

Securities Contracts (Regulation) (Manner of Increasing and Maintaining Public Shareholding in Recognised Stock Exchanges) Regulations, 2006

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THE GAZETTE OF INDIA
EXTRAORDINARY
PART –II – SECTION 3 – SUB SECTION (ii)
PUBLISHED BY AUTHORITY
NEW DELHI, MONDAY, NOVEMBER 13, 2006

SECURITIES AND EXCHANGE BOARD OF INDIA
NOTIFICATION
Mumbai, the 13th November 2006

**Securities Contracts (Regulation) (Manner of Increasing and Maintaining
Public Shareholding in Recognised Stock Exchanges) Regulations, 2006**

S.O. No. 1950(E). In exercise of the powers conferred by Section 31 read with sub-section (8) of section 4B of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Board hereby makes the following regulations, namely:-

CHAPTER I
PRELIMINARY

1. Short title and commencement. - (1) These regulations may be called the Securities Contracts (Regulation) (Manner of Increasing and Maintaining Public Shareholding in Recognised Stock Exchanges) Regulations, 2006.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions. - (1) In these Regulations, unless the context otherwise requires:-

- (a) “Act” means the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- (b) “associate” in relation to a shareholder having trading rights in a recognised stock exchange means a person –

- (i) who directly or indirectly, by himself or in combination with other persons, exercises control over such shareholder or holds substantial shares entitling not less than fifteen per cent. of the voting rights in such shareholder being a body corporate; or
 - (ii) over whom such shareholder, directly or indirectly, by itself or in combination with other persons, exercises control; or
 - (iii) whose director or partner is also a director or a partner of such shareholder, being a body corporate or a partnership firm, as the case may be; or
 - (iv) who is a holding company or subsidiary company of such shareholder or a company under the same management as such shareholder; or
 - (v) who is a relative of the shareholder being a natural person under ¹[Section 6] of the Companies Act, 1956 (1 of 1956); or
 - (vi) who is a sub-broker of the shareholder in that stock exchange; or
 - (vii) who acts in accordance with instructions of such shareholder in the exercise of voting rights and other rights in the recognised stock exchange, directly or indirectly.
- (c) “Board” means the Securities and Exchange Board of India established under provisions of Section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (d) “company” means a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956);
- (e) “control” has the meaning assigned to it in clause (c) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997;
- (f) “offer for sale” means offer for sale of equity shares, by shareholders of a recognised stock exchange having trading rights therein to the public;
- (g) “private placement” means an issue of equity shares made by a recognised stock exchange on preferential basis and/or through private placement to any

¹ Corrected vide corrigendum no. SEBI/LAD/DOP/1727/2007, dated 20th February, 2007. Prior to correction it read as “Schedule IA”.

person or group of persons not being a shareholder having trading rights or an associate of any such shareholder, pursuant to a special resolution passed under sub-section (1A) of section 81 of the Companies Act, 1956;

(h) “public” includes any member or section of the public but does not include any shareholder of the recognised stock exchange having trading rights therein or any associate of such shareholder;

(i) “scheme” means the scheme for corporatisation or demutualisation of a recognised stock exchange approved by the Board under section 4B of the Act;

¹[(j) “shareholder having trading rights” means a shareholder who has a trading interest in the stock exchange, whether directly or indirectly through a person having trading rights.

Explanation: A shareholder having a trading interest “indirectly” in relation to a person having trading rights shall have same meaning as assigned to the term “associate” in relation to a shareholder having trading rights under clause (b) of this sub-regulation.]

(2) All other words and expressions used but not defined in these regulations, but defined in the Act or in the Companies Act, 1956 (1 of 1956) or in Securities and Exchange Board of India Act, 1992 (15 of 1992) or the rules and the regulations made thereunder or in the scheme, shall have the same meanings respectively assigned to them in such Acts or the Rules or the Regulations made thereunder or the scheme or any statutory modification or re-enactment thereto, as the case may be.

3. Applicability. - These Regulations shall be applicable to all recognised stock exchanges in respect of which the scheme for corporatisation or demutualisation has been approved by the Board under Section 4B of the Act.

¹ Inserted by the Securities Contracts (Regulation) (Manner of Increasing and Maintaining Public Shareholding in Recognised Stock Exchanges) (Amendment) Regulations, 2008 w.e.f. 23-12-2008.

CHAPTER II

MANNER OF INCREASING PUBLIC SHAREHOLDING

4. Manner of increasing the public shareholding.- Subject to the provisions of sub-section (8) of Section 4B of the Act and the scheme, the recognised stock exchange shall ensure that at least fifty-one per cent. of its equity share capital is held by the public, either by fresh issue of equity shares to the public through issue of prospectus or in the following manner: -

- (a) offer for sale, by issue of prospectus, of shares held by shareholders having trading rights therein;
- (b) placement of shares held by shareholders having trading rights to such persons or institutions as may be shortlisted by the recognised stock exchange with the approval of the Board;
- (c) issue of equity shares on private placement basis by the recognised stock exchange to any person or group of persons not being shareholders having trading rights or their associates subject to the approval of the Board; or
- (d) any combination of the above.

5. Procedure for fresh issue of equity shares or offer for sale to the public.-

(1) Any fresh issue of equity shares or offer for sale to the public through a prospectus shall be in compliance with the provisions of the Companies Act, 1956 (1 of 1956) and Guidelines or Regulations of the Board relating to issue of capital.

(2) Where any fresh issue of equity shares or offer for sale to the public is made under clause (a) of regulation 4, an application for listing thereof shall be made to the same recognised stock exchange or any other recognised stock exchange and Section 73 of the Companies Act, 1956 (1 of 1956) shall apply to such application and the provisions of the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 (or any statutory

modification or replacement thereof) relating to public issue shall as far as may be apply to such offer for sale.

(3) Listing of equity shares or other securities of a recognised stock exchange on the same recognised stock exchange shall be in compliance with such conditions as may be specified by the Board.

6. Private placement. - (1) Where a recognised stock exchange whose shares are not listed on any recognised stock exchange makes a private placement for the purposes of clause (c) of regulation 4, such private placement shall be in compliance with applicable legal provisions, including those of the Companies Act, 1956 (1 of 1956) and the Unlisted Public Companies (Preferential Allotment) Rules, 2003.

(2) Where a recognised stock exchange whose equity shares are listed on any recognised stock exchange, makes a private placement of equity shares, such placement shall be in accordance with the provisions of the Companies Act, 1956 and Guidelines or Regulations of the Board relating to preferential issue of capital:

Provided that where a placement is made under sub-regulation (1) or sub-regulation (2) to fifty or more persons, it shall be in compliance with provisions of the Companies Act, 1956 (1 of 1956) and Guidelines or Regulations of the Board relating to public issue of capital.

7. Confirmation of compliance with Sub-section (8) of Section 4B.- When the Board is satisfied that any recognised stock exchange has complied with the provisions sub-section (8) of section 4B read with this Chapter, it shall issue a confirmation to the recognised stock exchange to that effect.

CHAPTER III

SHARE HOLDING RESTRICTIONS

8. Shareholding and transferability restrictions.-¹[(1) No person resident in India shall at anytime, directly or indirectly, either individually or together with persons acting in concert, hold more than five per cent. of the equity share capital in a recognised stock exchange:

Provided that a stock exchange, a depository, a clearing corporation, a banking company, an insurance company and a public financial institution defined under section 4A of the Companies Act, 1956 may hold, either directly or indirectly, either individually or together with persons acting in concert, upto fifteen per cent. of the paid up equity share capital of the recognised stock exchange:

Provided further that person holding equity shares in a recognised stock exchange in excess of the limits specified in this regulation at the commencement of these regulations shall reduce his holding to ensure compliance with this regulation within the time specified in sub-section (8) of section 4B of the Act or the time extended under the proviso thereto.

Explanation: For the purposes of this sub-regulation:-

- (I) "banking company" shall have the meaning assigned to it in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
- (II) "insurance company" shall have the meaning assigned to it in sub-section (8) of section 2 of the Insurance Act, 1938 (4 of 1938);
- (III) "person resident in India" shall have the meaning assigned to it in clause (v) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999);

¹ Substituted by the Securities Contracts (Regulation) (Manner of Increasing and Maintaining Public Shareholding in Recognised Stock Exchanges) (Amendment) Regulations, 2008 w.e.f. 23-12-2008. Prior to its substitution, this sub-regulation read as under:-

"(1) No person shall, directly or indirectly, acquire or hold more than five per cent in the paid up equity capital of a recognised stock exchange at any time after commencement of these regulations:

Provided that any person holding equity shares in a recognised stock exchange in excess of the limits specified in this regulation at the commencement of these regulations shall reduce his holding to ensure compliance with this regulation within the time specified in sub-section (8) of Section 4B of the Act or the time extended under the proviso thereto."

(IV) “persons acting in concert” shall have the meaning derived from clause (e) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.]

¹[(2) the combined holding of all persons resident outside India in the equity share capital of a recognised stock exchange shall not exceed, at any time, forty-nine per cent. of its total equity share capital, subject further to the following:-

- a) the combined holdings of such persons acquired through the foreign direct investment route shall not exceed twenty six per cent. of the total equity share capital, at any time;
- b) the combined holdings of foreign institutional investors shall not exceed twenty three per cent. of the total equity share capital, at any time;
- c) no foreign institutional investor shall acquire shares of a recognised stock exchange otherwise than through the secondary market if such exchange is listed:

Explanation: For the purposes of this clause c) the acquisition of shares through secondary market shall be construed as follows:

- (I) If the recognised stock exchange is not listed, a foreign institutional investor may acquire its shares through transactions outside of a recognised stock exchange provided it is not an initial allotment of shares;
- (II) If the recognised stock exchange is listed, the transactions by a foreign institutional investor shall be done through the recognised stock exchange where such shares are listed;

- d) no foreign institutional investor shall have any representation in the Board of Directors of the recognised stock exchange;
- e) no foreign investor, including persons acting in concert with him, shall hold more than five per cent. of the equity share capital in a recognised stock exchange.]

¹ Inserted by the Securities Contracts (Regulation) (Manner of Increasing and Maintaining Public Shareholding in Recognised Stock Exchanges) (Amendment) Regulations, 2008 w.e.f. 23-12-2008.

¹[(3)] No shareholder having trading rights in a recognised stock exchange shall, prior to issuance of the confirmation under regulation 7, transfer his shares in such recognised stock exchange to any person otherwise than in accordance with Chapter II.

9. Eligibility criteria for persons acquiring or holding more than ²[five per cent.] equity shares in a recognised stock exchange.-³[(1) No person shall,

directly or indirectly, either individually or together with persons acting in concert with him, acquire and/or hold more than five per cent. of the paid up equity capital of a recognised stock exchange after commencement of these regulations, unless he is a fit and proper person and has taken prior approval of the Board for doing so.]

(2) For the purpose of sub-regulation (1), a person shall be deemed to be a fit and proper person if –

(i) such person has a general reputation and record of fairness and integrity, including but not limited to -

- (a) financial integrity;
- (b) good reputation and character; and
- (c) honesty.

(ii) such person has not incurred any of the following disqualifications –

¹ Renumbered as sub-regulation (3) by the Securities Contracts (Regulation) (Manner of Increasing and Maintaining Public Shareholding in Recognised Stock Exchanges) (Amendment) Regulations, 2008 w.e.f. 23-12-2008. Prior to renumbering, it read as “(2)”.

² Substituted by the Securities Contracts (Regulation) (Manner of Increasing and Maintaining Public Shareholding in Recognised Stock Exchanges) (Amendment) Regulations, 2008 w.e.f. 23-12-2008. Prior to its substitution, it read as “one percent”.

³ Substituted by the Securities Contracts (Regulation) (Manner of Increasing and Maintaining Public Shareholding in Recognised Stock Exchanges) (Amendment) Regulations, 2008 w.e.f. 23-12-2008. Prior to its substitution, this sub-regulation read as under:-
“(1) No person shall, either individually or together with persons acting in concert with him, acquire and/or hold more than one per cent of the paid up equity capital of a recognised stock exchange after commencement of these regulations, unless he is a fit and proper person and has taken prior approval of the Board for doing so.”

- (a) the person or any of its whole time directors or managing partners has been convicted by a Court for any offence involving moral turpitude or any economic offence, or any offence against the securities laws;
 - (b) an order for winding up has been passed against the person;
 - (c) the person or any of its whole time directors or managing partners has been declared insolvent and has not been discharged;
 - (d) an order, restraining, prohibiting or debarring the person, or any of its whole time directors or managing partners from dealing in securities in the capital market or from accessing the capital market has been passed by the Board or any other regulatory authority and a period of three years from the date of the expiry of the period specified in the order has not elapsed;
 - (e) any other order against the person or any of its whole time directors or managing partners which has a bearing on the capital market, has been passed by the Board or any other regulatory authority and a period of three years from the date of the order has not elapsed;
 - (f) the person has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force; and
 - (g) the person is financially not sound.
- (3) If any question arises as to whether a person is a fit and proper person, the Board's decision on such question shall be final.

10. Dematerialization.- A recognised stock exchange which has issued equity shares or whose equity shares are offered for sale in the manner provided in these regulations shall—

- (a) enter into an agreement with the depositories for dematerialization of the equity shares proposed to be issued or proposed to be sold; and
- (b) it shall give an option to the subscribers or transferees to receive the share certificate or hold the shares in dematerialized form with a depository.

11. Obligations of the recognised stock exchange. - (1) A recognised stock exchange shall monitor and ensure:-

- (a) that no transfer or issue of equity shares therein is made otherwise than in accordance with these regulations;
- (b) that at least fifty-one per cent. of its equity share capital is continuously held by the public; and
- (c) that the restrictions contained in regulations 8 and 9 are complied with in respect of the shareholding therein.

(2) Without prejudice to the provisions of the Act and the rules made thereunder, the recognised stock exchanges shall submit a report to the Board disclosing the following on a quarterly basis within fifteen days from the end of each quarter:-

- (a) the names of ten largest shareholders along with the number of shares held by them and their percentage shareholding;
- (b) the names of the shareholders falling under regulation 8 who had acquired shares in that quarter;
- (c) the shareholding pattern in the recognised stock exchange in such format as may be specified by the Board.

(3) The recognised stock exchange shall submit an undertaking confirming the compliance of the provisions of sub-regulation (1) to the Board on a quarterly basis within fifteen days from the end of each quarter.

(4) Notwithstanding anything contained in this regulation, the Board may from time to time call for any information from the recognised stock exchange, any shareholder having trading rights or any transferee of shares held by such shareholder, under the provisions of Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.

(5) Without prejudice to the provisions of the Companies Act, 1956, the recognised stock exchange shall maintain and preserve all the books, registers, other documents and records relating to, the issue or sale of equity shares under these regulations for a period of ten years.

CHAPTER IV

POWERS OF THE BOARD

12. Power of Inspection. - (1) The Board may at any time undertake inspection, conduct inquiries and audit of any recognised stock exchange or any shareholder having trading rights therein or any associate of such shareholder, in accordance with the provisions of the Securities and Exchange Board of India Act, 1992, the Act and the rules made thereunder.

(2) Where an inspection of any recognised stock exchange or any shareholder having trading rights therein or any associate of such shareholder is undertaken by the Board, every manager, managing director, officer and other employee of such recognised stock exchange or shareholder or associate shall co-operate with the Board.

13. Action in case of default. - Without prejudice to power to impose monetary penalty, initiate prosecution or issue directions under the provisions of the Act or the Securities and Exchange Board of India Act, 1992, the Board may, issue such directions as it deems fit, including -

- (a) directing disinvestment of shares held by shareholders having trading rights in breach of sub-section (8) of section 4B of the Act, in such manner as may be specified in the direction;
- (b) directing a person holding equity shares in a recognised stock exchange in contravention of regulations 8 or 9 to divest his holding, in such manner as may be specified in the direction;
- (c) directing transfer of any proceeds or securities to the investors protection fund of a recognised stock exchange;
- (d) debarring any recognised stock exchange, any shareholder having trading rights therein, any associate of such shareholder or any transferee of shares from such shareholder from accessing the capital market or dealing in securities for such period as may be determined by the Board.