

**THE GAZETTE OF INDIA
EXTRAORDINARY
PART III – SECTION 4
PUBLISHED BY AUTHORITY
NEW DELHI, APRIL 13, 2010
SECURITIES AND EXCHANGE BOARD OF INDIA
NOTIFICATION
Mumbai, 13th April, 2010
Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements)
(Third Amendment) Regulations, 2010**

No. LAD-NRO/GN/2010-11/03/1104. In exercise of the powers conferred by Section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to amend the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, namely:-

1. (i) These regulations may be called the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2010.
(ii) These regulations, except sub-clause (a) (A) (I) of clause (xv) and sub-clause (a) (A), (B) and (C) of clause (xvi) of regulation 2 thereof, shall come into force on the date of their publication in the Official Gazette.
(iii) Sub-clause (a) (A) (I) of clause (xv) and sub-clause (a) (A), (B) and (C) of clause (xvi) of regulation 2 of these regulations shall come into force on 1st May, 2010.
2. In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, –
 - (i) in regulation 2, in sub-regulation (1),-
 - (a) in clause (c), after the words “qualified institutional buyer” and before the words “an application for”, the words “who makes” shall be inserted;
 - (b) for clause (m), the following clause shall be inserted , namely:-

‘(m) “employee” means a permanent and full-time employee, working in India or abroad, of the issuer or of the holding company or subsidiary company or of that material associate(s) of the issuer whose financial statements are consolidated with the issuer’s financial statements as per Accounting Standard 21, or a director of the issuer, whether whole time or part time and does not include promoters and an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of that person or of the spouse);’
 - (c) in clause (zf), for the words “regulation 41”, the words “regulation 42” shall be substituted;
 - (ii) in regulation 8, in sub-regulation (1), in clause (e), for the words “Part D”, the words “Part C” shall be substituted;

- (iii) in regulation 10, in sub-regulation (1), in clause (g), after the words “proceedings initiated” and before the word “or”, the words “by the Board” shall be inserted;
- (iv) in regulation 13, in sub-regulation (2), in proviso, for the words “regulation 28”, the words “regulation 27” shall be substituted;
- (v) in regulation 26, in sub- regulation (5), after the words “initial public offer if” and before the words “there are any”, the words “as on the date of registering the prospectus with the Registrar of Companies” shall be inserted;
- (vi) in regulation 29, in clause (a), the words “of the issuer”, appearing after the word “employees” and before the words “entitled for reservation” shall be omitted;
- (vii) in regulation 42,-
 - (a) in sub-regulation (1), for clause (a), the following shall be substituted, namely:-
“(a) employees; and in case of a new issuer, persons who are in the permanent and full time employment of the promoting companies excluding the promoters and an immediate relative of the promoter of such companies;”
 - (b) in sub-regulation (2), for clause (a), the following shall be substituted, namely:-
“(a) employees; and in case of a new issuer, persons who are in the permanent and full time employment of the promoting companies excluding the promoters and an immediate relative of the promoter of such companies;”
- (viii) in regulation 46, in sub- regulation (1), at the beginning, the words “Except as otherwise provided in these regulations” shall be inserted;
- (ix) in regulation 55A, the word “its”, occurring after the words “may make reservation for” and before the words “employees alongwith rights issue” shall be omitted;
- (x) in regulation 70, in clause (c), for the proviso , the following shall be substituted; namely :-

 “Provided that the lock-in provisions of this Chapter shall apply to preferential issue of equity shares mentioned in clause (c).”
- (xi) in regulation 98, in clause (e), for the proviso, the following shall be substituted, namely:-
 “Provided that at least thirty per cent. of the IDRs being offered in the public issue shall be available for allocation to retail individual investors and in case of under subscription in retail individual investor category, spillover to other categories to the extent of under subscription may be permitted.”

Explanation: For the purpose of this regulation, “employee” shall mean a person who,-

- (a) is a resident of India, and

- (b) is a permanent and full-time employee or a director, whether whole time or part time, of the issuer or of the holding company or subsidiary company or of the material associate(s) of the issuer, whose financial statements are consolidated with the issuer's financial statements, working in India and does not include promoters and an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse).”

(xii) after CHAPTER X, the following Chapter shall be inserted, namely:-

“CHAPTER XA

ISSUE OF SPECIFIED SECURITIES BY SMALL AND MEDIUM ENTERPRISES

Applicability.

106A. (1) An issuer whose post-issue face value capital does not exceed ten crore rupees shall issue its specified securities in accordance with provisions of this Chapter.

(2) An issuer, whose post issue face value capital is more than ten crore rupees and upto twenty five crore rupees, may also issue specified securities in accordance with provisions of this Chapter.

(3) The provisions of these regulations, in respect of the matters not specifically dealt or excluded under this Chapter, shall *mutatis mutandis* apply to any issue of specified securities under this Chapter:

Provided that provisions of sub-regulations (1), (2) and (3) of regulation 6, regulation 7, regulation 8, regulation 9, regulation 10, regulation 25, regulation 26, regulation 27 and sub-regulation (1) of regulation 49 of these regulations shall not apply to an issue of specified securities made under this Chapter.

Definitions.

106B. (1) In this Chapter, unless the context otherwise requires, -

- (a) “Main Board” means a recognized stock exchange having nationwide trading terminals, other than SME exchange;
- (b) “nominated investor” means a qualified institutional buyer or private equity fund, who enters into an agreement with the merchant banker to subscribe to the issue in case of under-subscription or to receive or deliver the specified securities in the market-making process;

Explanation: “private equity fund” means a fund registered with any regulatory authority or a fund established by any person registered with any regulatory authority;

(c) “SME exchange” means a trading platform of a recognised stock exchange having nationwide trading terminals permitted by the Board to list the specified securities issued in accordance with this Chapter and includes a stock exchange granted recognition for this purpose but does not include the Main Board;

(2) All other words and expression used in this Chapter but not defined under sub-regulation (1) shall derive their meaning from regulation 2 of these regulations.

Filing of offer document and due diligence certificate.

106C. (1) The issuer making a public issue or rights issue of specified securities under this Chapter shall not file the draft offer document with the Board:

Provided that the issuer shall file a copy of the offer document with the Board through a merchant banker, simultaneously with the filing of the prospectus with the SME exchange and the Registrar of Companies or letter of offer with the SME Exchange:

Provided further that the Board shall not issue any observation on the offer document.

(2) The merchant banker shall submit a due-diligence certificate as per Form A of Schedule VI including additional confirmations as provided in Form H of Schedule VI alongwith the offer document to the Board.

(3) The offer document shall be displayed from the date of filing in terms of sub-regulation (1) on the websites of the Board, the issuer, the merchant banker and the SME exchange where the specified securities offered through the offer document are proposed to be listed.

Underwriting by merchant bankers and underwriters.

106D. (1) The issue made under this Chapter shall be hundred per cent. underwritten.

Explanation: The underwriting under this regulation shall be for the entire hundred percent of the offer through offer document and shall not be restricted upto the minimum subscription level.

(2) The merchant banker/s shall underwrite at least fifteen per cent of the issue size on his/ their own account/s.

(3) The issuer in consultation with merchant banker may appoint underwriters in accordance with Securities and Exchange Board of India (Underwriters) Regulations, 1993 and the merchant banker may enter into an agreement with nominated investor indicating therein the number of specified securities which they agree to subscribe at issue price in case of under-subscription.

(4) If other underwriters fail to fulfill their underwriting obligations or other nominated investors fail to subscribe to unsubscribed portion, the merchant banker shall fulfill the underwriting obligations.

(5) The underwriters other than the merchant banker and the nominated investors, who have entered into an agreement for subscribing to the issue in case of under-subscription, shall not subscribe to the issue made under this Chapter in any manner except for fulfilling their obligations under their respective agreements with the merchant banker in this regard.

(6) All the underwriting and subscription arrangements made by the merchant banker shall be disclosed in the offer document.

(7) The merchant banker shall file an undertaking to the Board that the issue has been hundred per cent. underwritten along with the list of underwriters and nominated investors indicating the extent of underwriting or subscription commitment made by them, one day before the opening of issue.

Minimum Application Value.

106E. The issuer shall stipulate in the offer document, the minimum application size in terms of number of specified securities which shall not be less than one lakh rupees per application.

Minimum Number of Allottees.

106F. No allotment shall be made pursuant to any initial public offer made under this Chapter, if the number of prospective allottees is less than fifty.

Listing of specified securities.

106G. (1) Specified securities issued in accordance with this Chapter shall be listed on SME exchange.

(2) Where any listed issuer issues specified securities in accordance with provisions of this Chapter it shall migrate the specified securities already listed on any recognized stock exchange/s to the SME exchange.

Migration to SME exchange.

106H. A listed issuer whose post-issue face value capital is less than twenty five crore rupees may migrate its specified securities to SME exchange if its shareholders approve such migration by passing a special resolution through postal ballot to this effect and if such issuer fulfils the eligibility criteria for listing laid down by the SME exchange:

Provided that the special resolution shall be acted upon if and only if the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal.

Migration to Main Board.

106I. (1) An issuer, whose specified securities are listed on a SME Exchange and whose post issue face value capital is more than ten crore rupees and upto twenty five crore rupees, may migrate its specified securities to Main Board if its shareholders approve such migration by passing a special resolution through postal ballot to this effect and if such issuer fulfils the eligibility criteria for listing laid down by the Main Board:

Provided that the special resolution shall be acted upon if and only if the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal.

(2) Where the post issue face value capital of an issuer listed on SME exchange is likely to increase beyond twenty five crore rupees by virtue of any further issue of capital by the issuer by way of rights issue, preferential issue, bonus issue, etc. the issuer shall migrate its specified securities listed on SME exchange to Main Board and seek listing of specified securities proposed to be issued on the Main Board subject to the fulfilment of the eligibility criteria for listing of specified securities laid down by the Main Board:

Provided that no further issue of capital by the issuer shall be made unless –

- (a) the shareholders of the issuer have approved the migration by passing a special resolution through postal ballot wherein the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal;
- (b) the issuer has obtained in- principle approval from the Main Board for listing of its entire specified securities on it.

Market Making.

106J. (1) The merchant banker shall ensure compulsory market making through the stock brokers of SME exchange in the manner specified by the Board for a minimum period of three years from the date of listing of specified securities issued under this Chapter on SME exchange or from the date of migration from Main Board in terms of regulation 106H, as the case may be.

(2) The merchant banker may enter into agreement with nominated investors for receiving or delivering the specified securities in the market making subject to the prior approval by the SME exchange where the specified securities are proposed to be listed.

(3) The issuer shall disclose the details of arrangement of market making in the offer document.

(4) The specified securities being bought or sold in the process of market making may be transferred to or from the nominated investor with whom the merchant banker has entered into an agreement for the market making:

Provided that the inventory of the market maker, as on the date of allotment of the specified securities, shall be at least five per cent. of the specified securities proposed to be listed on SME exchange.

(5) The market maker shall buy the entire shareholding of a shareholder of the issuer in one lot, where value of such shareholding is less than the minimum contract size allowed for trading on the SME exchange:

Provided that market maker shall not sell in lots less than the minimum contract size allowed for trading on the SME exchange.

(6) Market maker shall not buy the shares from the promoters or persons belonging to promoter group of the issuer or any person who has acquired shares from such promoter or person belonging to promoter group, during the compulsory market making period laid down under sub-regulation (1).

(7) The promoters' holding shall not be eligible for offering to the market maker under this Chapter during the period specified in sub-regulation (1):

Provided that the promoters' holding which is not locked-in as per these regulations can be traded with prior permission of the SME exchange, in the manner specified by the Board.

(8) Subject to the agreement between the issuer and the merchant banker/s, the merchant banker/s who have the responsibility of market making may be represented on the board of the issuer.”

(xiii) in Schedule IV,-

(a) in Part A, for clause (b), the following shall be substituted, namely:-

“(b) In case of a rights issue:

Size of the issue, including intended retention of oversubscription	Amount / Rate of fees
Less than or equal to ten crore rupees.	A flat charge of twenty five thousand rupees (Rs.25,000/-).
More than ten crore rupees and less than or equal to five hundred crore rupees.	Twenty five thousand rupees (Rs. 25,000/-) plus 0.005 per cent. of the issue size in excess of ten crore rupees.
More than five hundred crore rupees.	A flat charge of five lakh rupees (Rs.5,00,000/-).

”

(b) in Part B, for the words “Para 3” , the words “Para 2” shall be substituted.

(xiv) In Schedule VI,-

- (a) in Form A, for reference title, the following shall be substituted, namely:-
“[See regulations 8(1)(c), 10(3)(a) and 106C(2)]”
- (b) in Form D, in the note, for the figure, bracket and word “2(b)”, the figure, bracket and word “1(b)” shall be substituted;
- (c) after Form G, the following form shall be inserted, namely:-
“**FORM H**”

[See regulation 106C(2)]

**ADDITIONAL CONFIRMATIONS/ CERTIFICATION TO BE GIVEN BY
MERCHANT BANKER IN DUE DILIGENCE CERTIFICATE TO BE GIVEN
ALONG WITH OFFER DOCUMENT REGARDING SME EXCHANGE**

- (1) We confirm that none of the intermediaries named in the red herring prospectus (in case of a book built issue) / prospectus (in case of a fixed price issue) / letter of offer (in case of a rights issue) have been debarred from functioning by any regulatory authority.
- (2) We confirm that all the material disclosures in respect of the issuer have been made in the red herring prospectus (in case of a book built issue) / prospectus (in case of a fixed price issue) / letter of offer (in case of a rights issue) and certify that any material development in the issuer or relating to the issue up to the commencement of listing and trading of the specified securities offered through this issue shall be informed through public notices/ advertisements in all those newspapers in which pre-issue advertisement and advertisement for opening or closure of the issue have been given.
- (3) We confirm that the abridged prospectus / abridged letter of offer contains all the disclosures as specified in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.
- (4) We confirm that agreements have been entered into with the depositories for dematerialisation of the specified securities of the issuer.
- (5) We certify that as per the requirements of first proviso to sub-regulation (4) of regulation 32 of Securities and Exchange board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, cash flow statement has been prepared and disclosed in the red herring prospectus and / or prospectus.
- (6) We confirm that underwriting and market making arrangements as per requirements of regulation 106D and 106 J of the Securities and Exchange board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 have been made.
- (7) We confirm that the issuer has redressed at least ninety five per cent. of the complaints received from the investors till the end of the quarter immediately preceding the month of the filing of the red herring prospectus / prospectus with the Registrar of Companies or letter of offer with SME exchange. (Applicable only in case of Further public offer and rights issue)

Place:
Date:

**Merchant Banker(s) to the Issue
with Official Seal(s)”**

(xv) in Schedule VIII,-

(a) in Part A, in Para (2), -

(A) in item (VI),-

(I) in sub-item (B), in clause (15), for sub-clause (e), the following shall be substituted, namely:-

“(e) The underwriting agreement shall list out the role and obligations of each syndicate member and *inter-alia* contain a clause stating that margin collected shall be uniform across all categories indicating the percentage to be paid as margin by the investor at the time of bidding.”

(II) in sub-item (D), in clause (2),-

(i) in sub-clause (i), in section (ii), after the words “regulation 2”, the bracket “)” shall be inserted;

(ii) in sub-clause (j), in section (iv), after the words “regulation 32”, the words “and regulation 33” shall be inserted;

(iii) in sub-clause (r), after section (xvii), the following shall be inserted, namely:-

“(xviii) the details of the number of shares issued in ESPS, the price at which such shares are issued, employee-wise details of the shares issued to

- senior managerial personnel;
- any other employee who is issued shares in any one year amounting to 5% or more shares issued during that year;
- identified employees who were issued shares during any one year equal to or exceeding 1% of the issued capital of the company at the time of issuance;

(xix) diluted Earning Per Share (EPS) pursuant to issuance of shares under ESPS; and consideration received against the issuance of shares.”

(B) in item (VIII),-

(I) in sub-item (D), in clause (3), sub-clause (f) shall be omitted;

(II) in sub-item (E), in clause (8), in sub-clause (j), for the word “discussed” appearing at the end, the word “disclosed” shall be substituted;

(C) in item (IX),-

(I) in sub-item (B),-

(i) in clause (12), in sub-clause (a), in section (v), for the mark and words “(c) or (d)”, the mark and words “(iii) or (iv)” shall be substituted;

(ii) in clause (16), in sub-clause (b), after the words “loan taken” and before the words “by the promoters”, the words “from the issuer” shall be inserted;

(II) in sub-item (C), in clause (2), before the proviso the following paragraph shall be inserted, namely:-

“In case there are no listed group companies, the financial information shall be given for the five largest unlisted group companies based on turnover.”

(D) in item (XI), in sub-item (I), for the words “letter of offer”, the words “offer document” shall be substituted;

(E) in item (XII), in sub-item (B), in clause (29), in sub-clause (a), for the words “thirty days” appearing after the words “from the date of the closure” the words “fifteen days” shall be substituted;

(b) in Part C, in para (2),-

(A) brackets and letter “(e)” shall be omitted;

(B) item (f) shall be renumbered as “(e)”;

(c) in Part E, in Para (5), in item (VI), in sub-item (C), in clause (6), the following proviso shall be inserted, namely:-

“Provided that such participation shall not result in breach of minimum public shareholding requirement stipulated in the equity listing agreement entered into between the issuer and the recognized stock exchanges where the specified securities of the issuer are listed.”

(d) in Part F, for para (2), the following shall be substituted, namely:-

“(2) However, if the conditions specified in clause (1) in Part E of this Schedule are satisfied, the disclosure requirements specified in the following clauses in Part D of this Schedule, shall not be applicable to such issuer:

(a) Sub-item (B) of item II ;

(b) Sub-item (D) of item III;

(c) Item V;

(d) Item VI;

(e) Item VII ;

(f) Item X;

(g) Item XI;

(h) Item XIV;

(i) Item XV;

(j) Item XVI.”

(xvi) in Schedule XI,-

(a) in Part A,-

(A) in para 10, for clause (f), the following shall be substituted, namely:-

“(f) Anchor Investors shall pay on application the same margin which is payable by other categories of investors the balance, if any, shall be paid within two days of the date of closure of the issue.”

(B) in para 11, -

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

“(a) The margin collected shall be uniform across all categories of investors.”

(II) clause (b) shall be omitted;

(C) in para 12, after clause (i), the following shall be inserted, namely:-

“(ia) The issuer may decide to close the bidding by qualified institutional buyers one day prior to the closure of the issue subject to the following conditions:

(i) bidding shall be kept open for a minimum of three days for all categories of applicants;

(ii) disclosures are made in the red herring prospectus regarding the issuer’s decision to close the bidding by qualified institutional buyers one day prior to closure of issue.”

(b) in Part C, in the heading, for the word “INSTUTIONAL”, the word “INSTITUTIONAL” shall be substituted.

**C. B. BHAVE
CHAIRMAN**

Footnote:

1. The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 were published in the Gazette of India on 26th August, 2009 vide No. LAD-NRO/GN/2009-10/15/174471.
2. The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 were subsequently amended on:-
 - (a) 11th December, 2009 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2009 vide No. LAD-NRO/GN/2009-10/23/186926.
 - (b) 1st January, 2010 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2010 vide No. LAD-NRO/GN/2009-2010/25/189240.
 - (c) 8th January, 2010 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2010 vide No. LAD-NRO/GN/2009-10/26/190146.
