "foreign corporate" and "foreign individual" are excluded from QIBs. The current definition of QIBs is as under:

> *"Qualified Institutional Buyer" means*
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> *a) a public financial institution as defined in section 4A of the Companies Act, 1956;*
> *b) a scheduled commercial bank;*
> *c) a mutual fund registered with the Board;*
> *d) a foreign institutional investor and sub-account registered with SEBI, **other than a sub-account which is a foreign corporate or foreign individual**;*
> *e) a multilateral and bilateral development financial institution;*
> *f) a venture capital fund registered with SEBI;*

[1] Notified vide Notification No. LAD-HRD/GN/2008/13/127878, dated 6-6-2008.

g) a foreign venture capital investor registered with SEBI;
h) a state industrial development corporation;
i) an insurance company registered with the Insurance Regulatory and Development Authority (IRDA);
j) a provident fund with minimum corpus of Rs. 25 crores;
k) a pension fund with minimum corpus of Rs. 25 crores;
l) National Investment Fund set up by resolution no. F. No. 2/3/2005-DDII dated November 23, 2005 of Government of India published in the Gazette of India."

Filing of Offer Documents with Regional Office of SEBI – Increase in Monetary Limit

As regards filing of offer documents by lead merchant bankers with that Regional Office[2] of SEBI under whose jurisdiction the registered office of the issuer company falls, the monetary limit stands increased and accordingly, draft offer documents of issue size up to Rs.50 crores shall be filed with the concerned Regional Office of SEBI. Before the amendment, the limit was Rs.20 crores.

Note: This amendment is applicable to all draft offer documents filed with SEBI after the date of the present circular i.e. 28.8.2008.

Eligibility of Shares for inclusion as Promoters' Contribution and to be offered for Sale

The present amendments in DIP Guidelines widen the eligibility of shares to be offered for sale and their inclusion for the purpose of promoters' contribution. Accordingly, such shares which have been acquired by the promoters pursuant to a restructuring exercise approved by a High Court under Sections 391-394 of the Companies Act, 1956, in lieu of business and invested capital which had been in existence for a period of more than one year prior to the restructuring exercise shall be eligible to be offered for sale and their inclusion in the promoters' contribution. Prior to this amendment, only those shares, which were held by the shareholders for a period of at least one year at the time of filing of draft offer document with SEBI, were eligible to be offered for sale and for inclusion as promoters' contribution excepting those cases where the shares had been issued at the same issue price during the preceding one year.

Note: According to the SEBI Circular this amendment is applicable to all draft offer documents filed with SEBI after 28.8.2008.

Qualified Institutions Placement (QIP) – Widening of Eligibility Norms

"Qualified Institutions Placement" (QIP) is the additional mode for listed companies to raise funds from domestic markets. DIP Guidelines have been amended to widen the

[2] Schedule XXII to the Guidelines provides the jurisdiction of Regional Offices/Head Office of SEBI.

eligibility norms of those companies which have been listed during the preceding one year pursuant to the scheme of merger/de-merger/arrangement sanctioned by Court under Sections 391 to 394 of the Companies Act, 1956 and entered into by such companies with companies which have been listed for more than one year in such stock exchanges. In order to enable the above type of companies listed during the preceding one year to raise funds through QIP route, they are permitted to take into account the listing history of the listed companies with which they have entered into the approved scheme of merger/ de-merger/ arrangement. This will enable the recently listed companies of less than one year to fulfill the essential condition applicable to listed companies desirous of availing QIP route for raising funds that the equity shares of the same class of such companies should have been listed on a stock exchange having nationwide terminals, for a period of at least one year as on the date of issuance of notice to shareholders for considering the QIP.

Note: This amendment is applicable to all notices for general meeting sent to shareholders for approval of the QIP after the date of the present circular i.e. 28.8.2008.

Qualified Institutions Placement (QIP) – Change in Pricing Norms

Another amendment in DIP Guidelines seeks to modify the pricing norms for QIP by bringing the issue price of the specified securities offered closer to their market price. For this purpose, both floor price formula and the definition of relevant date have undergone changes. As regards **floor price formula**, the amendment states that an issue of specified securities shall be made at a price not less than the average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the two weeks preceding the relevant date. As to what is '**relevant date**', the amendment states that it shall mean the date of the meeting in which the Board of the company or the Committee of Directors duly authorised by the Board of the company decides to open the proposed issue.

Note: This amendment is applicable to all notices for general meeting sent to shareholders for approval of the QIP after the date of the present circular i.e. 28.8.2008.

Preferential Allotment to Qualified Institutional Buyers (QIBs) – Pricing Norms

As regards preferential allotment of shares to QIBs the modified pricing guidelines of QIP (i.e. changed **floor price formula** stated in the preceding paragraph) have been made applicable with the condition that the number of QIB allottees in such preferential allotment does not exceed **five**. This amendment will enable the eligible listed companies to raise funds from QIBs without having to go through the elaborate documentation process required for QIP.

Note: This amendment is applicable to all notices for general meeting sent to shareholders for approval of the preferential allotment after the date of the present circular i.e. 28.8.2008.

Lock-in on Shares allotted pursuant to exercise of Options attached to Warrants issued on preferential basis – Change in Norms

The present amendments in DIP Guidelines seek to tighten the norms for the lock-in period for conversion of warrants issued on preferential basis. Accordingly, the shares allotted pursuant to exercise of options attached to warrants shall be subject to full lock-in period of one year or three years, as the case may be, from the date of allotment of such shares. Prior to the amendment, as per the guidelines on preferential allotment, the warrants issued on preferential basis were to remain locked-in for a period of one year or three years. And, the lock-in on shares allotted on exercise of such warrants could be reduced to the extent such warrants had already been locked-in. However, this is not the case now and the earlier lock-in applicable to warrants before conversion will not be adjusted against the lock-in applicable to shares so allotted on conversion of warrants.

Rights Issue – Reduction in Time Limits

Reduced time limits have been made applicable in case of listed companies making rights issues so that such companies are enabled to raise funds from their shareholders comparatively in a much shorter period. Reduction in time limits applies to various issue activities, starting from the notice period required for calling a board meeting of the issuer company to consider the rights issue and up to the period stipulated for completion of allotment and commencement of listing and trading of the shares so issued.