

## **ANNEXURE-5**

### **SEBI GUIDELINES FOR DISCLOSURE AND INVESTOR PROTECTION**

Main guidelines (dated June 11, 1992) - These guidelines will apply to all issues to be made after the promulgation of the Capital Issue (Control) Repeal Ordinance 1992. All those holding CCI consents issued prior to the promulgation of the ordinance may proceed with the issues on terms and conditions laid down there in, provided however that these guidelines are also followed where they are not inconsistent with the terms and conditions of the CCI consent.

#### **Preamble to the guidelines - The guidelines “not inconsistent” with the terms and conditions of the CCI consent**

If the company prefers to abide by the terms and conditions mentioned in the consent order already issued by the CCI, the same will hold good. Accordingly, if the company intends to retain 15% oversubscription, the same is permissible only if it has been noted as such by the CCI. In such cases all conditions including pricing of CCI consents will apply (C.I. dated June 18, 1992).

#### **Section-A: First Issue of New Companies**

##### *Main Guidelines*

(a) A new company will be defined as one which has not completed 12 months of commercial operation and its audited operative results are not available, and where it is set up by entrepreneurs without a track record. They will be permitted to issue capital to public only at par. Where a new company is being set up by an existing company with five years track record of consistent profitability, it will be free to price its issue provided the participation of the promoting companies is not less than 50% of the new company and the issue price made applicable to all new investors.

uniformly and provided that the prospectus or offer documents shall contain justification for issue price

#### *CLERIFICATIONS*

##### **Existing Companies :**

“Existing Company” mentioned in Section A(a)(Para 2) is to be interpreted as existing private / unlisted closely held / listed companies. (C.I.dated June 18, 1992).

##### **Track Record :**

(a)The expression track record of consistent profitability appearing in para-2 of the original guideline, is to be construed as distinct from continuous profitability. The spirit of the guidelines will be satisfied, if the promoting companies concerned have shown profit in their respective audited profit and loss account after providing for interest, tax and depreciation in 5 out of preceding 7 years with profit during the last two years prior to the issue (C.II. dated July 16,1992)

(b)Where a new company is set up by existing companies, each of them should fulfill the criteria of five year trackrecord of consistent profitability. However, where a new company is set up by existing private sector companies alongwith a state level agency or Government company or a foreign collaborator, it will be sufficient if the private sector companies satisfy the requirements of five years track record (C.II dated July 16,1992)

##### **Issue Price :**

(a)The issue price stated therein is applicable uniformly to all investors in new companies including promoters and the promoters' contribution being subject to lock in period of five years as mentioned in Section “L” of the guidelines. (C.I. date June 18,1992)

(b)Where FCDs/PCDs are issued by a new company being set up by the existing company(ies) having five years track record of consistent profitability, they may bring in their contribution by way of additional equity or by subscription to FCDs/PCDs such that the total contribution of the promoting company(ies) is not less than 50% of the total equity after the conversion of FCDs / PCDs. If the contribution is by way of equity, the promoting company(ies) may subscribe such equity at par, if the first conversion of FCDs / PCDs is to take place after 18 months from the date of allotment irrespective of the terms of conversion of debentures. In other cases,viz. if the conversion is to take place at 18 months or less, the promoting company's contribution towards equity shall be at the same price at which the subscriber to FCDs/PCDs are entitled to conversion (C.II.July 16, 1992)

#### **Section-B : First Issue by Existing Private / Closely Held Companies**

##### *Mam Guidelines :*

(i)Such companies with three years track record of consistent profitability shall be permitted to freely price the issue and list their securities on the stock exchange.

##### *CLARIFICATIONS*

##### **Applicability**

(a)The provisions will not apply to right issues of any amount by existing private companies and right issues without right of renunciation of any amount by unlisted closely held companies. (C.I. dated June 18, 1992).

(b)The section applies not only to the existing private companies, closely held companies but also to other existing unlisted companies going in for a public issue for the first time (C II dated July 16 1992).

(c)The Guidelines for Disclosure and Investors Protection issued by SEBI do not apply to the issue of securities by existing private/closely held and other unlisted companies.(C III dated August 13, 1992)

**Track record :**

(a)Three years track record [item B(i)] means three years records of which at least two should be completed years of 12 months each and one should be not less than 6 months.(C.I Dated June 18, 1992.)

(b)The expression “three years track record of consistent profitability” should mean that the concerned companies have shown profit in their respective audited profit and loss account after providing for interest tax and depreciation in three out of preceding five years with profit during the last two years prior to the issue. (C.II. dated July 16, 1992).

(c)Under this section, the companies having three years track record of consistent profitability are allowed to freely price their issues

(d)It is now proposed to take into account, subject to certain parameters, the track record of partnership firm, which have since been converted in to companies. In such cases, the track record of partnership firm will be considered, if the relative financial statements pertaining to partnership business conform to or are revised in a format identical to that required of companies. Further, such financial statements should also make adequate disclosure similar to that required of companies as specified in Schedule VI of the Companies Act, 1956

In addition, such financial statements should be duly certified by a chartered accountant stating unequivocally that -

(i)the accounts as revised or otherwise disclosure made are in line with the provision of Schedule VI of the Companies Act, 1956 and

(ii) the accounting standards of the Institute of Chartered Accountants of India have been followed and that the financial statements present a true and fair picture of firm's accounts as in the case of companies

The lead manager should also add his confirmation that the financial statements furnished on behalf of the partnership firms are in accordance with the accounting standards prescribed by the ICAI (C VI dated Dec.23, 1992).

**Issue Price :**

(a) An existing private/closely held /other unlisted company, which does not have three years track record of consistent profitability can issue to public for raising additional capital only at par provided not less than 20% of the total issued capital (expanded capital) is offered to public. However, a company, which does not have a three year track record, but has been promoted by other company(ies) with a five year track record of consistent profitability, will have freedom to price the shares provided that the participation of the promoting company(ies) is not less than the 50% of total issued capital, subject to lock-in-period as specified in Section L of the original guideline. For reaching minimum percentage of 50%, if the promoting company has to take additional equity out of the public issue, it will be at the same price at which the shares are offered to public (C II. dated July 16, 1992).

(b) It is clarified that, where an issue of shares is to be made at premium or FCDs/PCDs with conversion(s) at premium, for reckoning the minimum specified percentage of 50%, to be brought in by the promoting company(ies) only such portion of the issued capital as have been held by the promoting company(ies) pursuant to the allotment made prior to 12 months of the proposed public issue would be taken into account. Accordingly in case, where it is not possible for the promoting company(ies) to bring in additional equity to make up the specified percentage of 50% in the issued capital after excluding the allotment of shares made

within 12 months prior to the proposed public issue, such public issue shall be made only at par (C V. dated Nov.4, 1992).

***Disinvestment:***

Where private closely held and unlisted companies having three year track record of consistent profitability desire to get listed through disinvestment of the existing shareholdings, i.e. without raising additional capital, there is no prohibition against free pricing. Accordingly, the existing shareholders in such companies may freely price their shares offered to the public subject to compliance with the requirements specified in Section B of the original guidelines. It is clarified that the promoters' shareholding after disinvestment shall not be less than 25 % of the total issued capital of the company, subject to lock-in period as specified in Sec. L. (C II dated July 16, 1992)

***Main Guidelines :***

- (i) The draft prospectus would be vetted by SEBI to ensure adequacy of disclosures.
- (ii) The Price would be determined by the issuer and lead managers to the issue subject to specific disclosure requirement including .

- (a) disclosure of the net asset value of the company as per the last audited balance sheet.

- (b) Justification for the Issue price

**Section C : Public Issue by Existing Listed Companies**

***Main Guidelines :***

- (a) The companies will be allowed to raise fresh capital by freely pricing their further issue
- (b) Pricing - The issue price will be determined by the issuer in consultation with lead manager(s) to the issue

(c) Disclosures -

- (i) The draft prospectus will be vetted by SEBI to ensure adequacy of disclosure
- (ii) The prospectus or offer documents shall contain the net asset value of the company and justification for the price of the issue
- (iii) High and low price of the shares for the last two years.

*CLARIFICATIONS:*

Companies wishing to enhance their foreign shareholding upto 51% or more as permissible under the relevant guidelines of Government / Reserve Bank Of India can make issue at the price determined by shareholders in special resolution under Section 81 (1)(A) of the Companies Act. This will also apply to issue of share to foreign investors by closely held companies and also by other companies where there is no foreign shareholding at present. (C.I dated June 18, 1992).

**Section E : Composite Issues:**

*Main Guidelines :*

Issues to the public by existing company can be priced differentially as compared to issues to the right shareholders.

*CLARIFICATION:*

Differential pricing in a composite issue i.e. right cum public issue is permissible only in respect of issues made by existing listed companies covered by Sec.C of the guidelines. However, justification for the price difference should be given in the offer documents. Where an existing unlisted company makes the public issue for the first time differential pricing in a composite issue will not be permitted (C.V. dated Nov 4, 1992)

## **Section P :General**

### *Main Guidelines:*

(e)The gap between the closure date of various issues e g rights and indian public should not exceed 30 days

(f)In case issues of debentures fully or partly made in the past, when the conversion was to be made at a price to be determined by the Controller of Capital Issue at later date, the price of conversion and time of conversion shall be determined by the company in a duly organised meeting of the debenture holders and shareholders. The decision in the above meeting may be ratified by the shareholders in their meeting. Such conversion will be optional for acceptance on the part of individual debenture holders. The dissenting debentureholders shall have the right to continue as debenture holders if the terms of conversion are not acceptable to them. The letter of option to debenture holders should be vetted by SEBI.

### *CLARIFICATION :*

#### Conversion of Debentures Issued under CCI consent

(i)where in terms of the consent issued by the CCI,the price of conversion of PCDs/FCDs is to be determined at a later date by the CCI,it would be sufficient,if such price and the timing of conversion are determined at a general meeting of the shareholders subject to-

(a)the consent of the holders of PCDs/FCDs for the conversion terms being obtained individually and conversion is given effect to only if the concerned debentureholders send their positive cosent and not on the basis of non-receipt of their negative reply,

(b)such holders of debentures,who do not give such consent, are invariably given an option to get the convertible portion of debenture redeemed or repurchased by the company at a price,which shall not be less than the face value of the debentures; and



(c)where the consent from the CCI stipulates cap price for conversion of FCDs/PCDs the board of the company may determine the price at which the debenture may be converted.(C II,dated July 16,1992)

(ii)Every letter of option for roll over or conversion of debenture,value of which exceeds Rs 50 lakhs issued by a company listed in a recognised stock exchange shall be forwarded through a lead manager to the issue or a merchant banker holding certificate of registration to SEBI for vetting.(C.III,dated August,13 1992).

**Exception :**

Options to debentures / other instruments holders for conversion into equity not required under following circumstances-

Where the consent from the CCI stipulates cap price for conversion of FCDs and PCDs and the cap price has been disclosed to the investors before subscription is made, there is no need to give option to debenture holder as stipulated under Clause 1 of Section P of the guideline dated June 11, 1992 (C.III date Aug 13, 1992).

(iii)Incase of issues of debentures, fully or partly convertible (irrespective of value ) made in the past, where conversion was to be made at a price to be determined by CCI and the consent orderdoes not provide for a specific premium or cap price for conversion ,the draft letter of option to the debenture holders to be vetted by SEBI should contain justification for the conversion price (C.III. dated Aug 13, 1992).

(iv)Where issue of PCDs and FCDs is made pursuant to the consent given by the CCI and the consent specifies the timing of conversion but the price of conversion of PCDs / FCDs is to be determined at later date, it is clarified that -

a)The consent of the shareholders is to be obtained only for the purposes of fixing the price of conversion and not for preponing and postponing the timing of the conversion approved by CCI

b)The conversion price shall be reasonable (in comparison with previous conversion price where the terms of the issue provide for more than one conversion) and **IN ANY CASE** the conversion price shall not exceed the face value of that part of the convertible debenture which is sought to be converted

(c)In cases where an option is to be given to the debenture holders and if any debenture holders does not exercise the option to convert the debentures into equity at a price determined in the general meeting of the shareholders, the company shall redeem that part of debenture at a price which shall not be less than its facevalue within one month from the last date by which option is to be excercised The above provision would not apply, if such redemption is to be made in accordance with the terms of the issue originally stated. (C.V. dated Nov 4, 1992)

*Main Guidelines:*

(g)SEBI will have right to prescribe further guidelines for modifying the existing ones to bring about adequate investor protection, enhance the quality of disclosure and to bring about transparency in the primary market.

(h)SEBI shall have the right to issue necessary clarification to theseguidelines to remove any difficulty in its implementation

(i)Any violation of the guidelines by the issuer intermediaries will be punishable by prosecution under the SEBI Act

(j)The provision in the Company Act 1956 and other applicable laws shall be complied with in connection with issue of shares and debentures.

*CLARIFICATION :*

Letter of offer for right issue containing disclosure will be vetted by SEBI as hitherto (C I.dated June 18, 1992)

Companies wishing to enhance their foreign share holding upto 51 % or more as permissible under the relevant guidelines of Government / Reserve Bank of India can make issues at the price determined by the shareholders in special resolution under section 81 (1)(A) of the Companies Act. This will also apply to issue of share to foreign investors by closely held companies and also by other companies where there is no foreign share holding at present (C.I dated June 18, 1992).