



CIRCULAR

CIR/CFD/CMD/16/2015

November 30, 2015

To

All Listed Entities who have listed their equity and convertibles
All the Recognized Stock Exchanges

Dear Sir/Madam,

Sub: Schemes of Arrangement by Listed Entities and (ii) Relaxation under Sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957

1. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "listing regulations") place obligations with respect to Scheme of Arrangement on Listed Entities and Stock Exchange(s) in Regulation 11, 37 and 94.

Sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as "the SCRR") provides that Securities and Exchange Board of India (SEBI) may, at its own discretion or on the recommendation of a recognised stock exchange, waive or relax the strict enforcement of any or all of the requirements with respect to listing prescribed by these rules.

2. Thus the additional requirements in order to achieve the intent of regulations 11, 37 and 94 and for availing exemption under sub-rule (7) of rule 19 of SCRR, if applicable are placed at **Annexure-I**.
3. **Applicability:** The Circular shall come into force w.e.f December 01, 2015. The Schemes already submitted to the stock exchange in terms of Part A of SEBI Circular CIR/CFD/DIL/5/2013 dated February 04, 2013 read with CIR/CFD/DIL/8/2013 dated May 21, 2013, shall be governed by the requirements specified in these circulars.
4. The Stock Exchanges are advised to bring the provisions of this circular to the notice of Listed Entity and also to disseminate the same on its website.
5. This circular is issued under regulations 11, 37 & 94 read with regulation 101(2) of listing regulations and Rule 19(7) of SCRR, 1957.
6. This circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework/Circulars".

Yours faithfully,

B.N. Sahoo
General Manager
biranchins@sebi.gov.in



I. Requirements before the Scheme of arrangement is submitted for sanction by the Hon'ble High Court

A. Requirements to be fulfilled by Listed Entity

1. Eligibility conditions for companies seeking relaxation under sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957

A listed issuer may submit the Draft Scheme of arrangement under sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, thereby seeking relaxation from the strict enforcement of clause (b) to sub-rule (2) of rule 19 thereof, for listing of its equity shares on a recognized stock exchange without making an initial public offer, if it satisfies the following conditions:

- (a) The equity shares sought to be listed are proposed to be allotted by the unlisted issuer (transferee entity) to the holders of securities of a listed entity (transferor entity) pursuant to a scheme of reconstruction or amalgamation (Scheme) sanctioned by a High Court under section 391-394 of the Companies Act, 1956 or under Section 230-234 of the Companies Act, 2013;
- (b) At least twenty five per cent of the post-scheme paid up share capital of the transferee entity shall comprise of shares allotted to the public shareholders in the transferor entity;
- (c) The transferee entity will not issue/ reissue any shares, not covered under the Draft Scheme of arrangement;
- (d) As on date of application, there are no outstanding warrants/ instruments/ agreements which give right to any person to take the equity shares in the transferee entity at any future date. If there are such instruments stipulated in the Draft Scheme, the percentage referred to in Para (b) above shall be computed after giving effect to the consequent increase of capital on account of compulsory conversions outstanding as well as on the assumption that the options outstanding, if any, to subscribe for additional capital will be exercised; and
- (e) The shares of the transferee entity issued in lieu of the locked-in shares of the transferor entity will be subject to lock-in for the remaining period.

2. Designated Stock Exchange

- (a) Listed companies shall choose one of the stock exchanges having nationwide trading terminals as the designated stock exchange for the purpose of coordinating with SEBI.
- (b) For companies listed solely on regional stock exchange, wherein exemption from Rule 19(2) (b) of Securities Contracts (Regulation) Rules, 1957 is sought, the listed entity shall obtain in-principle approval for listing of equity shares on any stock exchange having nationwide trading terminals.
- (c) In cases, wherein exemption from Rule 19(2)(b) of Securities Contracts (Regulation) Rules, 1957 is not sought by the listed entity, one of the stock



exchanges having nationwide trading terminals shall provide a platform for dissemination of information of such Schemes and other documents required under this circular. For such purpose, stock exchanges having nationwide trading terminals may charge reasonable fees from such companies.

3. Submission of Documents

The Listed entity shall submit the following documents to the stock exchanges:-

- (a) Draft Scheme of arrangement/ amalgamation/ merger/ reconstruction/ reduction of capital, etc.;
- (b) Valuation Report as per Para (4) below;
- (c) Report from the Audit Committee recommending the Draft Scheme, taking into consideration, inter alia, the Valuation Report. The Valuation Report is required to be placed before the Audit Committee of the listed entity;
- (d) Fairness opinion by merchant banker on valuation of assets / shares done by the valuer for the listed entity and unlisted company;
- (e) Pre and post amalgamation shareholding pattern of unlisted company;
- (f) Audited financials of last 3 years (financials not being more than 6 months old) of unlisted company;
- (g) Auditor's Certificate as per Para (5) below;
- (h) Compliance with requirements of Regulation 17 to 27 of Listing Regulations;

4. Valuation Report;

- (a) All listed entities are required to submit a valuation report.
- (b) However, 'Valuation Report from an Independent Chartered Accountant' need not be required in cases where there is no change in the shareholding pattern of the listed entity / resultant company.
- (c) For the limited purpose of this Circular, 'change in the shareholding pattern' shall mean;
 - (i) change in the proportion of shareholding of any of the existing shareholders of the listed entity in the resultant company; or
 - (ii) new shareholder being allotted equity shares of the resultant company; or
 - (iii) existing shareholder exiting the company pursuant to the Scheme of Arrangement
- (d) Further, a few examples illustrating 'no change in shareholding pattern' are indicated below:
 - (i) In case a listed entity (say, "entity A") demerges a unit and makes it a separate company (say, "entity B");
 - 1) if the shareholding of entity B is comprised only of the shareholders of entity A; and
 - 2) if the shareholding pattern of entity B is the same as in entity A; and



3) every shareholder in entity B holds equity shares in the same proportion as held in entity A before the demerger. It will be treated as 'no change in shareholding pattern'.

(ii) In case a wholly-owned-subsiidiary (say, "entity X") of a listed entity is merged with its parent listed company (say, "entity Y"), where the shareholders and the shareholding pattern of entity Y remains the same, it will be treated as 'no change in shareholding pattern'.

For the limited purpose of this Circular, 'resultant company' shall mean a company arising / remaining after the listed company undertakes a Scheme of Arrangement.

(e) In all other cases, 'Valuation Report from an Independent Chartered Accountant' shall be required.

5. Auditor's certificate

(a) An auditors' certificate shall be filed to the effect that the accounting treatment contained in the scheme is in compliance with all the Accounting Standards specified by the Central Government under Section 133 of the Companies Act, 2013 read with the rules framed thereunder or the Accounting Standards issued by ICAI, as applicable, and other generally accepted accounting principles.

Provided that in case of companies where the respective sectoral regulatory authorities have prescribed norms for accounting treatment of items in the financial statements contained in the scheme, the requirements of the regulatory authorities shall prevail.

Explanation – For this purpose, mere disclosure of deviations in accounting treatments as prescribed in the aforementioned Accounting Standards and other generally accepted Accounting Principles shall not be deemed as compliance with the above.

(b) The standard format for auditors' certificate would be as per Annexure II.

6. Redressal of Complaints

(a) The Listed entity shall submit to stock exchanges a 'Complaints Report' which shall contain the details of complaints/comments received by it on the Draft Scheme from various sources (complaints/comments written directly to the listed entity or forwarded to it by the stock exchanges/SEBI) as per Annexure III of this Circular prior to obtaining Observation Letter from stock exchanges on Draft Scheme.

(b) 'Complaints Report' as mentioned above, shall be submitted by listed entity to the stock exchanges within 7 days of expiry of 21 days from the date of filing of Draft Scheme with stock exchanges and hosting the Draft Scheme along with documents specified under para (3) above on the websites of stock exchanges and the listed entity .



7. Disclosure on the Website

- (a) Immediately upon filing of the Draft Scheme of arrangement with the stock exchanges, the listed company shall disclose the Draft Scheme of arrangement and all the documents specified under para (3) above on its website.
- (b) Listed entity shall also disclose the Observation Letter of the stock exchanges on its website within 24 hours of receiving the same.

8. Explanatory Statement or notice or proposal accompanying resolution sent to shareholders for seeking approval of scheme

- (a) The Listed entity shall include the Observation Letter of the stock exchanges, in the explanatory statement or notice or proposal accompanying resolution to be passed sent to the shareholders seeking approval of the Scheme.
- (b) The listed entity shall ensure that in the explanatory statement or notice or proposal accompanying resolution to be passed, it shall disclose the pre and post-arrangement or amalgamation (expected) capital structure and shareholding pattern, and the “fairness opinion” obtained from a merchant bankers on valuation of assets / shares done by the independent chartered accountant for the listed entity and unlisted company.
- (c) The Listed entity shall include the ‘Complaints Report’ in the explanatory statement or notice or proposal accompanying resolution to be passed sent to the shareholders while seeking approval of the Scheme.

9. Approval of Shareholders to Scheme Through Postal Ballot And e- Voting:

- (a) The Listed companies shall ensure that the Scheme of Arrangement submitted with the Hon'ble High Court for sanction, provides for voting by public shareholders through postal ballot and e-voting, after disclosure of all material facts in the explanatory statement sent to the shareholders in relation to such resolution, in the following cases:
 - i. Where additional shares have been allotted to Promoter / Promoter Group, Related Parties of Promoter / Promoter Group, Associates of Promoter / Promoter Group, Subsidiary/(s) of Promoter / Promoter Group of the listed entity , or
 - ii. Where the Scheme of Arrangement involves the listed entity and any other entity involving Promoter / Promoter Group, Related Parties of Promoter / Promoter Group, Associates of Promoter / Promoter Group, Subsidiary/(s) of Promoter / Promoter Group.
 - iii. Where the parent listed entity, has acquired the equity shares of the subsidiary, by paying consideration in cash or in kind in the past to any of the shareholders of the subsidiary who may be Promoter / Promoter Group, Related Parties of Promoter / Promoter Group, Associates of Promoter /



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Promoter Group, Subsidiary/(s) of Promoter / Promoter Group of the parent listed entity company, and if that subsidiary is being merged with the parent listed company under the Scheme of arrangement.

- (b) Such Scheme of arrangement shall also provide that the Scheme of arrangement shall be acted upon only if the votes cast by the public shareholders in favor of the proposal are more than the number of votes cast by the public shareholders against it. The term 'public' shall carry the same meaning as defined under Rule 2 of Securities Contracts (Regulation) Rules, 1957.
- (c) For all other cases, the requirements stated at para (9) (a) above shall not be applicable. In such cases, the listed entities shall furnish an undertaking certified by the auditor and duly approved by the Board of the company, clearly stating the reasons for non-applicability of para (9) (a) above.
- (d) The undertaking as referred to in Para (9)(c) above shall be displayed on the websites of stock exchanges and the listed company along with other documents submitted, as stipulated under Para (3) above.
- (e) Any mis-statement or furnishing of false information with regard to the said undertaking would be viewed seriously and liable for punitive action as per the provisions of applicable laws and regulations.

B. Obligations of Stock Exchange(s)

1. The designated Stock Exchange, upon receipt of the Draft Scheme of Arrangement and documents referred to at para (A) (3) above shall forward the same to SEBI within three working days.
2. The 'Complaints Report' shall be forwarded by the stock exchanges to SEBI before SEBI communicates its comments on the Draft Scheme to the stock exchanges. Such Report shall be submitted as per the format specified at Annexure III to this Circular.
3. The stock exchanges where the specified securities are listed / proposed to be listed shall also disclose on their websites the documents listed at para (A) (3) above immediately on receipt. It shall also disclose the Observation Letter on its website immediately upon issuance.

C. Processing of the Draft Scheme by SEBI

1. Upon receipt of Observation Letter' or 'No-Objection' letter from the stock exchanges, SEBI shall provide its comments on the Draft Scheme of arrangement to the stock exchanges. While processing the Draft Scheme, SEBI may seek clarifications from any person relevant in this regard including the listed entity or the stock exchanges and may also seek an opinion from an Independent Chartered Accountant.



2. SEBI shall endeavour to provide its comments on the Draft Scheme to the stock exchanges within 30 days from the later of the following:
 - (a) date of receipt of satisfactory reply on clarifications, if any sought from the listed entity by SEBI; or
 - (b) date of receipt of opinion from Independent Chartered Accountant, if sought by SEBI; or
 - (c) date of receipt of 'Observation Letter' or 'No-Objection' letter from the stock exchanges.
 - (d) date of receipt of copy of in-principle approval for listing of equity shares of the company seeking exemption from Rule 19(2)(b) of Securities Contracts (Regulation) Rules, 1957 on designated stock exchange, in case the listed entity is listed solely on regional stock exchange.
3. All complaints/comments received by SEBI on the Draft Scheme of arrangement shall be forwarded to the designated stock exchange, for necessary action and resolution by the listed entity.

II. (a) Requirements after the Scheme is Sanctioned by the Hon'ble High Court (hereinafter referred to as "Approved Scheme") and (b) application for relaxation under Sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, as applicable

A. Requirements to be fulfilled by Listed Entity

1. Eligibility conditions for entities seeking relaxation under sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957

Stock exchanges shall ensure that , an unlisted issuer may make an application to the Board under sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, pursuant to Part I of Annexure I this Circular if it satisfies the following conditions:

- (a) Observation Letter or No Objection Letter has been issued by the stock exchanges to the Draft Scheme of arrangement;
- (b) The listing of the equity shares of the transferee entity is in terms of the Scheme sanctioned by the Hon'ble High Court or its order whereby the Scheme of arrangement has been sanctioned;
- (c) The equity shares sought to be listed have been allotted by the unlisted issuer (transferee entity) to the holders of securities of a listed entity (transferor entity);
- (d) The names of the allottees have been entered as beneficial owners in the records of the depositories pursuant to the Scheme or share certificates have been dispatched to the allottees.

2. Submission of Documents

Upon sanction of the Scheme by the Hon'ble High Court, the listed entity shall submit the documents mentioned below to the stock exchanges:-

- (a) Copy of the High Court approved Scheme;
- (b) Result of voting by shareholders for approving the Scheme;



- (c) Statement explaining changes, if any, and reasons for such changes carried out in the Approved Scheme of arrangement vis-à-vis the Draft Scheme of arrangement
 - (d) Status of compliance with the Observation Letter or No Objection Letter of the stock exchange(s)
 - (e) The application seeking exemption from Rule 19(2)(b) of SCRR, 1957, wherever applicable; and
 - (f) Complaints Report as per Annexure III of this Circular.
3. In case of a hiving off of a division of a listed entity (say, “entity A”) and its merger with a newly formed or existing unlisted issuer (say, “entity B”) there will not be any additional lock-in, if the paid-up share capital of the unlisted issuer 'B' is only to the extent of requirement for incorporation purposes
 4. In case of merger where the paid-up share capital of the unlisted issuer seeking listing (say, “entity B”) is more than the requirement for incorporation, the promoters' shares shall be locked-in to the extent twenty percent of the post-merger paid-up capital of the unlisted issuer, for a period of three years from the date of listing of the shares of the unlisted issuer. The balance of the entire pre-merger capital of the unlisted issuer shall also be locked-in for a period of three years from the date of listing of the shares of the unlisted issuer.
 5. The listed entity and/or transferee entity (unlisted entity), as applicable, shall confirm that it has taken steps for listing of its specified securities, within thirty days of the receipt of the order of the Hon'ble High Court sanctioning the Scheme, simultaneously on all the stock exchanges where the equity shares of the listed entity (or transferor entity) are/were listed.
 6. The formalities for commencing of trading shall be completed within forty five days of the order of the Hon'ble High Court. Before commencement of trading, the transferee entity shall give an advertisement in one English and one Hindi newspaper with nationwide circulation and one regional newspaper with wide circulation at the place where the registered office of the transferee entity (is situated, giving following details:
 - (a) Name and address of its registered office;
 - (b) Details of change of name and/or object clause;
 - (c) Capital structure - pre and post scheme of amalgamation. This shall provide details of the authorized, issued, subscribed and paid up capital (Number of instruments, description, and aggregate nominal value);
 - (d) Shareholding pattern giving details of its promoter group shareholding, group companies;
 - (e) Names of its ten largest shareholders - number and percentage of shares held by each of them, their interest, if any;
 - (f) Details of its promoters - educational qualifications, experience, address;
 - (g) Business and its management;
 - (h) Reason for the amalgamation;
 - (i) Financial statements for the previous three years prior to the date of listing;
 - (j) Latest audited financial statements along with notes to accounts and any audit qualifications. Change in accounting policies in the last three years and their



effect on profits and reserves (Financial statements should not be later than six months prior to the date of listing);

- (k) Details of its other group companies including their capital structure and financial statements;
- (l) Outstanding litigations and defaults of the transferee entity, promoters, directors or any of the group companies;
- (m) Particulars of high, low and average prices of the shares of the listed transferor entity during the preceding three years;
- (n) Any material development after the date of the balance sheet; and
- (o) Such other information as may be specified by the Board from time to time.

B. Application by a listed entity for Listing of Equity Shares with Differential Rights as to Dividend, Voting or Otherwise:

A listed entity desirous of listing of its equity shares with differential rights as to dividend, voting or otherwise, without making an initial public offer of such equity shares, may make an application to the Board under sub-rule (7) of rule 19 of the SCRR seeking relaxation from strict enforcement of clause (b) to sub-rule (2) of rule 19 thereof if it satisfies the following conditions:

- (a) such equity shares are issued to all the existing shareholders as on record date by way of rights or bonus issue;
- (b) the issuer is in compliance with the conditions of minimum public shareholding requirement stipulated in regulation 38 of Listing Regulation, with reference to the equity shares already listed and the equity shares with differential rights proposed to be listed; and
- (c) the issuer undertakes to disclose the shareholding pattern of the equity shares with differential rights separately in terms of requirements of regulation 31.

C. Application by a listed entity for Listing of warrants Offered Along With Non-Convertible Debentures (NCDs):

A listed entity, desirous of listing of its warrants without making an initial public offer of warrants, may make an application to the Board under sub-Rule (7) of rule 19 of the SCRR seeking relaxation from strict enforcement of clause (b) to sub-rule (2) of rule 19 if it satisfies the following conditions:

- (a) warrants are issued as combined offering of NCDs and warrants through qualified institutions placement under Chapter VIII of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as “the ICDR Regulations”);
- (b) the issuer is in compliance with all the provisions of Chapter VIII of the ICDR Regulations ; and
- (c) NCDs and warrants shall be traded in the minimum trade lot of one lakh rupees.

D. Requirements to be fulfilled by Stock Exchange(s)

1. The designated stock exchange shall forward the documents to the Board along with its recommendations on documents and recommendation, if applicable, on the application for granting exemption, under sub-rule (7) of rule 19 of SCRR.



E. Processing of the Scheme by SEBI

1. The Board may, while granting relaxation, if any, under sub-rule (7) of rule 19 of SCRR, stipulate any other conditions as may be deemed necessary in the interest of investors and securities market, under the facts and circumstances of the specific case.
2. SEBI shall endeavour to intimate its comments/approval, wherever applicable, to the designated stock exchange within 30 days of receipt of complete information, including the no-objection certificate from the exchange.



Format for Auditor's Certificate

To,
 The Board of Directors,

 (Name and address of the Company)

We, the statutory auditors of (name of the listed entity), (hereinafter referred to as "the Company"), have examined the proposed accounting treatment specified in clause (specify clause number) of the Draft Scheme of (specify the type of Scheme) between (names of the companies/entities involved) in terms of the provisions of section(s) (specify the relevant section(s)) of the Companies Act, 1956/ Companies Act, 2013 with reference to its compliance with the applicable Accounting Standards notified under the Companies Act, 1956/ Companies Act, 2013 and Other Generally Accepted Accounting Principles.

The responsibility for the preparation of the Draft Scheme and its compliance with the relevant laws and regulations, including the applicable Accounting Standards as aforesaid, is that of the Board of Directors of the Companies involved. Our responsibility is only to examine and report whether the Draft Scheme complies with the applicable Accounting Standards and Other Generally Accepted Accounting Principles. Nothing contained in this Certificate, nor anything said or done in the course of, or in connection with the services that are subject to this Certificate, will extend any duty of care that we may have in our capacity of the statutory auditors of any financial statements of the Company. We carried out our examination in accordance with the Guidance Note on Audit Reports and Certificates for Special Purposes, issued by the Institute of Chartered Accountants of India.

Based on our examination and according to the information and explanations given to us, we confirm that the accounting treatment contained in the aforesaid scheme is in compliance with SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and circulars issued there under and all the applicable Accounting Standards notified by the Central Government under the Companies Act, 1956/ Companies Act, 2013 and/or the accounting treatment in respect of (specify the financial statement item(s)) as prescribed by (name of the regulator) vide its Notification (details of the Notification) which prevail over the accounting treatment for the same as prescribed under the aforesaid Accounting Standards (wherever applicable), except the following:

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This Certificate is issued at the request of the (name of the Company) pursuant to the requirements of circulars issued under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for onward submission to the (name of the Stock Exchange(s)). This Certificate should not be used for any other purpose without our prior written consent.

For

 (name of the Firm)
 Chartered Accountants
 Firm Registration No.:
 Signature
 (Name of the member)
 Designation (Partner or proprietor, as may be applicable):
 Membership Number:
 Place:
 Date:



Format for Complaints Report

Part A

Sr. No.	Particulars	Number
1	Number of complaints received directly	
2	Number of complaints forwarded by Stock exchanges	
3	Total Number of complaints/comments received (1+2)	
4	Number of complaints resolved	
5	Number of complaints pending	

Part B

Sr. No.	Name of complainant	Date of Complaint	Status (Resolved/pending)
1			
2			
3			