भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

CIRCULAR

CIR/CFD/DIL/6/2013 March 1, 2013

To
All Stock Exchanges
All Depositories
All Registered Merchant Bankers
All Registered Registrars to an Issue/STA
All Registered Custodians

Dear Sir/Madam,

Sub: Guidelines for Enabling Partial Two-Way Fungibility of Indian Depository Receipts (IDRs)

1. Securities and Exchange Board of India ("SEBI"), vide circular No. CIR/CFD/DIL/10/2012 dated August 28, 2012, has prescribed the framework for redemption of IDRs into underlying equity shares. The circular has, *inter alia*, provided for partial fungibility of IDRs (i.e. redemption/conversion of IDRs into underlying equity shares) in a financial year to the extent of 25% of the IDRs originally issued. The Circular also stated that suitable instructions for modifying the existing legal framework governing IDRs, in order to implement the decision to allow redemption of IDRs into underlying equity shares and re-conversion of equity shares of a foreign issuer (which has already listed their IDRs) into IDRs, will be issued separately.

2. In order to encourage more number of foreign companies to issue IDRs in the Indian market and also to enable the investors to take informed investment decision, it has been decided to provide a detailed roadmap and guidelines for the future IDR issuances as well as for the existing listed IDRs.

3. All the IDRs shall have partial two-way fungibility. The partial two-way fungibility means that the IDRs can be converted into underlying equity shares and the underlying equity shares can be converted into IDRs within the available headroom. The headroom for this purpose shall be the number of IDRs originally issued minus the number of IDRs outstanding, which is further adjusted for IDRs redeemed into underlying equity shares ("Headroom").

4. The broad guidelines for fungibility of future IDR issuances and the existing listed IDRs are given below:

I. Guidelines for fungibility of future IDR issuance

i. IDRs shall not be redeemable into underlying equity shares before the expiry of one year period from the date of listing of IDRs.

ii. After completion of one year period from the date of listing of IDRs, the issuer shall, provide two-way fungibility of IDRs.

iii. IDR fungibility shall be provided on a continuous basis.

iv. The issuer shall provide said fungibility to IDR holders in any of the following ways:

   a. converting IDRs into underlying shares; or

   b. converting IDRs into underlying shares and selling the underlying shares in the foreign market where the shares of the issuer are listed and providing the sale proceeds to the IDR holders; or

   c. both the above options may be provided to IDR holders.

   Provided that the option once exercised and disclosed by the issuer at the time of offering the IDRs to public cannot be changed without the specific approval of SEBI.

v. All the IDRs that have been applied for fungibility by the holder shall be transferred to IDR redemption account at the time of application. The issuer shall take necessary steps to provide underlying shares or sale proceeds as per the choice made under sub-clause (iv) of this clause.

vi. The Issuer may receive requests from the holders of underlying shares and convert these into IDRs subject to the Headroom available with respect to the number of IDRs originally issued subject to the guidelines prescribed by SEBI & Reserve Bank of India (“RBI”) from time to time.

vii. In case of option of converting the IDRs into underlying equity shares and providing the sale proceeds to the IDR holders is exercised, the issuer shall disclose the range of fixed/variable costs in percentage terms upfront and ensure that all the costs together shall not exceed 5% of the sale proceeds.

viii. Available Headroom and significant conversion/ reconversion transactions shall be disclosed by the issuer on a continuous basis.

ix. The issuer shall lay down the detailed procedures while taking into consideration the above broad guidelines in addition to other norms specified by SEBI and RBI, from time to time.

II. Guidelines for fungibility of existing listed IDRs

i. After completion of one year period from the date of issue of IDRs, the issuer shall, every year provide redemption/conversion of IDRs into underlying equity shares of the issuer of up to 25% of the IDRs originally issued. The Issuer shall invite expression of interest from IDR holders by giving advertisements in leading English and Hindi national daily newspapers with wide circulation as well as notification to the stock exchanges giving the operating guidelines for redemption/ conversion of IDRs at least one month before the implementation.

ii. The issuer shall exercise the option specified in sub-clause (iii) below provided that the same is disclosed in accordance with sub-clause (xii) of this clause.

iii. The mode of fungibility: The issuer shall provide the said fungibility to IDR holders in any of the following ways:

a. converting IDRs into underlying shares; or

b. converting IDRs into underlying shares and selling the underlying shares in the foreign market where the shares of the Issuer are listed and providing the sale proceeds to the IDR holders; or

c. both the above options may be provided to IDR holders.

iv. The periodicity for IDR fungibility shall be at least once every quarter. The fungibility window shall remain open for the period of at least seven days.

Provided that the option once exercised and disclosed by the issuer to public cannot be changed without the specific approval of SEBI. However, the issuer may decide to exercise the option provided in sub-clause (xiii) below without specific approval from SEBI.

v. Total number of IDRs available for fungibility during one fungibility window shall be fixed before the opening of the window. Re-issuances of IDRs during the fungibility window, if any, shall be considered for computation of Headroom only at the time of next cycle of fungibility. Fungibility window for this purpose shall mean the time period during which IDR holders can apply for conversion of IDRs into underlying equity shares.

vi. In case of requests for conversion in excess of the limit available, the manner of accepting IDRs for conversion/ redemption or shares for re-issuance shall be on proportionate basis.

vii. A reservation of 20% of the IDRs made available for redemption/conversion into underlying equity shares in the fungibility window shall be provided to Retail Investors. Within this reserved window:

- in case of higher demand for fungibility, the demand shall be satisfied on proportionate basis. Further, the excess unsatisfied demand from the retail investors shall be included in the unreserved portion.
- in case of lower demand for fungibility from retail investors, the unallocated portion shall be added to the unreserved portion.

viii. All the IDRs applied for fungibility shall be transferred to IDR redemption account at the time of application and in case of unsuccessful bids the balance IDRs shall be transferred back to the account of applicant. The issuer shall take necessary steps to provide underlying shares or cash as per the choice made under sub-clause (iii) above.

ix. The Issuer may receive requests from the holders of underlying shares and convert these into IDRs subject to the Headroom available with respect to the number of IDRs originally issued subject to the guidelines prescribed by RBI from time to time.

x. In case of option of converting IDRs into underlying shares and providing the sale proceeds to the IDR holders, the issuer shall disclose the range of fixed/variable costs in percentage terms upfront and all the cost together shall not exceed 5% of the sale proceeds.

xi. Available Headroom and significant conversion/ reconversion transactions shall be disclosed by the issuer on a continuous basis.

xii. Existing issuers shall provide the option of redemption/ conversation within three months of notification of these guidelines.

xiii. The existing issuer of IDR may exercise the option of using the guidelines available for the new issuers as referred above from the anniversary of the date of listing of their IDRs after the issuance of this circular or from any of the subsequent quarters thereafter. For this purpose, the issuer shall disclose the exercising of the said option by giving advertisements in leading English and Hindi national daily newspapers with wide circulation as well as notification to the stock exchanges giving the operating guidelines for redemption/ conversion of IDRs at least one month before exercising the option. The said option, once exercised, cannot be reversed.

xiv. The issuer shall lay down the detailed procedures while taking into consideration the above broad guidelines in addition to other norms specified by SEBI and RBI, from time to time.

5. With issuance of this circular, SEBI circular No: CIR/CFD/DIL/10/2012 dated August 28, 2012 shall become effective and SEBI circular No: CIR/CFD/DIL/3/2011 dated June 03, 2011 would stand rescinded.

6. This circular is issued in exercise of the powers conferred under Section 11 of the Securities and Exchange Board of India Act, 1992 read with Regulation 100 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.

7. This circular is available on SEBI website at www.sebi.gov.in under the category "*Legal Framework"*.

Yours faithfully,

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