

THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

UNIT I

(Questions based on the SEBI Act, 1992)

Purpose of the Act & Establishment of SEBI

Question 1

Explain briefly the purpose of establishing SEBI. (May 2002)

The purpose of the SEBI Act is to provide for the establishment of a Board called Securities and Exchange Board of India (SEBI). The Preamble to the Act provides for the establishment of a Board to:

- (i) Protect the interests of investors in securities,
- (ii) Promote the development of the securities market,
- (iii) To regulate the securities market, and
- (iv) For matters connected therewith or incidental thereto.

The Securities and Exchange Board of India was set up to achieve the following objectives:

- (i) To promote fair dealings by the issuers of securities and ensure a market place where they can raise funds at a relatively low cost.
- (ii) To provide a degree of protection to the investors and safeguard their rights and interests so that there is a steady flow of savings into the market.
- (iii) To regulate and develop a code of conduct and fair practices by intermediaries like brokers, merchant bankers, etc., with a view to making them competitive and professional.

Board to regulate or prohibit issue of prospectus, offer document or advertisement soliciting money for issue of securities – Section 11

Question 2

State the circumstances under which Securities and Exchange Board of India may prohibit a company from issuing prospectus, any offer document or advertisement soliciting money from public for issue of securities. (November, 2006)

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Point out the circumstances where under the following powers may be exercised by the Securities and Exchange Board of India:

- (a) *Prohibiting a company from issuing or publishing any document or advertisement soliciting money from public for issue of securities.*
- (b) *Pass cease and desist order in relation to any listed company.*

What remedies are available to the companies against such orders under the SEBI Act, 1992?
(June, 2009)

Answer

Without prejudice to the provisions of the Companies Act, 1956, the Board may, for the protection of investors specify, by regulations

- (a) (i) the matters relating to issue of capital, transfer of securities and other matters incidental thereto; and (ii) the manner in which such matters shall be disclosed by the companies; and
- (b) by general or special orders (i) prohibit any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities; (ii) specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued. The Board may specify the requirements for listing and transfer of securities and other matters incidental thereto. without prejudice to the provisions of section 21 of the Securities Contracts (Regulation) Act, 1956.

Seizure of records of a Stock Broker by SEBI

Question 3

Explain briefly the powers of SEBI under Securities and Exchange Board of India Act, 1992 to seize the records of a Stock broker or other Intermediaries associated with Securities Market.
(May, 2004)

Answer

Section 11C was inserted by SEBI (Amendment) Act, 2002. Where SEBI has reasonable grounds to believe that (a) transactions in securities are being dealt with in a manner detrimental to the investors or securities market or (b) any intermediary or any person associated with securities has violated provisions of SEBI Act, rules, regulations or directions issued by SEBI, it can appoint an investigating Authority to investigate the affairs of such intermediary/person and report matter thereon to the Board [Section 11C (1)].

If Investigating Authority is of the opinion that the records are likely to be destroyed or mutilated or secreted or altered, he can make application to Judicial Magistrate of First Class for an order of seizure of such books, registers, other documents and record [Section 11C(8)]. The Magistrate can authorize Investigating Authority to enter premises search and seize records. But Magistrate will authorize seizure of records of a listed company or company intending to be listed only if it is indulging in insider trading or market manipulation [11C (9)]. The seized records will be kept by Investigating Authority till conclusion of investigation and then return it to person concerned after placing identification marks on them [11C(10)].

Price Manipulation by brokers – Action by SEBI

Question 4

SEBI received complaints from some investors alleging that ABC Ltd. And some brokers are indulging in price manipulation in the shares of ABC Ltd. Explain the powers that can be exercised by SEBI under the Securities and Exchange Board of India Act, 1992 in case the allegations are found to be correct.
(May, 2006)

Answer

Price manipulation in the shares of ABC Ltd. can be considered as fraudulent and unfair trade practices relating to securities market. In this case SEBI may exercise the following powers under Section 11(4) of securities and Exchange Board of India Act, 1992.

- (i) Suspend the trading of any security (in this case the securities of ABC Ltd.) in a recognized stock exchange.
- (ii) Restrain persons (in this case ABC Ltd.) from accessing the securities market. It can also prohibit any person associated with securities market (i.e. brokers who have indulged in price manipulation) to buy, sale or deal in securities market.

SEBI may issue the above orders for reasons to be recorded in writing. SEBI shall, either before or after passing such orders give an opportunity of hearing to company and brokers concerned (proviso 2 to Section 11(4)) SEBI may also appoint an adjudicating officer who may levy penalty under Section 15 HA after holding an enquiry in the prescribed manner. According to Section 15HA if any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of Rs. 25 crores or 3 times the amount of profits made out of such practices, whichever is higher.

Prohibition on manipulation and deceptive practices: Further according to Section 12A, no person shall directly or indirectly indulge in following (i.e.) (a) using in manipulative or deceptive device in connection with purchase, sale or securities listed (b) Employ any scheme or device to defraud in connection with dealing in securities which are listed (c) engage in an act which would operate as fraud or deceit upon any person in connection with dealing in

securities which are listed. SEBI may impose penalty upto Rs. 1 crore on any person who fails to comply with any provisions of SEBI Act (Section 15 HB).

Penalties

Question 5

Mr. Clever who is registered as an Intermediary fails to enter into an agreement with his client and hence penalised by SEBI under Section 15B of the SEBI Act. Advise Mr. Clever as to what remedies are available to him against the order of SEBI. (May, 2002)

Answer

Remedies against SEBI order: Section 15B of the Securities and Exchange Board of India Act, 1992 lays down that if any person, who is registered as an intermediary and is required under this Act or any rules or regulations made there under, to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Mr. Clever has been penalised under the above mentioned provision. Two remedies are available to Mr. Clever in this matter:-

(i) **Appeal to the Securities Appellate Tribunal :**

Section 15 T of the SEBI Act, 1992 provides that any person aggrieved by an order of the Board made, on and after the commencement of the Security Laws (Second Amendment) Act, 1999, under this Act or the rules or regulations made there under may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

Such appeal shall be filed within a period of 45 days from the date on which a copy of the order made by the Board is received and it shall be in such form and be accompanied by such fee as may be prescribed. However, the Tribunal may entertain an appeal after satisfied that there was sufficient cause for not filing it within the said period. The Tribunal may, after giving the parties an opportunity of being heard, pass such orders as it thinks fit, confirming, modifying or setting aside the order appealed against.

(ii) **Appeal to the High Court**

Section 15 Z of the SEBI Act, 1992 provides that any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the decision or order to him on any question of fact or law arising out of such order. The High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

Failure to redress investor grievances (Section 15C)

Question 6

Mr. DB is a member of RPA Ltd. He obtains an order against the company for redressal of his grievances against the company. But the company fails to redress the grievances of DB within the time fixed by the SEBI. The Board thereafter imposed penalty upon the company U/s 15C of the SEBI Act. RPL Ltd. seeks your advice whether it has any remedy against the order of SEBI. Advise. **(November 2008)**

Answer

Section 15C of Securities Exchange Board of India Act, 1992 lays down that if any listed company or any person who is registered as an intermediary, after having been called upon by the board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the board, such company or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

RPA limited was penalized under the provisions of above-mentioned section. Now two remedies are available to RPA limited in this matter:

- (i) **Appeal to the Securities Appellate Tribunal:** Section 15T of the SEBI Act, 1992 provides that any person aggrieved by an order of the Board made, on and after the commencement of the security laws (second amendment) act 1999, under this act or the rules or regulations made there under may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

Such appeal shall be filed within a period of 45 days from the date on which a copy of the order made by the Board is received and it shall be in such form and be accompanied by such fee as may be prescribed. However the Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within the said period.

The Tribunal may, after giving the parties an opportunity of being heard, pass such orders as it thinks fit, confirming, modifying or setting aside the order appealed against.

- (ii) **Appeal to the Supreme Court:** Section 15Z of the SEBI Act, 1992 provides that any person aggrieved by any decision or an order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or an order to him on any question of law arising out of such order. The Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

Penalty for failure in case of stock brokers – (Section 15F)

Question 7

What are the default for which a stock-broker may be penalized under the provisions of Securities and Exchange Board of India Act, 1992 in respect of his dealings with the investors? State the factors that must be taken into account by the adjudicating officer while determining the quantum of penalty in such cases. **(May, 2000)**

SEBI received a complaint from an investor that he has not received the payment due to him from a registered stock broker. Explain the action that can be taken by SEBI against the stock broker under the provisions of Securities and Exchange Board of India Act, 1992 and the factors that will be taken into account while taking such action. **(May, 2003)**

Answer

Penalty for default in case of stock brokers: Section 15F of Securities and Exchange Board of India Act, 1992 provides for penalty for default in case of stock brokers. If any person who, is registered, as a stock broker under this Act:

- (a) fails to issue contract notes in the form and in the manner specified by the stock exchange of which such broker is a member, he shall be liable to a penalty not exceeding five times the amount for which the contract note was required to be issued by that broker.
- (b) fails to deliver any security or fails to make payment of the amount due to the investor in the manner or within the period specified in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.
- (c) charges an amount of brokerage which is on excess of the brokerage specified in the regulations, he shall be liable to a penalty of one lakh rupees or five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

Factors for taking into account while action

While adjudging quantum of penalty under section 15J, the adjudicating officer shall have due regard to the following factors:

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the defaults.
- (b) the amount of loss to an investor or group of investors as a result of the default.
- (c) the repetitive nature of the default.

Taking into consideration the above factors, the adjudicating officer may levy a maximum penalty as prescribed in Section 15F for default by the concern stock broker in making the payment to the investor.

Question 8

A group of investors are upset with the functioning of two leading stock brokers of Calcutta Stock Exchange and want to make a complaint to SEBI for intervention and redressal of their grievances. Explain briefly the purpose of establishing SEBI and what type of defaults by the stock brokers come within the purview of SEBI Act, 1992. (May, 2002)

Answer

The Securities and Exchange Board of India (SEBI) was established primarily for the purpose of

1. to protect the interests of investors in securities
2. to promote the development of securities market
3. to regulate the securities market and (iv) for matters connected therewith and incidental thereto.

The following defaults by stock brokers come within the purview of SEBI Act:

- (a) Any failure on the part of the stock broker to issue contract notes in the form and in the manner specified by the Stock Exchange.
- (b) Any failure on the part of the broker to deliver any security or to make payment of the amount due to the investor in the manner or within the period specified in the regulations.
- (c) Any collection of charges by way of brokerage in excess of the brokerage as specified in the regulations. (Section 15 F, SEBI Act, 1992)

Question 9

Mr. Raman, an investor is not satisfied with the dealings of his stock broker who is registered with Delhi Stock Exchange. Mr. Raman approaches you to guide him regarding the avenues available to him for making a complaint against the stock broker under Securities and Exchange Board of India Act, 1992 and also the grounds on which such complaint can be made. You are required to briefly explain the answer to his queries. (November, 2003)

Answer

Securities and Exchange Board of India (SEBI) was established for regulating the various aspects of stock market. One of its functions is to register and regulate the stock brokers. In the light of this, Mr. Raman is advised that the complaint against the erring stock broker may be submitted to SEBI.

The grounds on which or the defaults for which complaints may be made to SEBI are as follows:

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- (a) Any failure on the part of the stock broker to issue contract notes in the form and manner specified by the stock exchange of which the stock broker is a member.
- (b) Any failure to deliver any security or any failure to make payment of the amount due to the investor in the manner within the period specified in the regulations.
- (c) Any collection of charges by way of brokerage which is in excess of the brokerage specified in the regulations.

Penalty for insider trading – Section 15G

Question 10

On the complaint of Mr. Kamlesh Gupta, after enquiry SEBI finds that Mr. P. Mehta a Chief Executive Officer of the Company, on the basis of unpublished price sensitive information, has indulged in the trading of the securities of that company. Explain, on the basis of the said finding, what action SEBI can take against Mr. P. Mehra under the Securities and Exchange Board of India Act, 1992.
(May, 2002)

Answer

Section 15G of the Securities and Exchange Board of India (SEBI) Act, 1992 deals with penalty for Insider Trading. According to this, if any insider

- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate on any stock exchange on the basis of any unpublished price sensitive information; or
- (ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law, or
- (iii) counsels or procures for, any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,

shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher. As such SEBI can, after following the prescribed procedure, impose a penalty on Mr. P. Mehra. The maximum penalty that SEBI can impose is Rupees twenty-five crores or three times the amount of profits made out of insider trading, whichever is higher.

Question 11

What provision has been made under Section 15G of the SEBI Act, 1992, in connection with penalty for insider trading?
(November, 2000)

Answer

If any insider who:

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- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate on any stock exchange on the basis of any unpublished price sensitive information; or
- (ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
- (iii) counsels, or procures for, any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,

shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher. [Section 15, SEBI Act, 1992].

UNIT – II

Questions based on

SECURITIES AND EXCHANGE BOARD OF INDIA

(ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2009

Earlier known as SEBI (Disclosure for Investor Protection) Guidelines, 2000

Book-Building Process

Question 12

What is the specific advantage of Book-building process in connection with issue of securities by a company?
(May, 2000)

Answer

Book building is a process of price discovery. The issuer discloses a price band or floor price before opening of the issue of the securities offered. On the basis of the demands received at various price levels within the price band specified by the issuer, Book Running Lead Manager (BRLM) in close consultation with the issuer arrives at a price at which the security offered by the issuer, can be issued. When the price of an issue is discovered on the basis of demand received from the prospective investors at various price levels, it is called "Book Built Issue". According to Regulation 2(f) of SEBI (ICDR) Regulation 2009 "book building" means a process undertaken to elicit demand and to assess the price for determination of the quantum or value of specified securities or Indian Depository Receipts, as the case may be, in accordance with these regulations.

The specific advantage of the book-building process is:

- (a) It is a process which helps the issuer company and the lead merchant banker to discover the price through the demand received.
- (b) Cut-off option is available for the investors. i.e investors who are applying for securities worth up to Rs 1,00,000/- only. Such investors are required to tick the cut off option which indicates their willingness to subscribe to shares at any price discovered within the price band. Unlike price bids (where a specific price is indicated) which can be invalid, if price indicated by applicant is lower than the price discovered, the cut off bids always remain valid for the purpose of allotment.
- (c) Investors can change/revise/before the date of closure of the issue and also cancel the bid anytime before the finalization of the basis of allotment by approaching/ writing/ making an application to the registrar to the issue.

Common Conditions for Public Issues and Rights Issues (Regulation 4)

Question 13

What are the Common restrictions for issuers in case of public and rights issues?

Answer

No issuer shall make a public issue or rights issue of specified securities:

- (a) if the issuer, any of its promoters, promoter group or directors or persons in control of the issuer are debarred from accessing the capital market by the Board;
- (b) if any of the promoters, directors or persons in control of the issuer was or also is a promoter, director or person in control of any other company which is debarred from accessing the capital market under any order or directions made by the Board;
- (c) if the issuer of convertible debt instruments is in the list of wilful defaulters published by the Reserve Bank of India or it is in default of payment of interest or repayment of principal amount in respect of debt instruments issued by it to the public, if any, for a period of more than six months;
- (d) unless it has made an application to one or more recognised stock exchanges for listing of specified securities on such stock exchanges and has chosen one of them as the designated stock exchange:

Provided that in case of an initial public offer, the issuer shall make an application for listing of the specified securities in at least one recognised stock exchange having nationwide trading terminals;

- (e) unless it has entered into an agreement with a depository for dematerialisation of specified securities already issued or proposed to be issued;
- (f) unless all existing partly paid-up equity shares of the issuer have either been fully paid up or forfeited;
- (g) unless firm arrangements of finance through verifiable means towards seventy five per cent. of the stated means of finance, excluding the amount to be raised through the proposed public issue or rights issue or through existing identifiable internal accruals, have been made.

Eligibility Requirements in case of Public Issues (Chapter III - Regulation 26)

Question 14

M/s Herbal Pharma Limited, a listed company, decides to make a public issue of equity shares. Explain briefly the eligibility norms prescribed by SEBI guidelines to be complied with by the company. (May, 2002) or

AVD Limited was incorporated on 1st April, 2006. The Company got its shares listed at Bombay Stock Exchange on 30th September, 2007. The Company at an Extra-Ordinary General Meeting

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held on 31st October, 2009, decided to go for public issue of equity shares to an extent of Rs.300 crores. The net worth of the Company as per the audited Balance sheets in the financial years 2007-08 and 2008-09 was Rs.50 crores and 60 crores respectively. During the financial year 2008-09 the Company had already issued equity shares amounting to Rs.20 crores. There is no change in the name of the Company or its business activities during the financial year 2008-09. Referring to the guidelines issued by Securities and Exchange Board of India, advise the Company on the following:

- (i) *Whether the Company can go ahead with the public issue of equity shares as stated above.*
- (ii) *What would be your advice in case the net worth of the Company as per audited balance sheets in the financial years 2007-08 and 2008-09 was Rs.20 crores and 30 crores respectively?*
- (iii) *What would be the position in case the Company in question changed its name to AJD Limited during the year 2008-09, three months before filing the offer document and the revenue due to change of business activity suggested by the new name during the financial year 2008-09 was 40% less than the total revenue for the financial year 2007-08 reckoned from the date of filing the offer document?* **(November, 2009)**

Answer

As per the SEBI (ICDR) Regulations 2009, vide Regulation 26 (d) & (e), a listed Company shall be eligible to make a public issue of equity shares or any other security which may be converted into or exchanged with equity shares at a later date provided

- (d) the aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed five times its pre-issue net worth as per the audited balance sheet of the preceding financial year;
- (e) if it has changed its name within the last one year, at least fifty per cent. of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name.

Applying the above Regulations, the questions as asked in the problem can be answered as under:

1. There are two conditions in the guidelines as stated above viz. i) that the aggregate issue i.e. proposed + all the previous issues made in the same financial year should not exceed 5 times the net worth of the Company; ii) there is no change in the name of the issuer Company within the last 1 year. In the question the proposed issue of Rs.300 crores + Previous issue in the same financial year is Rs.20 crores, making an aggregate of Rs.320. Since the aggregate of the issue is more than 5 times of Net Worth, i.e. more than Rs.300 crores, the proposed offer is not within the limit, Company cannot proceed ahead with the proposed issue of Rs.300 crores.

2. In the second case the net worth is only Rs.30 crores. 5 times of the net worth comes to Rs.150 crores only. Since the aggregate of the proposed issue and the previous issue during the same financial year is Rs.320 crores, which is exceeding the limits of Rs.150 crores, as calculated above, the Company cannot proceed with the public issue of shares as proposed in the second case.
3. In the third case the offer cannot be made since the current year revenue is less than 50% of the total revenue of the previous year.

Question 15

Following information is available from the Records of Star Chemicals & Engineering Ltd.:

- (i) *The company is a closely held unlisted company.*
- (ii) *The paid up share capital of the company since 1st April, 1999 is Rs.3.00 crores and its net worth as at 31st March, 2008 was Rs.5.00 crores as per audited Balance Sheet.*
- (iii) *The Net Tangible Assets of the company as per last 3(three) audited Balance Sheets as at 31st March, 2005, 2006 and 2007 were Rs.4.00 crores, 4.50 crores and 5.00 crores respectively, out of which monetary assets were less than Rs. 50 lacs in each of the three years.*
- (iv) *The company was incorporated in 1996 and commenced its business on 1st April, 1996 and since then it has earned good profits and it has not incurred any loss in any year in past.*
- (v) *The company has not declared any dividend so far, but according to the profits earned so far, the management could have declared the dividend in each of the last five years.*
- (vi) *The name of the company was changed from Star Engineering Ltd. to its present name with effect from 1st January, 2007*
- (vii) *The company's turnover in the years ended 31st March, 2006, 2007 and 2008 was Rs.20 crores, 30 crores and 35 crores respectively.*

The company wants to make a public issue of shares to raise Rs. 20.00 crores by issuing equity shares at premium. For the purpose of including the information in the prospectus, the Company has prepared its accounts for 12 months ended 31st December, 2007 showing segment wise revenue which reveals that revenue from chemical segment is more than the revenue from Engineering segment.

You are required to state the relevant guidelines issued by SEBI and your conclusion whether the Company can make the desired issue of equity shares based on the facts stated above.

(November, 2005)

Question 16

M/s Earth Chemicals and Engineering Ltd. is a closely held unlisted company with a paid up share capital of Rs. 3.00 crores, since 1st April, 2001 and its net worth as on 31st March, 2007 was Rs.

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5.00 crores. The net tangible assets of the company as per last three audited balance sheets as at 31st March, 2005, 2006 and 2007 were Rs. 4.00 crores, 4.50 crores and 5.00 crores respectively out of which momentary assets were less than Rs. 50 lakhs in each of the three years. The company was incorporated in 1998 and commenced its business on 1st April, 1998 and since then it has earned good profits and it has not incurred any loss in any year in the past. The company has not declared any dividend so far. But according to the profits earned so far, the management could have declared dividends in each of the last five years. The name of the company was changed from Earth Engineering Ltd. to its present name effective from 1st October, 2006. The company wants to make a public issue of shares to raise Rs. 20.00 crores by issuing equity shares at premium. For the purpose of including the information in the prospectus. The company has prepared its accounts for 12 months ended 30th September, 2007 showing segment wise revenue, which reveals that revenue from chemical segment was more than the revenue from engineering segment. Keeping the relevant guidelines issued by SEBI into account, examine whether the company can make the desired issue of equity shares based on the facts stated above.

(November 2007)

Answer

Regulation 26 of the SEBI (ICDR) Regulations, 2009 prescribes the conditions to be fulfilled for issue of shares. As per the said Regulation, an issuer may make an initial public offer, if:

- (a) it has net tangible assets of at least three crore rupees in each of the preceding three full years (of twelve months each), of which not more than fifty per cent. are held in monetary assets. Further that if more than fifty per cent of the net tangible assets are held in monetary assets, the issuer has made firm commitments to utilise such excess monetary assets in its business or project.
- (b) it has a track record of distributable profits in terms of section 205 of the Companies Act, 1956, for at least three out of the immediately preceding five years. The extraordinary items shall not be considered for calculating distributable profits.
- (c) it has a net worth of at least one crore rupees in each of the preceding three full years (of twelve months each).
- (d) the aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed five times its pre-issue net worth as per the audited balance sheet of the preceding financial year.
- (e) if it has changed its name within the last one year, at least fifty per cent. of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name.

In the given case,

- (a) The net tangible assets of the company as per the last three audited balance sheets as on 31st March, 2005, 2006 and 2007 were Rs. 4.00 crores, Rs. 4.50 crores, and Rs.

5.00 crores respectively. It satisfies the requirements of clause (a) as above as during each of the preceding three full years, it has net tangible assets, more than Rs.3 crores and out of which the monetary assets are not more than 50 % of the net tangible assets. (In this case it has monetary assets less than Rs 50 lacs).

- (b) The company has good track record of distributable profits in terms of section 205 of the Companies Act, 1956. In other words, it has not incurred any loss in any year in the past.
- (c) The net worth of the company during the three preceding years was at least Rs. 1 crore in the preceding three full years. (paid-up capital since 1st April, 1999 is Rs 3 crores and net worth as at 31st March, 2005 was Rs. 5.00 crores.
- (d) The aggregate of the proposed issue and all previous issues made in the same financial years does not exceed 5 times its pre-issue net worth. (Rs. 20 crores is the proposed issue and pre-issue net worth is Rs. 5 crores as on 31st March, 2007.
- (e) It is stated in the problem that the revenue earned by the company under its activity (chemical) the new name is more than from the old activity (engineering, it satisfied the condition (e) as stated above.

Hence Star Chemicals & Engineering Ltd can proceed to make a public issue of shares to raise Rs. 20.00 crores by issuing equity shares at premium.

Question 17

The Annual Accounts of CALM Ltd., a listed company from for the year ended 31st March, 2003 were finalized on 31st May, 2004. The Company had a paid up capital of Rs.50.00 Lacs and free reserves of Rs.100.00 Lacs. The Company did not have any accumulated losses. The Board of Directors of the Company wishes to make a public issue of Equity Shares amounting to Rs. 10.00 Crores comprising of offer to public through offer document, firm allotment and promoters contribution. State, how this can be done under SEBI Guidelines.

What would be your answer in the following cases?

- (a) *If CALM Ltd. was a Private Sector Bank known as CALM Bank Ltd.*
- (b) *If the issue of above mentioned Rs.10.00 Crores was a right issue* **(November, 2004)**

Answer

To determine, whether CALM Ltd can proceed with the public issue of equity shares amounting to Rs.10.00 crores, one has to find out whether the company satisfied Regulation 26 of the SEBI (ICDR) Regulations, 2009 applying clause (c) of the said Regulation, the aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed five times its pre-issue net worth as per the audited

balance sheet of the preceding financial year. In this case, it exceeds 5 times the net worth as on 31st March, 2004. (Proposed issue is Rs.10 crores and net worth as at 31st March, 2003 is Rs. 1.5 crores). Since the company does not satisfy the above stated condition, it has to satisfy any of the alternate conditions specified in Clause 2(a)(b), which states that,

the issue is made through the book building process and the issuer undertakes to allot at least fifty per cent. of the net offer to public to qualified institutional buyers and to refund full subscription monies if it fails to make allotment to the qualified institutional buyers ; **or**

at least fifteen per cent. of the cost of the project is contributed by scheduled commercial banks or public financial institutions, of which not less than ten per cent. shall come from the appraisers and the issuer undertakes to allot at least ten per cent. of the net offer to public to qualified institutional buyers and to refund full subscription monies if it fails to make the allotment to the qualified institutional buyers;

- a. (i) the minimum post-issue face value capital of the issuer is ten crore rupees; or
- (ii) the issuer undertakes to provide market-making for at least two years from the date of listing of the specified securities, subject to the following:
 - (A) the market makers offer buy and sell quotes for a minimum depth of three hundred specified securities and ensure that the bid-ask spread for their quotes does not, at any time, exceed ten per cent.;
 - (B) the inventory of the market makers, as on the date of allotment of the specified securities, shall be at least five per cent. of the proposed issue.

Pricing in Public Issue (Regulation 28)

Question 18

State the guidelines issued by SEBI in this regard in respect of the following matters:

- (i) *Determination of issue price and that of successful bidders.*
- (ii) *Reservation for individual investors who have not participated in the bidding process and basis of allotment to such investors.* **(May, 2000)**

Answer

Determination of issue price: (Regulation 28, read with Schedule XI)

- (a) The issuer shall, in consultation with lead book runner, determine the issue price based on the bids received.
- (b) On determination of the price, the number of specified securities to be offered shall be determined (i.e. issue size divided by the price to be determined).
- (c) Once the final price (cut-off price) is determined, all those bidders whose bids have been found to be successful (i.e. at and above the final price or cut-off price) shall be entitled

for allotment of specified securities.

- (d) Retail individual investors may bid at "cut off" price instead of their writing the specific bid price in the bid forms.
- (e) The lead book runner may reject a bid placed by a qualified institutional buyer for reasons to be recorded in writing provided that such rejection shall be made at the time of acceptance of the bid and the reasons therefor shall be disclosed to the bidders. Necessary disclosures in this regard shall also be made in the red herring prospectus.

Allotment procedure and basis of allotment. (Regulation 50)

1. The allotment of specified securities to applicants other than anchor investors shall be on proportionate basis within the specified investor categories and the number of securities allotted shall be rounded off to the nearest integer, subject to minimum allotment being equal to the minimum application size as determined and disclosed by the issuer: Provided that value of specified securities allotted to any person in pursuance of reservation made under clause (a) of sub-regulation (1) or clause (a) of sub-regulation (2) of regulation 42, shall not exceed one lakh rupees.]
2. The executive director or managing director of the designated stock exchange along with the post issue lead merchant bankers and registrars to the issue shall ensure that the basis of allotment is finalised in a fair and proper manner in accordance with the allotment procedure as specified in **Schedule XV**.

Manner of Allotment/ Allocation.

- (a) Allotment to retail individual investors, non-institutional investors and qualified institutional buyers other than anchor investors shall be made proportionately as illustrated in this Schedule.
- (b) In case of under subscription in any category, the undersubscribed portion in that category shall be allocated to the bidders as per disclosures made in the red herring prospectus; Provided that the unsubscribed portion in qualified institutional buyer category shall not be available for subscription to other categories, in case the book building process is undertaken for the purpose of compliance of eligibility conditions for public issue.
- (c) On receipt of the sum payable on application for the amount towards minimum subscription, the issuer shall allot the specified securities to the applicants as per these regulations.
- (d) Definition of CAN to be modified to state that it is for 'allocation of shares' and not 'confirmation of shares'

Question 19

M/s Ambitious Financiers Ltd., an existing unlisted Public Company, is planning to issue to the

public five lakhs fully convertible debentures of Rs. 100 each. Explain the eligibility norms to be fulfilled by the company as per SEBI guidelines before making the issue. (May, 2001)

Answer

Conditions for initial public offer (Regulation 26)

- (1) An issuer may make an initial public offer, if:
 - (a) it has net tangible assets of at least three crore rupees in each of the preceding three full years (of twelve months each), of which not more than fifty per cent. are held in monetary assets: **Provided** that if more than fifty per cent. of the net tangible assets are held in monetary assets, the issuer has made firm commitments to utilise such excess monetary assets in its business or project;
 - (b) it has a track record of distributable profits in terms of section 205 of the Companies Act, 1956, for at least three out of the immediately preceding five years: **Provided** that extraordinary items shall not be considered for calculating distributable profits;
 - (c) it has a net worth of at least one crore rupees in each of the preceding three full years (of twelve months each);
 - (d) the aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed five times its pre-issue net worth as per the audited balance sheet of the preceding financial year;
 - (e) if it has changed its name within the last one year, at least fifty per cent. of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name.
- (2) An issuer not satisfying any of the conditions stipulated in sub-regulation (1) may make an initial public offer if:
 - (a) (i) the issue is made through the book building process and the issuer undertakes to allot at least fifty per cent. of the net offer to public to qualified institutional buyers and to refund full subscription monies if it fails to make allotment to the qualified institutional buyers;

Or

 - (ii) at least fifteen per cent. of the cost of the project is contributed by scheduled commercial banks or public financial institutions, of which not less than ten per cent. shall come from the appraisers and the issuer undertakes to allot at least ten per cent. of the net offer to public to qualified institutional buyers and to refund full subscription monies if it fails to make the allotment to the qualified institutional buyers;

- (b) (i) the minimum post-issue face value capital of the issuer is ten crore rupees;

Or
- (ii) the issuer undertakes to provide market-making for at least two years from the date of listing of the specified securities, subject to the following:
 - (A) the market makers offer buy and sell quotes for a minimum depth of three hundred specified securities and ensure that the bid-ask spread for their quotes does not, at any time, exceed ten per cent.;
 - (B) the inventory of the market makers, as on the date of allotment of the specified securities, shall be at least five per cent. of the proposed issue.
- (3) An issuer may make an initial public offer of convertible debt instruments without making a prior public issue of its equity shares and listing thereof.
- (4) An issuer shall not make an allotment pursuant to a public issue if the number of prospective allottees is less than one thousand.
- (5) No issuer shall make an initial public offer if there are any outstanding convertible securities or any other right which would entitle any person any option to receive equity shares after the initial public offer: **Provided** that the provisions of this sub-regulation shall not apply to:
 - (a) a public issue made during the currency of convertible debt instruments which were issued through an earlier initial public offer, if the conversion price of such convertible debt instruments was determined and disclosed in the prospectus of the earlier issue of convertible debt instruments;
 - (b) outstanding options granted to employees pursuant to an employee stock option scheme framed in accordance with the relevant Guidance Note or Accounting Standards, if any, issued by the Institute of Chartered Accountants of India in this regard.
- (6) Subject to provisions of the Companies Act, 1956 and these regulations, equity shares may be offered for sale to public if such equity shares have been held by the sellers for a period of at least one year prior to the filing of draft offer document with the Board in accordance with sub- regulation (1) of regulation 6: **Provided** that in case equity shares received on conversion or exchange of fully paid-up compulsorily convertible securities including depository receipts are being offered for sale, the holding period of such convertible securities as well as that of resultant equity shares together shall be considered for the purpose of calculation of one year period referred in this sub-regulation: **Provided** further that the requirement of holding equity shares for a period of one year shall not apply:

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- (a) in case of an offer for sale of specified securities of a government company or statutory authority or corporation or any special purpose vehicle set up and controlled by any one or more of them, which is engaged in infrastructure sector;
 - (b) if the specified securities offered for sale were acquired pursuant to any scheme 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 such approval.
- (7) No issuer shall make an initial public offer, unless as on the date of registering prospectus or red herring prospectus with the Registrar of Companies, the issuer has obtained grading for the initial public offer from at least one credit rating agency registered with the Board.

Explanation: For the purposes of this regulation:

- (I) "net tangible assets" mean the sum of all net assets of the issuer, excluding intangible assets as defined in Accounting Standard 26 (AS 26) issued by the Institute of Chartered Accountants of India;
- (II) "project" means the object for which monies are proposed to be raised to cover the objects of the issue;
- (III) In case of an issuer which had been a partnership firm, the track record of distributable profits of the partnership firm shall be considered only if the financial statements of the partnership business for the period during which the issuer was a partnership firm, conform to and are revised in the format prescribed for companies under the Companies Act, 1956 and also comply with the following:
 - (a) adequate disclosures are made in the financial statements as required to be made by the issuer as per Schedule VI of the Companies Act, 1956;
 - (b) the financial statements are duly certified by a Chartered Accountant stating that:
 - (i) the accounts and the disclosures made are in accordance with the provisions of Schedule VI of the Companies Act, 1956;
 - (ii) the accounting standards of the Institute of Chartered Accountants of India have been followed;
 - (iii) the financial statements present a true and fair view of the firm's accounts;
- (IV) In case of an issuer formed out of a division of an existing company, the track record of distributable profits of the division spun-off shall be considered only if the requirements regarding financial statements as provided for partnership firms in Explanation III are complied with;

- (V) "bid-ask spread" means the difference between quotations for sale and purchase;
- (VI) The term "infrastructure sector" includes the facilities or services as specified in **Schedule X**.

Conditions for further public offer (Regulation 27)

An issuer may make a further public offer if it satisfies the conditions specified in clauses (d) and (e) of sub-regulation (1) of regulation 26 and if it does not satisfy those conditions, it may make a further public offer if it satisfies the conditions specified in sub-regulation (2) of regulation 26.

Question 20

Super Chemicals Limited, a closely held unlisted company, is in need of about Rs. 20 crores for financing its expansion programme. The company has not declared any dividend so far though it has made good profits from the commencement of commercial operations on 1st January, 1995. The paid-up capital of the company was increased to Rs. 3.5 crores on 1st April, 1998. The net worth of the company as per latest audited Balance Sheet as at 31st March, 2002 is Rs. 5 crores. The company seeks your advice as to its eligibility to raise Rs. 20 crores through public issue of equity shares at a premium. Advise with reference to relevant guidelines issued by SEBI.

(May, 2003)

Answer

Super Chemicals Ltd, a closely held company is eligible to raise Rs.20 crores through public issue of equity shares at a premium provided it satisfies the **Conditions for initial public offer contained in Regulation 26 of the SEBI (ICDR) Regulations 2009**.

- (a) it has net tangible assets of at least three crore rupees in each of the preceding three full years (of twelve months each), of which not more than fifty per cent. are held in monetary assets: **Provided** that if more than fifty per cent. of the net tangible assets are held in monetary assets, the issuer has made firm commitments to utilise such excess monetary assets in its business or project;
- (b) it has a track record of distributable profits in terms of section 205 of the Companies Act, 1956, for at least three out of the immediately preceding five years: **Provided** that extraordinary items shall not be considered for calculating distributable profits;
- (c) it has a net worth of at least one crore rupees in each of the preceding three full years (of twelve months each);
- (d) the aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed five times its pre-issue net worth as per the audited balance sheet of the preceding financial year;

- (e) if it has changed its name within the last one year, at least fifty per cent. of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name.

Question 21

What are the SEBI's important guidelines regarding pricing of first issue of Equity shares of new companies? (November, 2000)

A company proposes to make a public issue of equity shares for financing its project through book building process. It proposes to fix the floor price of the share at Rs.500 for a share of Rs. 10. Answer the following with reference to SEBI (Disclosure and Investor Protection) guidelines:

What is the price band that may be indicated in the red herring prospectus?

If the company wants to lower the floor price during the bidding period in order to increase the response to the issue, state the conditions subject to which such revision can be made.

(CA Final, New Course, November, 2008)

Answer

Pricing of public issue of equity shares are contained in SEBI (ICDR) Regulations, 2009 - Regulations 28 to 31, Part II of Chapter III

Pricing

- 28.** (1) An issuer may determine the price of specified securities in consultation with the lead merchant banker or through the book building process.
- (2) An issuer may determine the coupon rate and conversion price of convertible debt instruments in consultation with the lead merchant banker or through the book building process.
- (3) The issuer shall undertake the book building process in a manner specified in **Schedule XI**.

Differential pricing

- 29.** An issuer may offer specified securities at different prices, subject to the following:
- (a) retail individual investors or retail individual shareholders ¹[or employees of the issuer entitled for reservation made under regulation 42 making an application for specified securities of value not more than one lakh rupees,] may be offered specified securities at a price lower than the price at which net offer is made to other categories of applicants:

¹ Inserted by SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2009, w.e.f. 11.12.09.

Provided that such difference shall not be more than ten per cent. of the price at which specified securities are offered to other categories of applicants;

- (b) in case of a book built issue, the price of the specified securities offered to an anchor investor shall not be lower than the price offered to other applicants;
- (c) in case of a composite issue, the price of the specified securities offered in the public issue may be different from the price offered in rights issue and justification for such price difference shall be given in the offer document.
- (d) In case the issuer opts for the alternate method of book building in terms of Part D of Schedule XI, the issuer may offer specified securities to its employees at a price lower than the floor price:

Provided that the difference between the floor price and the price at which specified securities are offered to employees shall not be more than ten per cent. of the floor price.]

Price and price band

- 30.** (1) The issuer may mention a price or price band in the draft prospectus (in case of a fixed price issue) and floor price or price band in the red herring prospectus (in case of a book built issue) and determine the price at a later date before registering the prospectus with the Registrar of Companies: Provided that the prospectus registered with the Registrar of Companies shall contain only one price or the specific coupon rate, as the case may be.
- (2) If the floor price or price band is not mentioned in the red herring prospectus, the issuer shall announce the floor price or price band at least two working days before the opening of the bid (in case of an initial public offer) and at least one working day before the opening of the bid (in case of a further public offer), in all the newspapers in which the pre issue advertisement was released.
- (3) The announcement referred to in sub-regulation (2) shall contain relevant financial ratios computed for both upper and lower end of the price band and also a statement drawing attention of the investors to the section titled "basis of issue price" in the prospectus.
- (4) The cap on the price band shall be less than or equal to one hundred and twenty per cent. of the floor price.
- (5) The floor price or the final price shall not be less than the face value of the specified securities. **Explanation:** For the purposes of sub-regulation (4), the "cap on the price band" includes cap on the coupon rate in case of convertible debt instruments.

Face value of equity shares.

31. (1) Subject to the provisions of the Companies Act, 1956, the Act and these regulations, an issuer making an initial public offer may determine the face value of the equity shares in the following manner:

- (a) if the issue price per equity share is five hundred rupees or more, the issuer shall have the option to determine the face value at less than ten rupees per equity share: Provided that the face value shall not be less than one rupee per equity share;
- (b) if the issue price per equity share is less than five hundred rupees, the face value of the equity shares shall be ten rupees per equity share:

Provided that nothing contained in this sub-regulation shall apply to initial public offer made by any government company, statutory authority or corporation or any special purpose vehicle set up by any of them, which is engaged in infrastructure sector.

- (2) The disclosure about the face value of equity shares (including the statement about the issue price being "X" times of the face value) shall be made in the advertisements, offer documents and application forms in identical font size as that of issue price or price band.

Explanation: For the purposes of this regulation, the term "infrastructure sector" includes the facilities or services as specified in **Schedule X**.

Question 22

An Unlisted Public Company, having a paid-up equity share capital of Rs.5 Crores consisting of 50,00,000 equity shares of Rs.10 each fully paid-up, proposes to reduce the denomination of equity shares to less than Rs.10 Per share and make an initial public offer of equity shares at a premium. Examine whether it is possible for the company to issue shares at a denomination of less than Rs.10 and, if so, state the minimum issue price and other conditions to be fulfilled under the SEBI (Disclosure and Investor Protection) Guidelines, 2000. (November, 2009)

Answer

Denomination of shares for public issue

An eligible company shall be free to make a public or right issue of equity shares in any denomination determined by it by complying with section 13(4) of the Companies Act, 1956 and also SEBI Guidelines.

According to SEBI guidelines, in case of initial public offer by an unlisted company.

- (a) if the issue price is Rs.500 or more, the issuer company shall have a discretion to fix the face value below Rs.10 per share subject shall in no case be less than Re.1 per share and also it shall not be is decimal of a rupee.
- (b) If issue price is less than Rs.500 per share the face value shall be Re.10 per share.

Here the issue price has not been given in the question. It is possible for the company to issue shares having a face value of less than Rs.10 per share only if the issue price is Rs.500 or more (para 3.7.1)

However, at any one time, shares shall be only of one denomination. Hence the denomination of existing shares can be altered by changing memorandum and articles by passing special resolution disclosure and accounting norms specified by the SEBI from time to time (para 3.7.). The face value shall be disclosed in the advertisement offer documents and is application fauses, in the same font size as that of issue price or price band .

Promoters' Contribution and Lock in period (Regulations 32)

Question 23

An unlisted Company, having paid-up Share Capital of Rs.3 crores consisting of 30,00,000 Equity Shares of Rs. 10 each fully paid-up, proposes to make an initial Public offer of 90,000 Equity Shares of Rs.10 each at a premium of Rs.5 per share, in July, 2004. The promoters acquired 10,00,000 shares on 1st January, 2000 and another 10,00,000 shares on 1st January, 2004 at face value:

- (i) *What should be the minimum contribution that should be made by the promoters of the above company in order to comply with the guidelines issued by SEBI?*
- (ii) *State also the period for which the promoters are required to hold these shares and also the shares, if any acquired by the promoters in excess of the required minimum contribution.*

(May, 2004)

Answer

- (i) The minimum contribution that should be made by the promoters should be in accordance with the Regulation 32 (1) of the SEBI (ICDR) Regulations, 2009. According to the said regulations the promoters of the issuer shall contribute in the public issue in case of an initial public offer, not less than twenty per cent. of the post issue capital. In the above case, pre-issued capital is Rs. 3 crores and proposed issue is Rs. 9 crores (90,000 equity shares of Rs. 10 each). Of the total post issue capital ie. Rs. 12 crores (Rs. 3 crores + Rs. 9 crores), **the promoters have to contribute minimum of Rs. 2.4 crores (20% of Rs. 12 crores). For the purpose of promoters' contribution, the following securities shall be considered as ineligible as per Regulation 33 (b) (i)**

Specified securities acquired by promoters during the preceding one year at a price lower than the price at which specified securities are being offered to public in the initial public offer: Provided that nothing contained in this clause shall apply: if promoters pay to the issuer, the difference between the price at which specified securities are offered in the initial public offer and the price at which the specified securities had been acquired.

In the above case, shares acquired by the promoters on 1st January, 2004 shall not be taken into account for the computation of promoter's contribution, as the allotment was made in the preceding one year. However, shares acquired during the 1st January, 2000 shall be taken into account for promoter's contribution. Further, it is to be noted that there is a difference in price (shares which were earlier acquired at Rs.10 each as on 1st January, 2000 and the issue price in July, 2004 (Rs 15 per share). In view of the proviso in the said Regulation, the difference in price (Rs. 15 including premium of Rs. 5 per share for issue in July, 2004 and acquisition @ Rs.10 per share = Rs. 5 per share for 10 lakh equity shares (Rs 50 lakhs) acquired in 1st January, 2004 need to be brought in by the promoters. In view of the proviso to the said Regulation, the acquisition of shares in July, 2004 of 10 lakh shares will also be taken into consideration for calculating promoters' contribution. Of the total Rs.2.4 crores issue of shares, if Rs. 2 crores issue already acquired by the promoters are taken into account, then the promoters are eligible to subscribe only for the balance of 4 lakh shares (ie. 2.4 crores – 2 crores = 0.4 crores or 44 lakh equity shares).

(ii) **Lock-in of specified securities held by promoters: As per Regulation 36 of the SEBI (ICDR) Regulations, 2009**, In a public issue, the specified securities held by promoters shall be locked-in for the period stipulated hereunder:

- (a) minimum promoters' contribution shall be locked-in for a period of three years from the date of commencement of commercial production or date of allotment in the public issue, whichever is later;
- (b) promoters' holding in excess of minimum promoters' contribution shall be locked-in for a period of one year: Provided that excess promoters' contribution as provided in proviso to clause (b) of regulation 34 shall not be subject to lock-in.

Explanation: For the purposes of this clause, the expression "date of commencement of commercial production" means the last date of the month in which commercial production in a manufacturing company is expected to commence as stated in the offer document.

Accordingly, in the above case, promoters are required to hold the shares for a lock-in-period of 3 years. However, any excess of minimum promoter's contribution shall be locked in for a period of 1 year.

Green Shoe Option (Regulation 45)

Explain clearly the meaning of the term “Green shoe option” in relation to a public company going for public offer of equity shares. What disclosures is such a company required to make in the draft red herring prospectus in accordance with SEBI (Disclosure and Investor Protection) Guidelines? **(November, 2008)**

“Green Shoe Option” means an option of allotting equity shares in excess of the equity shares offered in the public issue as a post-listing price stabilizing mechanism; (Regulation 2(o))

Price stabilisation through green shoe option.

- (1) An issuer making a public issue of specified securities may provide green shoe option for stabilising the post listing price of its specified securities, subject to the following:
 - (a) the issuer has been authorized, by a resolution passed in the general meeting of shareholders approving the public issue, to allot specified securities to the stabilising agent, if required, on the expiry of the stabilisation period;
 - (b) the issuer has appointed a merchant banker or book runner, as the case may be, from amongst the merchant bankers appointed by the issuer as a stabilising agent, who shall be responsible for the price stabilisation process;
 - (c) prior to filing the draft offer document with the Board, the issuer and the stabilising agent have entered into an agreement, stating all the terms and conditions relating to the green shoe option including fees charged and expenses to be incurred by the stabilising agent for discharging his responsibilities;
 - (d) prior to filing the offer document with the Board, the stabilising agent has entered into an agreement with the promoters or pre-issue shareholders or both for borrowing specified securities from them in accordance with clause (g) of this sub-regulation, specifying therein the maximum number of specified securities that may be borrowed for the purpose of allotment or allocation of specified securities in excess of the issue size (hereinafter referred to as the “over-allotment”), which shall not be in excess of fifteen per cent. of the issue size;
 - (e) subject to clause (d), the lead merchant banker or lead book runner, in consultation with the stabilising agent, shall determine the amount of specified securities to be over-allotted in the public issue;
 - (f) the draft and final offer documents shall contain all material disclosures about the green shoe option specified in this regard in **Part A of Schedule VIII**;
 - (g) in case of an initial public offer pre-issue shareholders and promoters and in case of a further public offer pre-issue shareholders holding more than five per

- cent. specified securities and promoters, may lend specified securities to the extent of the proposed over- allotment;
- (h) the specified securities borrowed shall be in dematerialised form and allocation of these securities shall be made pro-rata to all successful applicants.
- (2) For the purpose of stabilisation of post-listing price of the specified securities, the stabilising agent shall determine the relevant aspects including the timing of buying such securities, quantity to be bought and the price at which such securities are to be bought from the market.
- (3) The stabilisation process shall be available for a period not exceeding thirty days from the date on which trading permission is given by the recognised stock exchanges in respect of the specified securities allotted in the public issue.
- (4) The stabilising agent shall open a special account, distinct from the issue account, with a bank for crediting the monies received from the applicants against the over-allotment and a special account with a depository participant for crediting specified securities to be bought from the market during the stabilisation period out of the monies credited in the special bank account.
- (5) The specified securities bought from the market and credited in the special account with the depository participant shall be returned to the promoters or pre-issue shareholders immediately, in any case not later than two working days after the end of the stabilization period.
- (6) On expiry of the stabilisation period, if the stabilising agent has not been able to buy specified securities from the market to the extent of such securities over-allotted, the issuer shall allot specified securities at issue price in dematerialised form to the extent of the shortfall to the special account with the depository participant, within five days of the closure of the stabilisation period and such specified securities shall be returned to the promoters or pre-issue shareholders by the stabilising agent in lieu of the specified securities borrowed from them and the account with the depository participant shall be closed thereafter.
- (7) The issuer shall make a listing application in respect of the further specified securities allotted under sub-regulation (6), to all the recognised stock exchanges where the specified securities allotted in the public issue are listed and the provisions of Chapter VII shall not be applicable to such allotment.
- (8) The stabilising agent shall remit the monies with respect to the specified securities allotted under sub-regulation (6) to the issuer from the special bank account.
- (9) Any monies left in the special bank account after remittance of monies to the issuer under sub- regulation (8) and deduction of expenses incurred by the stabilising agent
-

for the stabilisation process shall be transferred to the Investor Protection and Education Fund established by the Board and the special bank account shall be closed soon thereafter.

- (10) The stabilising agent shall submit a report to the stock exchange on a daily basis during the stabilisation period and a final report to the Board in the format specified in **Schedule XII**.
- (11) The stabilising agent shall maintain a register for a period of at least three years from the date of the end of the stabilisation period and such register shall contain the following particulars:
 - (a) The names of the promoters or pre-issue shareholders from whom the specified securities were borrowed and the number of specified securities borrowed from each of them;
 - (b) The price, date and time in respect of each transaction effected in the course of the stabilisation process; and
 - (c) The details of allotment made by the issuer on expiry of the stabilisation process.

Preferential Issue (Chapter VII – Regulation 76)

Question 24

MGR Ltd. wants to issue certain shares on preferential basis and has sought your advice in respect of pricing the shares for such issue. You are required to state the guidelines issued by the Securities and Exchange Board of India in respect of pricing of the issue of shares on a preferential basis.
(May, 2008)

Answer

The Regulations relating to pricing of the issue of shares on a preferential basis is contained in Regulation 76 in Chapter VII of the SEBI (ICDR) Regulations, 2009.

Pricing of equity shares.

- (1) If the equity shares of the issuer have been listed on a recognised stock exchange for a period of six months or more as on the relevant date, the equity shares shall be allotted at a price not less than higher of the following:
 - (a) The average of the weekly high and low of the closing prices of the related equity shares quoted on the recognised stock exchange during the six months preceding the relevant date; or
 - (b) The average of the weekly high and low of the closing prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

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- (2) If the equity shares of the issuer have been listed on a recognised stock exchange for a period of less than six months as on the relevant date, the equity shares shall be allotted at a price not less than the higher of the following:
- (a) the price at which equity shares were issued by the issuer in its initial public offer or the value per share arrived at in a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956, pursuant to which the equity shares of the issuer were listed, as the case may be;
 - Or
 - (b) the average of the weekly high and low of the closing prices of the related equity shares quoted on the recognised stock exchange during the period shares have been listed preceding the relevant date; or
 - (c) the average of the weekly high and low of the closing prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.
- (3) Where the price of the equity shares is determined in terms of sub-regulation (2), such price shall be recomputed by the issuer on completion of six months from the date of listing on a recognised stock exchange with reference to the average of the weekly high and low of the closing prices of the related equity shares quoted on the recognised stock exchange during these six months and if such recomputed price is higher than the price paid on allotment, the difference shall be paid by the allottees to the issuer.
- (4) Any preferential issue of specified securities, 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 equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

Explanation: For the purpose of this regulation, 'stock exchange' means any of the recognised stock exchanges in which the equity shares are listed and in which the highest trading volume in respect of the equity shares of the issuer has been recorded during the preceding six months prior to the relevant date.

Question 25

Excel Ltd., a public limited company listed with The Stock Exchange, Mumbai, wants to make issue of equity shares on preferential basis pursuant to a scheme approved under Corporate Debt Restructuring framework specified by Reserve Bank of India to various persons as may be selected by the Board of Director of the Company. Following information relevant to the preferential issue is available:

- (i) *Total No. of equity shares to be issued: 50 Lac equity shares of Rs.10 each out of which 30 lac equity shares will be allotted on 30th June, 2005 as fully paid up and*

balance 20 lac equity shares shall be allotted on the same date but paid up to Rs.5 each and balance Rs.5 shall be called upon at a later date and shall be paid up on 30th November, 2005.

- (ii) Out of the proposed allottees some persons are holding their shares in Excel Ltd. in physical form and not in dematerialised form and some persons had sold their entire shareholding in Excel Ltd. in January, 2005.*
- (iii) The meeting of general body of shareholders for approving the preferential issue was held on 15th March, 2005.*

Based on the above information you are required to answer the following queries with reference to the SEBI (Disclosure and Investor Protection Guidelines, 2000:

- (i) What would be the lock-in period for the shares allotted on preferential basis?*
- (ii) Who are the persons not entitled for allotment of shares on preferential basis?*

(May, 2005, May 2008)

Answer

- (i) Lock-in period for the shares allotted on preferential basis: Regulation 76(4), SEBI, (ICDR) Regulations, 2009.**

As per the aforesaid regulation, the equity shares issued on preferential basis pursuant to a scheme of corporate debt restructuring as per the Corporate Debt Restructuring framework specified by the Reserve Bank of India shall be locked-in for a period of one year from the date of allotment: **Provided** that partly paid up equity shares, if any, shall be locked-in from the date of allotment and the lock-in shall end on the expiry of one year from the date when such equity shares become fully paid up. Accordingly, the first lot of 30 lac full paid equity shares issued on 30th June, 2005 will have a lock-in period of 1 year from the date of allotment. i.e. till 30th June, 2006. In respect of the second lot, of partly paid 20 lac equity shares, the lock in period will be till 30th November, 2006 being the date on which the calls shall be paid up on 30th November, 2005.

- (ii) Persons not entitled for allotment of shares on preferential basis (Regulation 72)**

- (1) A listed issuer may make a preferential issue of specified securities, if:
 - (a) a special resolution has been passed by its shareholders;
 - (b) all the equity shares, if any, held by the proposed allottees in the issuer are in dematerialised form;
 - (c) the issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the recognised stock exchange where the equity shares of the issuer are listed;

- (d) the issuer has obtained the Permanent Account Number of the proposed allottees.
- (2) The issuer shall not make preferential issue of specified securities to any person who has sold any equity shares of the issuer during the six months preceding the relevant date: **Provided** that in respect of the preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, the Board may grant relaxation from the requirements of this sub-regulation, if the Board has granted relaxation in terms of regulation 29A of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 to such preferential allotment.

Accordingly, as given in the problem, persons are holding their shares in Excel Ltd. in physical form and not in dematerialised form and persons had sold their entire shareholding in Excel Ltd. in January, 2005 shall not be eligible for preferential allotment of shares.

Issue of Bonus Shares - Chapter IX – Regulations 92 - 95

Question 26

The Balance Sheet of M/s Get Rich Quick Ltd. as at 31.3.2001 disclosed the following details:

- (i) *Share Capital Rs. 150 crores*
- (ii) *Reserves and Surplus Rs. 750 crores*

The company has issued in the year 1996, fully convertible debentures of Rs.100 crores, which are due for conversion in the year 2001. The company proposes to issue bonus shares in the ratio of 1: 1. Explain briefly the SEBI guidelines to be followed by the company.

(May, 2001)

or

Following information and figures are noticed from the Annual Accounts for the year ended 31st March, 2003 of MNP Limited, a listed company:

- (i) *Authorised Shares Capital Rs.10 crores comprising of one crore Equity shares of Rs.10 each.*
- (ii) *Paid-up Share Capital of Rs.4.5 crores comprising of 40,00,000 Equity shares of Rs.10 each fully paid-up and 10,00,000 Equity shares of Rs.10 each called and paid-up to Rs.5 each. The total paid-up capital is paid up in cash.*
- (iii) *Securities Premium Account Rs.10 crores.*

- (iv) 2,50,000 fully convertible debentures of Rs.100 each. These debentures are due for conversion on 30th June, 2003 in full into fully paid Equity shares of Rs.10 each in the ratio of two equity shares for one debenture.
- (v) General Reserve Rs.15 crores.
- (vi) Fixed asset revaluation reserves Rs.2.5 crores.

It was further ascertained that the partly paid shares were made fully paid by 30th June, 2003.

The Directors of MNP Limited propose to issue bonus shares in the ratio of 1:1.

Advise the Directors on the matter with reference to the guidelines issued by SEBI on bonus issue. What will be your advice, if the company has defaulted in the matter of payment of interest on fixed deposits?
(November, 2003)

Answer

Chapter IX of the SEBI (ICDR) Regulations, 2009 deal with the issue of Bonus Shares. They are contained in Regulations 92 to 95 of the said Regulations. Applying the said Regulations, the above stated problem can be solved as follows:

1. Conditions for Bonus Issue

Subject to the provisions of the Companies Act, 1956 or any other applicable law for the time being in force, a listed issuer may issue bonus shares to its members if:

- (a) it is authorised by its articles of association for issue of bonus shares, capitalisation of reserves, etc.. If there is no such provision in the articles of association, the issuer shall pass a resolution at its general body meeting making provisions in the articles of associations for capitalisation of reserve.
- (b) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- (c) it has sufficient reason to believe that it has not defaulted in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity and bonus;
- (d) the partly paid shares, if any outstanding on the date of allotment, are made fully paid up.

In the above stated problem, MNP Ltd, authorized capital is Rs.10 crores and proposes to issue bonus shares in the ratio of 1:1, which means the authorized capital after bonus issue is to increase the company has to pass a special resolution for increase of its authorized capital because of bonus issue. In the said problem, MNP Ltd has –

Corporate and Allied Laws

Fully paid up share capital	Rs 4.0 crores	40,00,000 shares of Rs. 10 each)
Partly paid-up capital (to be made fully paid-up before bonus issue)	Rs.1 crore	10,00,000 shares of Rs. 10 each, Rs. 5 paid-up
2,50,000 convertible debentures of Rs. 100 each convertible into full paid up shares of Rs. 10 each in the ratio of 2 equity shares for every 1 debenture	Rs. 5 crores	5,00,000 shares of Rs. 10 each.
Total capital after conversion	Rs.5.5 crores	5,50,000 shares of Rs. 10 each

In all the company will be having 40,00,000 + 10,00,000 + 5,00,000 shares of Rs. 10 each amounting to Rs. 5.5 crores of paid-up capital.

If the company propose to issue bonus shares in the ratio of 1:1, then post-issue capital will be Rs.11 crores (5.5 crores + 5.5 crores), bringing the authorized capital to Rs. 11 crores (post bonus issue) and since its present authorized capital is Rs. 10crores, it has to pass a special resolution for increasing to Rs. 11 crores.

Bonus shares only against reserves, etc. if capitalised in cash. (Regulation 94)

- (1) The bonus issue shall be made out of free reserves built out of the genuine profits or securities premium collected in cash only and reserves created by revaluation of fixed assets shall not be capitalised for the purpose of issuing bonus shares.
- (2) Without prejudice to the provisions of sub-regulation (1), the bonus share shall not be issued in lieu of dividend.

Applying the above regulations, MNP Ltd, currently has Rs. 25 crores (general reserve of Rs 15 crores and Rs. 10 crores as securities premium amount) which can be utilised for the purpose of bonus issue amounting to Rs. 5.5 crores.

Completion of bonus issue (Regulation 95)

- (1) An issuer, announcing a bonus issue after the approval of its board of directors and not requiring shareholders' approval for capitalisation of profits or reserves for making the bonus issue, shall implement the bonus issue within fifteen days from the date of approval of the issue by its board of directors. **Provided** that where the issuer is required to seek shareholders' approval for capitalisation of profits or reserves for making the bonus issue, the bonus issue shall be implemented within two months from the date of the meeting of its board of directors wherein the decision to announce the bonus issue was taken subject to shareholders' approval.

- (2) Once the decision to make a bonus issue is announced, the issue can not be withdrawn.

Question 27

- (a) As on 31st December, 2004, following information and figures are noticed from the Annual Accounts for the year ended 31st March, 2004 of SKP Ltd., a Company listed with The Stock Exchange, Mumbai:
- (i) Authorised Share Capital Rs.20.00 Crores comprising of 2 Crore Equity Shares of Rs.10 each.
 - (ii) Paid up Share Capital Rs.9.00 Crores comprising of 80 lac Equity Shares of Rs.10 each fully paid up and 20 lac Equity Shares of Rs.10 each called and paid up to Rs.5 each. The total paid up capital is paid up in cash.
 - (iii) Securities Premium Account Rs.20.00 Crores.
 - (iv) 5 lac Fully Convertible Debentures of Rs.100 each. These debentures are due for conversion on 31st March, 2005 in full into fully paid Equity Shares of Rs.10 each in the ratio of one Debenture: two Equity Shares.
 - (v) General Reserve Rs.30.00 Crores.
 - (vi) Fixed Assets Revaluation Reserve Rs.10.00 Crores.
 - (vii) Outstanding Liabilities in respect of Bonus to Employees and Workers Rs.25.00 lacs.
 - (viii) Outstanding Liabilities in respect of Interest payable on Public Deposits comprising of Fixed Deposits from general public Rs.15.00 lacs.

Following other information is gathered from the books of account and other records of the said Company for the period upto 31st December, 2004:

- (a) The partly paid shares were made fully paid prior to 30th September, 2004.
- (b) Bonus to employees and workers was paid on 15th September, 2004.
- (c) Interest on Public Deposits was outstanding on 31st December, 2004.

The Directors of SKP Ltd. wants to issue Bonus Shares on or after 1st April, 2005 in the ratio of 1:1. Advise the Directors on the matter with reference to the guidelines issued by Securities and Exchange Board of India on Bonus Issue. **(May, 2005, May, 2007)**

Answer

Chapter IX of the SEBI (ICDR) Regulations, 2009 deal with the issue of Bonus Shares. They are contained in Regulations 92 to 95 of the said Regulations. Applying the said Regulations, the above stated problem can be solved as follows:

Corporate and Allied Laws

Whether there is any need for increase of authorized capital because of bonus issue?

Fully Paid up share capital	80,00,000 x Rs. 10	Rs 8 crores
Partly paid-up capital (Rs 5 each) converted into fully paid-up of Rs. 10 each	20,00,000 x Rs 10	Rs. 2 crores
Total paid up capital after conversion partly paid up are converted into fully paid-up	1,00,00,000 x Rs. 10	Rs 10 crores
<i>5 lac Fully Convertible Debentures of Rs.100 each. (These debentures are due for conversion on 31st March, 2005 in full into fully paid Equity Shares of Rs.10 each in the ratio of one Debenture: two Equity Shares)</i>	10,00,000 x Rs 10	Rs 1crore
Capital before bonus issue		Rs 11 crores
Bonus issue 1:1		Rs/ 11 crores
Capital after bonus issue		Rs. 22 crores
Current authorized capital		Rs 20 crores

In view of the increase in authorized capital because of bonus issue, the company has to pass a special resolution.

Bonus shares only against reserves, etc. if capitalised in cash

As per Regulation 94 (1), the bonus issue shall be made out of free reserves built out of the genuine profits or securities premium collected in cash only and reserves created by revaluation of fixed assets shall not be capitalised for the purpose of issuing bonus shares. In the given case, the bonus issue amounts to Rs. 11 crores which can be paid out of Securities premium account (Rs. 20 crores) and General Reserves (Rs. 30 crores).

As per the Conditions for bonus issue stated in Regulation 92, bonus issue cannot be made if the company has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it; it has sufficient reason to believe that it has not defaulted in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity and bonus and the partly paid shares, if any outstanding on the date of allotment, are made fully paid up. In the present case, SKP Ltd, proposed date of bonus issue is on or after 1st April, 2005 and since partly paid-up shares were made fully paid-up prior to 30th June, 2004, bonus to employees and workers were paid on 15th September, 2004 and interest on public deposits was still outstanding on 31st December, 2004, it is advised that the company shall make good the interest on public deposits before proceeding for its bonus issue.

Question 28

The Balance Sheet of Get Well soon Ltd as at 31.3.2009 disclosed the following details:

- (i) *Authorised share capital Rs.400 crores*
- (ii) *Paid up share capital Rs.150 crores*
- (iii) *Reserves and surplus Rs.750 crores*

The company has issued in the year 2004, Fully Convertible Debentures of Rs.100 crores which are due for conversion in the year 2009. The company proposes, after conversion of Debentures to issue Bonus shares in the ratio of 1:1. Explain briefly the requirements of the Companies Act, 1956 and the Securities and Exchange Board of India (SEBI) guidelines to be followed by the company in this regard. **(May 2009)**

Answer

Chapter IX of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 contains the Regulations (Regulations 92 to 95) for issue of bonus shares, following which M/s Get well soon Ltd. can make a bonus issue in the ratio of 1:1 as follows:

1. The articles of M/s Get well Soon Ltd. must authorize it to issue the bonus shares. If there is no provision in the articles authorizing the company to issue bonus shares, firstly, the articles shall be amended by passing a special resolution.
2. Steps for determining whether any increase in authorised share capital is required.
 - (a) Paid up share capital as on 31st March, 2009 Rs.150 crores.
 - (b) Paid up capital (after conversion of Rs.100 crores fully convertible debentures, assuming that these debentures shall be converted into share capital Rs.100 crores) Rs.250 crores.
 - (c) Proposed bonus issue – 1 share for every held.
 - (d) Post bonus issue capital. Rs.500 crores.

Since the authorised share capital of the company is only Rs.400 crores, it has to take steps to increase the amount to Rs.500 crores or beyond by complying with the provisions laid down in section 94 and 97 of the Companies Act,1956.

3. Sources of bonus shares.

Reserves and surplus (since free reserves built out of the genuine profits can be used for issue of bonus issue). Rs. 750 Crores

Since the source of issue of bonus shares (Rs.750 crores) is sufficient to issue bonus shares (Rs.250 crores), the proposed issue can be made.

4. Other legal requirements for issue of bonus shares are as under.
 - (a) A resolution shall be passed by the board in a duly convened board meeting.
 - (b) The bonus issue shall be made within 6 months of passing the board resolution.

5. The bonus issue can be made if there is no default in payment of interest or principal in respect of fixed deposits and interest on existing debentures or principal on redemption there of; and Payment of statutory dues of the employees such as contribution to provident fund, gratuity, bonus, etc.

Pricing under Book-Building Process

Question 29

XYZ Automobiles Ltd. intends to make a public issue of 2,00,00,000 equity shares of Rs. 10 each through the 100% book building process indicating a price band. You are required to answer the following with reference to the SEBI (Disclosure and Investor Protection) Guidelines:

- (i) *What is the price band that can be indicated in the red herring prospectus, if the floor price is proposed to be fixed at Rs. 300 per equity share?*
 - (ii) *What are the restrictions, if the company wants to revise the price band during the bidding period?*
 - (iii) *How the shares are to be allocated to different categories of investors like Qualified institutional buyers, Retail individual investors, etc.?*
- (November 2006)**

Answer

Schedule XI of the SEBI (ICDR) Regulations, 2009 contains provisions relating to Book-Building process. Clause 8 (b) deals with the Floor Price and Price Band. According to the said clause where the issuer decides to opt for price band instead of floor price, the issuer shall also ensure compliance with the following conditions:

- 1. The cap of the price band should not be more than 20% of the floor of the band; i.e cap of the price band shall be less than or equal to 120% of the floor of the price band.
- 2. The price band can be revised during the bidding period in which case the maximum revision on either side shall not exceed 20% i.e floor of price band can move up or down to the extent of 20% of floor of the price band disclosed in the red herring prospectus and the cap of the revised price band will be fixed in accordance with clause (i) above.
- 3. Any revision in the price band shall be widely disseminated by informing the stock exchanges, by issuing press release and also indicating the change on the relevant website and the terminals of the syndicate members.
- 4. In case the price band is revised, the bidding period shall be extended as per provisions of sub-regulation (2) of regulation 46.

5. The manner in which the shortfall, if any, in the project financing, arising on account of lowering of price band to the extent of 20% will be met shall be disclosed in the red herring prospectus. It shall also be disclosed that the allotment shall not be made unless the financing is tied up.

Accordingly, in the given problem

- (i) The price band that can be indicated in the red herring prospectus, if the floor price is to be fixed at Rs. 300 per share will be 20% of the floor price ie. $\text{Rs. } 300 + 20\% = \text{Rs. } 360$ per share.
- (ii) If the company wants to revise the price band during the bidding period, the maximum revision on either side shall not exceed 20% i.e floor of price band can move up or down to the extent of 20% of floor of the price and the cap of the revised price band shall not be more than 20% of the revised floor price band. In other words, on the lower side it can be down by Rs. 240 ($300 - 20\% = \text{Rs. } 260$) and 360 being the revised price band $- 20\% = \text{Rs. } 288$) and on the upper side, it can be Rs. 360 ($\text{Rs. } 300 + 20\%$) and Rs. 432 ($360 + 20\%$).
- (iii) Any revision in the price band shall be widely disseminated by informing the stock exchanges, by issuing press release and also indicating the change on the relevant website and the terminals of the syndicate members. Regarding the period of subscription, Regulation 46 provides that a public issue shall be kept open for at least three working days but not more than ten working days including the days for which the issue is kept open in case of revision in price band. In case the price band in a public issue made through the book building process is revised, the bidding (issue) period disclosed in the red herring prospectus shall be extended for a minimum period of three working days, provided that the total bidding period shall not exceed ten working days.
- (iv) As per Regulation 42, if an issue is made through book building process, the allocation to different categories of investors will be as follows:
 - o Not less than 35% to retail individual investors
 - o Not less than 15% to non-institutional investors
 - o Not less than 50% to qualified institutional buyers, five per cent. of which shall be allocated to mutual funds:

Question 30

A company proposes to make a public issue of equity shares for financing its project through book building process. It proposes to fix the floor price of the share at Rs.500 for a share of Rs. 10. Answer the following with reference to SEBI (Disclosure and Investor Protection) guidelines:

Corporate and Allied Laws

What is the price band that may be indicated in the red herring prospectus?

If the company wants to lower the floor price during the bidding period in order to increase the response to the issue, state the conditions subject to which such revision can be made.

(November, 2008)

Answer

The price band is the range within which the price can move. The cap of the price band shall not be more than 20% of the floor price. If the floor price is Rs.500 the cap of the price shall be Rs.600 and the company may indicate a price band of Rs.500 to 600 in the red herring prospectus (Schedule XI, Clause 8(b) SEBI (ICDR) Regulations, 2009..

The price band can be revised during the bidding period in which case the maximum revision on either side shall not exceed 20% i.e. floor of the price band can move up or down to the extent of 20% of the floor price. Hence the revised price band may be Rs. 400 (Rs. 500 less 20%) to 480 (120% of Rs.400).

Any revision in the price band shall be widely disseminated by informing the stock exchange, by issuing press releases and also indicating the change on the relevant website and terminals of syndicate members. The bidding period shall be extended for a further period of 3 days subject to the total bidding period not exceeding 10 days. The manner in which the shortfall, if any in the project financing arising on account of lowering of price band will be met shall be disclosed in the red- herring prospectus. It shall also be disclosed that the allotment shall not be made unless the financing is tied up. These are the conditions subject to which the price the price band may be lowered

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