



CIRCULAR

CIR/CFD/DIL/5/2013

Date: February 4, 2013

To
The Stock Exchanges

Dear Sir/Madam

Sub: Scheme of Arrangement under the Companies Act, 1956 – Revised requirements for the Stock Exchanges and Listed Companies

1. Vide Circular No. SEBI/CFD/SCRR/01/2009/03/09, dated September 03, 2009 (“Circular”) certain requirements were prescribed for seeking exemption under sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957 (“SCRR, 1957”) from strict enforcement of clause (b) to sub-rule (2) of rule 19 by listed companies.
2. The existing Clause 24(f) of the Listing Agreement mandates that a listed company shall file any scheme/petition, proposed to be filed before any Court or Tribunal under sections 391, 394 and 101 of the Companies Act, 1956, with the stock exchange, for approval, at least a month before it is presented to the Court or Tribunal.
3. In terms of the above mentioned Circular, pursuant to a scheme of reconstruction or amalgamation being sanctioned by the Hon'ble High Court under sections 391-394 or 101 of the Companies Act, 1956 (“Scheme”), the listed companies desirous of getting their equity shares listed after merger/de-merger/amalgamation etc. were required to seek an exemption from Securities and Exchange Board of India (“SEBI”) from the requirements of Rule 19(2)(b) of SCRR, 1957. In terms of Rule 19(7) of SCRR, 1957, SEBI has been granting exemption to such listed companies from time to time, on a case to case basis.
4. However, in the recent past, SEBI has received applications, seeking exemption, from certain entities containing, *inter alia*, (a) inadequate disclosures, (b) convoluted schemes of arrangement, (c) exaggerated valuations, etc. SEBI is of the view that granting listing permission or exemption from the requirements of Rule 19(2)(b) of SCRR, 1957 based on such applications may not be in the interest of minority shareholders. At the same time, if listing permission or such an exemption is delayed or denied, it would add to the uncertainty and would deprive shareholders of an exit opportunity.
5. In order to avoid such situations, the existing requirements are being revised. The salient features of the revised requirements, include the following:



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

A. Obligations of Listed Companies

The obligations of a listed company, *inter alia*, include:

- 5.1. Listed companies desirous of undertaking a Scheme of Arrangement under Chapter V of the Companies Act, 1956, (Amalgamation/ Merger/ Reconstruction/ Reduction Of Capital, etc.) shall file the Draft Scheme with the stock exchanges in terms of Clause 24(f) of the Listing Agreement. Listed companies shall also submit the documents mentioned in Para 2 of Part A of Annexure I to this Circular to the stock exchanges along with the Draft Scheme.
- 5.2. Such listed companies shall place before its Audit Committee the Valuation Report obtained from an Independent Chartered Accountant. The Audit Committee shall furnish a report recommending the Draft Scheme, taking into consideration, *inter alia*, the aforementioned valuation report.
- 5.3. Listed companies shall choose one of the stock exchanges having nation-wide trading terminals as the designated stock exchange for the purpose of coordinating with SEBI.
- 5.4. Listed companies shall be required to:-
 - (a) include the Observation Letter of the stock exchanges, referred to in Clause 5.8 below, in the notice sent to the shareholders seeking approval of the Scheme; and
 - (b) bring the same to the notice of the Hon'ble High Court at the time of seeking approval of the Scheme.

B. Obligations of The Stock Exchanges

- 5.5. The designated stock exchange, upon receipt of the Draft Scheme and the documents referred to in Clause 5.1 above, shall forward the same to SEBI within 3 working days.
- 5.6. The stock exchanges shall process the Draft Scheme (including seeking clarifications from company and/or Opinion from Independent Chartered Accountant.) and forward their "Objection/No-Objection" letter on the Draft Scheme to SEBI.
- 5.7. The stock exchanges shall forward their "Objection/No-Objection" letter on the Draft Scheme to SEBI within 30 days from the date of application or within 7 days of date of receipt of satisfactory reply on clarifications from the company and/or opinion from independent chartered accountant, if any sought by stock exchanges, as applicable.



- 5.8. The stock exchanges, upon receipt of comments from SEBI, as referred to in Clause 5.10 below, shall issue Observation Letter to the listed company after suitably incorporating the comments received from SEBI. Stock exchanges shall provide 'Observation Letter' to listed company within 7 days of receipt of comments from SEBI on the Draft Scheme.

C. Processing of the Draft Scheme by SEBI

- 5.9. Upon receipt of "Objection/No-Objection" letter from the stock exchanges, SEBI shall provide its comments on the Draft Scheme to the stock exchanges. While processing the Draft Scheme, SEBI may seek clarifications from any person relevant in this regard including the listed company or the stock exchanges and may also seek an opinion from an Independent Chartered Accountant.
- 5.10. SEBI shall endeavour to provide its comments on the Draft Scheme to the stock exchanges within 30 days from the later of the following:
- date of receipt of satisfactory reply on clarifications, if any sought from the company by SEBI; or
 - date of receipt of opinion from Independent Chartered Accountant, if sought by SEBI; or
 - date of receipt of "Objection/No-Objection" letter from the stock exchanges.

D. Disclosure on the Website

- 5.11. Immediately upon filing of the Draft Scheme with the stock exchanges under Clause 5.1 above, the listed company shall disclose the Draft Scheme and all the documents mentioned in Clause 5.1 above on its website. It shall also disclose the Observation Letter of the stock exchanges on its website within 24 hours of receiving the same.
- 5.12. The stock exchanges where the specified securities are listed / proposed to be listed shall also disclose on their websites the Draft Scheme and documents listed at Clause 5.1 above immediately on receipt. It shall also disclose the Observation Letter on its website immediately upon issuance.

E. Redressal of Complaints:

- 5.13. All complaints/comments received by SEBI on the Draft Scheme shall be forwarded to the designated stock exchange, for necessary action and resolution by the listed company. Listed company 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 company or forwarded to it by the stock exchanges) prior to obtaining Observation Letter from stock exchanges on Draft Scheme.



5.14. Listed companies shall also include the 'Complaints Report' in the notice sent to the shareholders while seeking approval of the Scheme. 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.

5.15. 'Complaints Report' as mentioned above, shall be submitted by listed companies 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 listed at Clause 5.1 above on the websites of stock exchanges and the listed company. The stock exchanges shall thereafter submit the 'Complaints Report' to SEBI. Such Report shall be submitted as per the format specified at Annexure II to this Circular.

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

5.16. Listed companies shall ensure that the Scheme submitted with the Hon'ble High Court for sanction, provides for obtaining shareholders' approval through special resolution passed 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. The Scheme shall also provide that the special resolution shall be acted upon only if the votes cast by public shareholders in favor of the proposal amount to at least two times the number of votes cast by public shareholders against it.

II. Requirements after the Scheme is Sanctioned by the Hon'ble High Court (hereinafter referred to as "Approved Scheme")

5.17. Upon sanction of the Scheme by the Hon'ble High Court, the listed company shall submit the documents mentioned in Para 2 of Part B of Annexure I to this Circular, to the stock exchanges.

5.18. The designated stock exchange shall forward its recommendations to SEBI on the documents submitted by the listed company as referred to in Clause 5.17 above.

5.19. SEBI shall endeavour to offer its comments/approval, wherever applicable, to the designated stock exchange in 30 days.

6. **Validity of Observation Letter:** The validity of the 'Observation Letter' of stock exchanges shall be six months from the date of issuance, within which the Scheme shall be submitted to the Hon'ble High Court.

7. **Applicability:** The revised requirements shall be applicable to listed companies which, on the date of this Circular, have not submitted the Scheme with the Hon'ble High Court. It is clarified that the revised requirements shall also be applicable in cases wherein the companies have submitted the Draft Scheme with the stock exchanges under Clause 24(f) of Listing Agreement and such schemes have not yet been submitted with the Hon'ble High Court for approval. Therefore, the companies



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that have submitted the Draft Scheme with the stock exchanges and have already received approval thereon but have not yet submitted to the Hon'ble High Court, shall be required to resubmit the same in accordance with the requirements of this Circular.

8. For consideration of applications involving Schemes of Arrangement, Warrants along with NCDs, and Issuance of Equity shares with Differential Rights, the detailed requirements to be complied with are mentioned in Annexure I to this Circular.
9. **Repeal and Saving:** Pursuant to issuance of this Circular, SEBI Circular No. SEBI/CFD/SCRR/01/2009/03/09 dated September 03, 2009 stands rescinded. Notwithstanding such rescission, anything done or any action taken or pending in respect of the said Circular shall continue to be dealt under SEBI Circular No. SEBI/CFD/SCRR/01/2009/03/09 except as expressly provided under Clause 7 of this Circular.
10. The stock exchanges are advised to take into account the requirements of this Circular and to bring the same to the notice of the companies listed on their exchange.
11. This Circular is issued in exercise of the powers conferred under Section 11 and Section 11A of the SEBI Act, 1992 read with Rule 19(7) of SCRR, 1957.
12. This Circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and "Issues and Listing".

Yours faithfully

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Annexure I	Part A	Requirements for Listed Companies While Submitting Draft Scheme of Arrangement
	Part B	Requirements for Stock Exchanges/Listed companies while Submitting Scheme Sanctioned by the Hon'ble High Court
	Part C	Application by a Listed Issuer for Listing of Equity Shares with Differential Rights as to Dividend, Voting or Otherwise
	Part D	Application by a Listed Issuer for Listing of Warrants Offered Along With Non Convertible Debentures (NCDs)
	Part E	Miscellaneous
Annexure II		Format for Complaints Report



PART A

Requirements for Listed Companies While Submitting Draft Scheme of Arrangement

1. A listed issuer may submit the Draft Scheme 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;
 - 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;
 - 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. The listed company shall submit the following documents to the Stock Exchanges:
 - a. Draft Scheme of arrangement/ amalgamation/ merger/ reconstruction/ reduction of capital, etc.;
 - b. Valuation Report from Independent Chartered Accountant;
 - c. Report from the Audit Committee recommending the Draft Scheme, taking into consideration, inter alia, the Valuation Report as stated in Para (b) above. The Valuation Report mentioned in Para (b) above is required to be placed before the Audit Committee of the listed company;
 - d. Fairness opinion by merchant banker;
 - 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. Compliance with Clause 49 of Listing Agreement; and
 - h. Complaints Report as per Annexure II of this Circular.



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3. Draft Scheme along with various documents submitted (as stipulated in Para 2 above), shall be displayed from the date of filing of Draft Scheme with the stock exchanges on the websites of:
 - a. the listed company; and
 - b. the stock exchanges where the specified securities are proposed to be listed.



PART B

Requirements for Stock Exchanges/Listed companies while Submitting Scheme Sanctioned by the Hon'ble High Court

1. 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 A of this Circular if it satisfies the following conditions:
 - a. Observation Letter has been issued by the stock exchanges to the Draft Scheme;
 - 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 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); and
 - d. The share certificates have been dispatched to the allottees pursuant to the Scheme or their names have been entered as beneficial owner in the records of the depositories.
2. Upon sanction of the Scheme by the Hon'ble High Court, the listed company shall submit 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 vis-à-vis the Draft Scheme
 - d. Status of compliance with the Observation Letter/s of the stock exchanges
 - e. The application seeking exemption from Rule 19(2)(b) of SCRR, 1957, wherever applicable; and
 - f. Complaints Report as per Annexure II 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 per cent. 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 transferee entity shall confirm that it has taken steps for listing of its equity shares, 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 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.



PART C

Application by a Listed Issuer for Listing of Equity Shares with Differential Rights as to Dividend, Voting or Otherwise

1. A listed issuer 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 the equity listing agreement, 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 the equity listing agreement.



PART D

**Application by a Listed Issuer for Listing of Warrants Offered Along With
Non Convertible Debentures (NCDs)**

1. A listed issuer, 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.



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PART E Miscellaneous

1. An application to the Board under Part B, Part C or Part D shall be made through the designated stock exchange of the listed company and the designated stock exchange shall forward the application along with its recommendations, giving reasons in writing to the Board.
2. 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.



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.			