CORPORATE LAWS AND SECRETARIAL PRACTICE

AMENDMENTS IN SEBI GUIDELINES APPLICABLE FOR JUNE 2009 FINAL EXAMS

I. SEBI (DIP) Guidelines, 2000, August 4, 2008 (applicable for May, 2009 examinations)

(a) Amendments to SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999.

The full text of the amendments is given in Annexure I and the amendments are explained in brief as under:

(i) Eligibility of nominee directors for ESOS

(a) Presently, as per SEBI (ESOS & ESPS) Guidelines, an employee (including a director of a company / its holding company / its subsidiary, whether such director is a whole- time director or not) is eligible to participate in the ESOS of the company, if such employee is not a promoter, does not belong to the promoter group and is not a director, who, either by himself or through his relative or through any body corporate, directly or indirectly holds more than 10% of the outstanding equity shares of the company.

(b) It has been decided to clarify that a director, nominated by an institution as its representative on the Board of Directors of a company, is eligible to participate in the ESOS of the company, if the contract / agreement entered into between the nominating institution and the director so appointed specifically provides for acceptance of ESOS of the company by such director and a copy thereof is filed with the company.

(ii) Accounting treatment for options granted under graded vesting schemes

(a) Presently, as per SEBI (ESOS & ESPS) Guidelines, where an employee stock option scheme provides for graded vesting of options, the vesting period is determined separately for each portion of the option and the accounting value of each such portion is amortised on a straight-line basis over the vesting period of that portion.

(b) The Institute of Chartered Accountants of India (ICAI), which also prescribes the accounting treatment for employee stock options through its Guidance Note on "Employee Shared Based Payments", has, vide its Announcement issued in March 2007, revised the accounting treatment, reorganisation and measurement of options granted under graded vesting schedule.

(c) It has been decided to amend SEBI (ESOS & ESPS) Guidelines to bring the accounting treatment prescribed by SEBI, for options granted under graded vesting, in line with the accounting treatment provided by ICAI in this regard.

ANNEXURE I

AMENDMENTS TO SEBI (ESOS & ESPS) GUIDELINES, 1999

1. After clause 4.1, the following Explanation shall be inserted, namely:-

"Explanation: Where such employee is a director nominated by an institution as its representative on the Board of Directors of the company –

(i) the contract/ agreement entered into between the institution nominating its employee as the director of a company and the director so appointed shall, inter-alia, specify the following:

(a) whether options granted by the company under its ESOS can be accepted by the said employee in his capacity as director of the company;

(b) that options, if granted to the director, shall not be renounced in favour of the nominating institution; and

(c) the conditions subject to which fees, commissions, ESOSs, other incentives, etc. can be accepted by the director from the company.

(ii) the institution nominating its employee as a director of a company shall file a copy of the contract/ agreement with the said company, which shall, in turn, file the copy with all the stock exchanges on which its shares are listed.

(iii) the director so appointed shall furnish a copy of the contract/ agreement at the first Board meeting of the company attended by him after his nomination."

2. After clause 11.6, the following new clause shall be inserted, namely:-

"11.7 The options granted to a director, who is an employee of an institution and has been nominated by the said institution, shall not be renounced in favour of the institution nominating him."

3. Clause 13.2 shall be omitted.

4. In Schedule I, for clause (c), the following clause shall be substituted, namely:-

"(c) Where the accounting value is accounted for as employee compensation in accordance with clause (b), the amount shall be amortised as under :

(i) Where the scheme does not provide for graded vesting, the amount shall be amortised on a straight-line basis over the vesting period.

(ii) Where the scheme provides for graded vesting -

(1) the vesting period shall be determined separately for each separate vesting portion of the option, as if the option was, in substance, multiple option and the amount of employee compensation cost shall be accounted for and amortised accordingly on a straight-line basis over the vesting period; or

(2) the amount of employee compensation cost shall be accounted for and amortised on a straight-line basis over the aggregate vesting period of the entire option (that is, over the vesting period of the last separately vesting portion of the option): Provided that the amount of employee compensation cost recognized at any date at least equals the fair value or the intrinsic value, as the case may be, of the vested portion of the option at that date."

(b) SEBI (DIP) Guidelines, 2000, August, 2008 (applicable for May, 2009 examinations)

The amendments are given in brief as under:

(i) Reduction in timelines for rights issue

(a) At present, timelines for listed companies making rights issues are stipulated in the SEBI (DIP) Guidelines and Equity Listing Agreement. It is understood that the current timelines expose investors and issuers to market risks.

(b) In order to mitigate these risks and to enable listed companies to raise funds from its shareholders in a more time effective manner, it has been decided to reduce the current timelines, starting from the notice period required for calling a board meeting of the issuer to consider the rights issue up to the period stipulated for completion of allotment and commencement of listing and trading of the shares so issued.

(ii) Definition of "Qualified Institutional Buyers (QIBs)"

(a) Presently, foreign institutional investors (FIIs) registered with SEBI are included in the definition of QIBs. These FIIs 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. It has been decided to exclude subaccounts falling in the categories of "foreign corporate" and "foreign individual" from the definition of QIBs.

(b) Further, it has been decided to include the definition of "QIB" in the definition clause of the SEBI (DIP) Guidelines, for the purpose of clarity.

(iii) Eligibility for making Qualified Institutions Placement (QIP)

(a) Presently, the eligibility criteria for listed companies desirous of making QIP include a condition that the equity shares of the same class of such companies shall 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.

(b) It is noted that companies, which have been listed during the preceding one year pursuant to approved scheme(s) of merger/ demerger/ arrangement entered into by such companies with companies which have been listed for more than one year in such stock exchange(s), are not able to use the QIP route for raising funds. In order to enable such companies to raise funds through QIP route, it has been decided that for the purpose of fulfilment of the abovementioned eligibility criterion, such companies may take into account the listing history of the listed companies with which they have entered into the approved scheme(s) of merger/ demerger/arrangement.

(iv) Pricing norms for QIP

In order to facilitate eligible listed companies to raise funds through QIP route, it has been decided to modify the pricing guidelines for QIP by bringing the issue price of the securities offered closer to their market price. This has been effected through change in the floor price formula and definition of relevant date

(v) Pricing norms for preferential allotment to QIBs

In order to facilitate eligible listed companies to raise funds from QIBs without having to go through the elaborate documentation process required for QIP, it has been decided to extend the modified pricing guidelines of QIP to preferential allotment to QIBs, provided that the number of QIB allottees in such preferential allotment does not exceed five.

(vi) Lock-in on shares on exercise of warrants issued on preferential basis

Presently, as per the guidelines on preferential allotment, warrants issued on preferential basis are subject to lock-in for a period of one year or three years, as the case may be and lock-in on shares allotted on exercise of such warrants is reduced to the extent such warrants have already been locked-in. It has been decided to subject the shares so allotted pursuant to exercise of warrants to full lock-in period of one year or three years, as the case may be, from the date of allotment of such shares.

(vii) Eligibility of shares for promoters' contribution and offer for sale

(a) Presently, the SEBI (DIP) Guidelines provide that only those shares, which are held by shareholders for a period of at least one year at the time of filing of draft offer document with SEBI, are eligible (i) to be offered for sale and (ii) to be included for the purpose of promoters' contribution (except in cases where the shares have been issued at the same issue price during the preceding one year).

(b) It has been decided to permit offer for sale and inclusion in the promoters' contribution of those shares which have been acquired pursuant to a restructuring exercise approved by High Court(s), 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.

(viii) Filing of offer documents at SEBI Regional Offices

At present, draft offer documents of issue size up to Rs.20 crores can be filed by lead merchant bankers with such Regional Office of SEBI under the jurisdiction of which the registered office of the issuer company falls. It has been decided to increase this limit to Rs.50 crores.

(ix) Miscellaneous amendments

The SEBI (Issue and Listing of Debt Securities) Regulations, 2008 were notified on June 6, 2008 and are 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. As per regulation 33(1) of these regulations, the provisions of the SEBI (DIP) Guidelines, in so far as these relate to issue and listing of debt securities, shall stand rescinded on the commencement of these regulations. Consequential amendments have accordingly been made in the SEBI (DIP) Guidelines.

CHAPTER I

PRELIMINARY

1. In clause 1.2.1:-

(a) after sub-clause (viii), the following sub-clause shall be inserted, namely:- "(viii-a) 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;"

(b) sub-clause (xi) shall be omitted;

(c) sub-clause (xxiva), sub-clause (xxiv aa) and sub-clause (xxiv b) shall be renumbered as sub-clause "(xxiv b)" , sub-clause "(xxiv c)" and sub-clause "(xxiv d)" respectively;

(d) after sub-clause (xxiv), the following sub-clause shall be inserted, namely:- "(xxiv a) "Qualified Institutional Buyer" means

(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;

(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."

CHAPTER II

ELIGIBILITY NORMS FOR COMPANIES ISSUING SECURITIES

2. In clause 2.2.2B, sub-clause (v) shall be omitted.

3. In clause 2.5.1A, for the words and brackets "debt instruments (whether convertible or not)", the words "convertible debt instruments" shall be substituted.

4. Clause 2.5.1B shall be omitted.

CHAPTER IV

PROMOTERS' CONTRIBUTION AND LOCK-IN REQUIREMENTS

PART I – PROMOTERS' CONTRIBUTION

5. In clause 4.6.2, after 3rd proviso and before Explanation to the clause, the following proviso shall be inserted, namely:-

"Provided further that nothing contained in clause 4.6.2 shall apply to shares acquired by promoters in lieu of business and invested capital which had been in existence for a period of more than one year prior to the restructuring scheme under sections 391-394 of the Companies Act, 1956, as approved by a High Court, which entitled the promoters to acquire such shares."

6. In 4.14.2, in sub-clause (ii):-

(a) after 1st proviso and before Explanation, the following proviso shall be inserted, namely:-

"Provided further that the minimum holding requirement of pre-issue capital shall also not apply to shares which have been acquired during one year preceding the date of filing draft offer document with the Board in lieu of business and invested capital which had been in existence for a period of more than one year prior to the restructuring scheme under sections 391- 394 of the Companies Act, 1956, as approved by a High Court, which entitled acquisition of such shares."

(b) in the para below the heading "Explanation", for the words "this proviso", the words "1st proviso above" shall be inserted.

CHAPTER V

PRE- ISSUE OBLIGATIONS

7. In clause 5.11.1, for the words and figure "7 days", the words and figures "3 days" shall be substituted.

CHAPTER VI

CONTENTS OF OFFER DOCUMENT

SECTION III - CONTENTS OF THE LETTER OF OFFER

8. In clause 6.41.8, for the words and figures "7 weeks", the words and figures "15 days" shall be substituted.

9. In clause 6.41.10.1 –

(a) in sub-clause (i), for the words "forty two days", the words "fifteen days" shall be substituted; and

(b) in sub-clause (ii), for the words "forty two days", the words "fifteen days" shall be substituted.

10. In clause 6.41.10.2 –

(a) in sub-clause (i), for the words "forty two days", the words "fifteen days" shall be substituted; and

(b) in sub-clause (ii), for the words "forty two days", the words "fifteen days" shall be substituted.

CHAPTER VIII

OTHER ISSUE REQUIREMENTS

11. For clause 8.2, the following shall be substituted, namely:-

"8.2 Public issue and listing of Convertible Debt Instruments"

12. Clause 8.2.1 and clause 8.2.2 shall be omitted.

13. In clause 8.2.3, for the words "DSCE", the words "Convertible Debt Instruments" shall be substituted.

14. In clause 8.2.3:-

(a) sub-clauses (b), (c) and (d) shall be renumbered as sub-clauses "(f)", "(g)" and "(h)" respectively;

(b) for sub-clause (a), the following shall be substituted, namely:-

"(a) a credit rating is obtained from at least one credit rating agency registered with the Board."

(c) after sub-clause (a) and before the renumbered sub-clauses (f), (g) and (h), the following sub-clauses and proviso shall be inserted, namely:-

"(b) A contribution of at least 20% of the project cost, i.e., objects proposed to be, inter alia, financed through the issue, shall be brought in the form of equity. Such equity participation may be brought by the promoter from his own funds or from other sources, subject to the condition that at least 20% of the issue size is brought by way of equity by the promoter from his own funds. If the project is to be implemented in stages, the promoters' contribution as per these requirements shall be with respect to total equity participation till the respective stage vis-à-vis the debt raised or proposed to be raised through the issue."

"(c) The issuer company shall agree to comply with the requirements of continuing disclosures as specified under the listing agreement to be entered into with concerned stock exchanges as is applicable for listing of equity shares."

"(d) The issuer company shall agree to obtain prior consent of the holders of the Convertible Debt Instruments, through special resolution to be passed at the general meeting of the Convertible Debt Instrument holders, for change in terms of issue, change in capital structure and change in shareholding pattern."

"(e) There shall be no partly paid up shares/ other securities at the time of filing of draft offer document with the Board and also at time of filing Red Herring Prospectus and Prospectus with ROC.

Provided that in case of a public issue of securities by a listed company satisfying all the requirements specified in clause 2.1.2A, there shall be no partly paid up shares/ other securities at the time of filing Red Herring Prospectus and Prospectus with ROC."

(d) in the renumbered sub-clause (f) and its proviso, for the word "DSCE", wherever it appears, the words "Convertible Debt Instruments" shall be substituted;

(e) in the renumbered sub-clause (g), for the word "DSCE", the words "Convertible Debt Instruments" shall be substituted; and

(f) in the renumbered sub-clause (h), for the word "DSCE", wherever it appears, the words "Convertible Debt Instruments" shall be substituted.

(c) In clause 8.2.5, for the words "NCDS/ DSCE", the words "Convertible Debt Instruments" shall be substituted.

(d) In clause 8.8.2.1, for the words and figures "30 days and not more than 60 days", the words and figures "15 days and not more than 30 days" shall be substituted.

CHAPTER X

15. In Chapter X, for the Chapter heading "GUIDELINES FOR ISSUE OF DEBT INSTRUMENTS", the following shall be substituted, namely:-

"GUIDELINES FOR ISSUE OF CONVERTIBLE DEBT INSTRUMENTS"

16. In clause 10.0, the mark and words "/ Non Convertible", appearing after the words "company offering Convertible" and before the words "debt instruments", shall be omitted.

17. In clause 10.1.1, for the words and parentheses "debt instruments (whether convertible or not)", the words "convertible debt instruments" shall be substituted.

18. In clause 10.1.4, for the words and parentheses "debt instrument (including convertible instruments)", the words "convertible debt instrument" shall be substituted.

19. In clause 10.7.1.1, the mark and words "/ Non Convertible Debentures (NCDs)," appearing after the words and brackets "Partly Convertible Debentures (PCDs)" and before the words "by company not being in default", shall be omitted.

20. In clause 10.7.1.1A:-

(a) in the heading, the mark and words "/ Non Convertible Debentures (NCDs),", appearing after the words and parentheses "Partly Convertible Debentures (PCDs)" and before the words "by company being in default", shall be omitted; and

(b) in the body, the words "and the NCDs", appearing after the words "portions of PCDs" and before the words "issued by a listed company" shall be omitted.

21. In sub-clause (b) of clause 10.9, the word "PCDs/", wherever it appears, shall be omitted.

CHAPTER XIII

GUIDELINES FOR PREFERENTIAL ISSUES

22. In clause 13.1.1.1, after the words “on preferential basis” and before the words “shall be made at”, the following shall be inserted, namely:-

“, other than an issue of shares on preferential basis to Qualified Institutional Buyers not exceeding five in number,”

23. In clause 13.1.1.2, after the words “on preferential basis” and before the words “can be made at”, the following shall be inserted, namely:-

“, other than an issue of shares on preferential basis to Qualified Institutional Buyers not exceeding five in number,”

24. After clause 13.1.1.2 and before Explanation, the following clause shall be inserted, namely:-

“13.1.1.3 An issue of shares on preferential basis to Qualified Institutional Buyers not exceeding five in number 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 a stock exchange during the two weeks preceding the relevant date.”

25. In the Explanation appearing after the newly inserted clause 13.1.1.3:-

(a) in Explanation (a), for the words and figures “for the purpose of clauses 13.1.1.1 and 13.1.1.2”, the words and figures “for the purpose of clause 13.1.1” shall be substituted; and

(b) in Explanation (b), for the words and figures “for the purpose of clauses 13.1.1.1 and 13.1.1.2”, the words and figures “for the purpose of clause 13.1.1” shall be substituted.

26. In clause 13.1.2.1:-

(a) in sub-clause (a), for the words and figures “Clause 13.1.1.1”, the words and figures “clause 13.1.1” shall be substituted; and

(b) in sub-clause (b), for the words and figures “Clause 13.1.1.1”, the words and figures “clause 13.1.1” shall be substituted.

27. In clause 13.3.1:-

(a) in sub-clause (a), after the words “clause 6.8.3.2 of these guidelines” and before the words “, shall be subject to lock-in” the following words shall be inserted, namely:-

"and the shares allotted to such promoter / promoter group pursuant to exercise of options attached to warrants issued on preferential basis"

(b) in sub-clause (c), after the words "preferential basis to promoters/ promoter group" and before the words "as per clause 13.3.1 (a) and (b)", the following words shall be inserted, namely:-

"and shares allotted to such promoters/ promoter group pursuant to exercise of options attached to warrants issued on preferential basis"

(c) in sub-clause (d):-

(i) the mark and words "/exercise of warrants," appearing after the words "conversion of the convertible instrument" and before the words "shall be reduced", shall be omitted; and

(ii) the word "warrants", appearing after the words "to the extent the convertible instrument" and before the words "have already been locked-in", shall be omitted.

CHAPTER XIII-A

GUIDELINES FOR QUALIFIED INSTITUTIONS PLACEMENT

28. In clause 13A.1.1:-

(a) after sub-clause (a), the following shall be inserted, namely:-

"Provided that in case of a listed company, being the transferee company in a scheme of merger/ demerger/ amalgamation/ arrangement sanctioned by Court(s) under sections 391 to 394 of the Companies Act, 1956, the period for which the equity shares of the transferor company were listed on a stock exchange having nation wide trading terminals shall also be considered for the purpose of computation of the period of one year."

(b) Explanation (i) shall be omitted; and

(c) In Explanation (ii), after the words "nation wide trading terminals" and before the words ", shall be deemed", the following shall be inserted, namely:- "and satisfy the conditions laid down in Explanation to Rule 19(4) of the Securities Contracts (Regulation) Rules, 1957"

29. In clause 13A.3.1, along with its Explanation:-

(a) for clause 13A.3.1, the following shall be substituted, namely:- "13A.3.1 An issue of specified securities made under this Chapter 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."

(b) For Explanation (a), the following shall be substituted, namely:-

"a) "relevant date" for the purpose of this clause means 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."

(c) In Explanation (b), for the words "six months", the words "two weeks" may be substituted.

30. In clause 13A.3.2.2, the words "a day thirty days prior to", appearing after the words "clause 13A.3.1" and before the words "the date on which", shall be omitted.

CHAPTER XVI

OPERATIONAL GUIDELINES

31. In clause 16.1.1, in sub-clause (a), for the words and figure "Rs. 20 crores", the words and figure "Rs.50 crores" shall be substituted.