

CAPITAL MARKETS NEWSFLASH

21 April 2004
SUPPLEMENT TO
LEGAL EYE

Your peek into the Indian legal scene

AMENDMENTS TO SEBI (DISCLOSURE AND INVESTOR PROTECTION) GUIDELINES, 2000

SEBI (Disclosure and Investor Protection) [DIP] Guidelines, 2000 has been amended vide SEBI circular¹ dated April 8, 2004 with immediate effect. The amendments focus on the following areas:

- Preferential issues
- Shelf prospectus
- Guidelines for issue advertisements

Preferential Issues

The amendments introduced for preferential issues seem to have been brought about with a view to safeguard the interest of the small shareholders and avoid arbitrage. The following amendments have been introduced:

- Allotments on preferential basis which involve swap of equity shares/securities convertible into equity at later date, for acquisition are no longer exempt from the lock-in period of one year;
- In case of shares issued on preferential basis under the Corporate Debt Restructuring framework of Reserve Bank of India lock-in shall continue for a period of *one year from date of allotment* and in case of partly paid –up shares lock-in shall begin *from date of allotment and continue for a period of one year from date when the shares become fully paid-up*;
- A listed company shall preferentially allot equity shares, warrants, PCDs, FCDs or any other convertible financial instrument to such persons whose *entire shareholding*, if any, *in the company is held by him in dematerialised form*;
- The *entire pre-preferential shareholding of allottees* who are issued shares, warrants, PCDs, FCDs or other financial instruments convertible into equity at a later date *shall be locked in from relevant date up to a period of 6 months from date of preferential allotment (approx. about 7 months and 15 days)*;
- Any shareholder who has sold his shares *during the six month period prior to relevant date shall not be eligible for allotment of shares, warrants, FCDs, PCDs, other financial instruments convertible into equity shares at a later date on a preferential basis; (effectively there cannot be sale of pre-preferential shareholding for a period of a little more than one year)*;
- Preferential allotment shall be *completed within 15 days from the date of shareholders' approval (i.e. all formalities must be completed within 15 days from date of approval and not 3 months as was available earlier; furthermore in cases where allotment has not been completed pursuant to shareholders approval prior to this amendment will require fresh shareholders approval)*;
- If preferential allotment is pending on account of approval of any regulatory authority or the Central Government, then it shall be completed *within 15 days from date of such approval (i.e. pending any approval from RBI, FIPB)*;
- The above period specified for allotment of preferential issue shall not apply to allotment of preferential issue of those shares and convertible securities which are issued under the corporate debt restructuring framework specified by SEBI.

¹ SEBI/CFD/DIL/DIP/12/2004/8/4

Shelf Prospectus

A new Chapter XIIA has been inserted wherein:

- Public sector banks, scheduled commercial banks and public financial institutions pursuant may issue debt securities pursuant to a shelf prospectus issued in terms of section 60A of the Companies Act;
- A draft shelf prospectus is to be filed with SEBI;
- The draft shelf prospectus shall also disclose the aggregate amount to be raised through all stages of offer of securities made under such shelf prospectus;
- The observation letter issued by SEBI shall be valid for a period of 365 days from the date of issuance;
- The shelf prospectus shall incorporate updates in terms of information memorandum in respect of second or any subsequent offer of securities with SEBI;
- The updated shelf prospectus shall be uploaded on the website of SEBI and the lead merchant banker;
- A particular stage of offer of securities shall be opened only after filing the updated version with Registrar of Companies and SEBI.

Advertisements

- As per the newly added clause 9.1.8A the risk factors need not be scrolled on the television screen
- Advertisement shall advise the viewers to refer to the red herring prospectus or other offer document for details.

TEAM: CAPITAL MARKETS

Editor-in-Chief:

Rajesh N. Begur

Partner

Email: rajesh@aralaw.com

Associate Editors:

Ashu V Thakur

Ketki A Shah

Mumbai	Bangalore
Agra Building, 1st Floor 121 M. G. Road Fort, Mumbai 400 023 India. Tel: (+91 22) 2263 1700 Fax: (+91 22) 2263 1800 Email: bom@aralaw.com	237 'Sumitra', 2'C Cross 1st Main, Domlur II Stage Bangalore India. Tel: (+91 80) 535 1619 Fax: (+91 80) 535 2708 Email: blr@aralaw.com

DISCLAIMER

The Publishers, A.R.A. LAW, make no warranty of any kind with respect to the subject matter included herein or the completeness or accuracy of this Newsflash. The Publishers and the contributors are not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this Newsflash and in no event shall be liable for any damages resulting from reliance on or use of this information. Without limiting the above the Publishers and the contributors shall each have no responsibility for any act or omission of any other contributor. Readers should take specific advice from a qualified professional when dealing with specific situations.

© Copyright 2004 A.R.A. LAW. All rights reserved.

This Newsflash is published by A.R.A. LAW for private circulation only.