

## Corpsec Hotline

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### SEBI TIGHTENS NOOSE ON CAPITAL MARKET

The Securities and Exchange Board of India ("SEBI") vide circular SEBI/CFD/DIL/DIP/25/2007/30/4 dated April 30, 2007 has amended the SEBI (Disclosure and Investor Protection) Guidelines, 2000 ("Guidelines") governing the mechanism of Initial Public Offering ("IPO"). Following are the highlights of amendments as made by SEBI:

- Qualified Institutions Placement ("QIP") barred for companies with less than 1-year listing history
- Pricing guidelines modified for making preferential allotments for companies with less than 6 months history
- IPO grading mandatory
- Draft IPO document must be made public for 30 days
- Pledged shares not eligible for promoters' contribution

#### ■ Guidelines on QIP

SEBI has amended the eligibility criteria for a company desirous of issuing securities to Qualified Institutional Buyers ("QIB") and has tightened the rules by barring companies with less than 1 year of listing history from making QIPs. A listing history on stock exchanges of at least 1 year, as on the date of issuance of notice to shareholders for convening a general meeting in terms of Section 81(1A) of the Companies Act, 1956 to consider the QIP, will be a prerequisite for making issuances to QIBs.

Thus, now companies not listed on stock exchanges for a period less than 1 year cannot go for QIB Placement.

#### ■ Guidelines of preferential allotments

SEBI has allowed companies with less than 6 months' listing history to raise money through preferential allotments as long as they meet certain criteria. It covers only cases where listing is done pursuant to IPO or scheme of arrangements. At present, the provisions relating to pricing in a preferential allotment under the Guidelines presupposes a listing history of at least 6 months of a company proposing to make preferential allotment. Under the revised Guidelines, companies with listing history of less than 6 months can raise money through preferential allotment by complying with the modified pricing and disclosure norms. It also provides that on completing a period of 6 months of being listed on a stock exchange, the company shall recompute the price of shares allotted and if the price as per modified pricing guidelines is lower than the price as per the existing pricing guidelines, than the difference shall be paid by the allottees to the company.

#### ■ Mandatory grading of all IPOs

In furtherance to circular SEBI/CFD/DIL/DIP/21/2006/24/4 dated April 24, 2006, SEBI has made grading of IPOs mandatory, and the issuer company will now have to bear the charges of the credit rating agency performing the grading of its IPO. The grading will be done by credit rating agencies, registered with SEBI under the SEBI (Credit Rating Agencies) Regulations, 1999, namely ICRA, Crisil, Fitch or Care. From May 1, 2007, it will be mandatory to all IPOs to obtain grading from at least one credit rating agency and the issuer company will be required to disclose such grades obtained in the Prospectus (in case of fixed price issue) or Red Herring Prospectus (in case of book built issue).

Rating agencies have proposed to grade IPOs on the basis of the fundamentals of the company, measuring them on a five-point scale, wherein a Grade 5 indicates strong fundamentals and Grade 1 indicates poor fundamentals.

#### ■ Filing of offer document

Under the amended Guidelines, merchant bankers are now required to file draft offer documents 30 days before the filing of the prospectus with the Registrar of Companies (ROC) as against the earlier 21 days.

It is observed that more often draft offer documents are filed with SEBI with incomplete documentation, disclosures or information. SEBI in order to issue its observations on the draft offer documents is then required to seek satisfactory clarifications from the Lead Manager/s, regulators or other agencies referred to in the offer documents and so on. This amendment is aimed at giving sufficient time to Merchant Bankers to file proper offer documents rather than filing incomplete and hurried information.

- Pledged shares not eligible for promoters' contribution

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Promoters of companies going public are now required to maintain their minimum stipulated shareholding over and above what has been pledged with banks or financial institutions as collateral security for loans granted by such banks or financial institutions and such pledges will not be eligible for computation of minimum promoters' contribution.

The newly laid down amendments, on one hand provides some clarifications to players of capital market while on the other hand seeks to introduce stricter eligibility criteria and tighten surveillance and vigil, thus offering mixed set of amendments.

Sources: [Amendment to SEBI \(Disclosure and Investor Protection\) Guidelines, 2000 dated April 30, 2007](#)

- [Divya Kataria](#) & [Vyapak Desai](#)

You can direct your queries or comments to the authors

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