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The Managing Director / Executive Director / Administrator of All Stock Exchanges

Dear Sirs,

Sub.: Amendments to Clause 40A and Clause 35 of Equity Listing Agreement

- I. In order to ensure availability of floating stock on a continuous basis and to bring about greater transparency in respect of disclosure of shareholding pattern of companies, SEBI has decided to bring in the following policy changes to the continuous listing requirements:

- 1. Minimum Level of public shareholding**

All listed companies, other than those mentioned hereunder, will be required to ensure minimum level of public shareholding at 25% of the total number of issued shares of a class or kind for the purpose of continuous listing:

- a. Companies which, at the time of initial listing, had offered less than 25% but not less than 10% of the total number of issued shares of a class or kind, in terms of Rule 19(2)(b) of Securities Contract (Regulation) Rules 1957 (SCRR) or companies desiring to list their shares by making an Initial Public Offering (IPO) of at least 10% in terms of Rule 19(2)(b) of SCRR.
- b. Companies which have, irrespective of the percentage of their shares with public at the time of initial listing, reached a size of two crore or more in terms of number of listed shares and Rs. 1000 crore or more in terms of market capitalization.

The companies at (a) and (b) above will be required to maintain the minimum level of public shareholding at 10% of the total number of issued shares of a class or kind for the purpose of continuous listing.

The aforesaid requirement of maintaining minimum level of public shareholding on a continuous basis will not be applicable to government companies (as defined under Section 617 of the Companies Act, 1956), infrastructure companies (as defined under clause 1.2.1(xv) of the SEBI (DIP) Guidelines, 2000) and companies referred to the Board for Industrial and Financial Reconstruction.

The “public shareholding” for the purpose of continuous listing, will continue to comprise of shares held by entities other than promoters and promoter group and shares held by custodians against which depository receipts are issued overseas. The terms “Promoter” and “Promoter group” shall have the same meaning as is assigned to them under the SEBI (Disclosure & Investor Protection) Guidelines, 2000.

2. Increasing the public shareholding to the minimum level

As on the date of this circular coming into force, there may be two categories of companies, viz., those which are non-compliant and those which may subsequently become non-compliant on account of factors such as compliance with directions of a court, tribunal, regulatory or statutory authority, compliance with SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, re-organization of capital by way of a scheme of arrangement, etc.

It has been decided to provide a transparent mechanism to such non-compliant companies for enabling them to graduate to the level of compliant companies. The mechanism for increasing the public shareholding to the minimum level will inter alia provide for various modes of issuing shares in domestic market and reasonable time period, as approved by Specified Stock Exchange.

3. Revision in the reporting format for shareholding pattern

It has been decided to revise the existing reporting format of shareholding pattern provided in Clause 35 of the Listing Agreement. The shareholding pattern will now be indicated under three categories, viz., “shares held by promoter and promoter group”, “shares held by public” and “shares held by custodians and against which Depository Receipts have been issued.”. Further, details such as number of shareholders, number and percentage of shares held, number of shares held in dematerialized form, etc. will be given for all the three categories. It is clarified that for the purpose of Clause 40A, percentage of “public shareholding” shall be computed as “shares held by public” as a percentage of “total number of shares held by promoters, promoter group and public”.

II. Applicability

1. The revised Clause 40A of Equity Listing Agreement shall come into force with effect from May 1, 2006.
2. The revised Clause 35 of Equity Listing Agreement shall come into force with immediate effect. The quarterly reporting as per the revised Clause 35 shall start from quarter ending June 30, 2006.

III. Direction to Stock Exchanges

1. All Stock Exchanges are advised to do the following before the date of this circular coming into force, i.e., by May 1, 2006 :
 - a. Give effect to the above mentioned policies and appropriately amend Clause 40A and Clause 35 of Equity Listing Agreement in line with the text of the amendments specified in **Annexure I** and **II**.
 - b. Make consequential changes, if any, in other clauses of Equity Listing Agreement, e.g., Clause 41.
2. All Stock Exchanges are further advised to do the following:
 - a. Monitor compliance with the minimum level of public shareholding, based on quarterly returns submitted by companies.
 - b. Submit a report to SEBI on quarterly basis as per the format specified in **Annexure III**. The said report shall be submitted within 45 days of the end of each quarter, first such report to be submitted for the quarter ending June 30, 2006.
 - c. Communicate to SEBI, status of implementation of the requirements of this circular in the next Monthly Development Report.
3. Specified Stock Exchanges are advised to grant necessary approvals as specified in Clause 40A after examining and satisfying themselves about the circumstances of the case and after recording reasons in writing. The decision taken by Specified Stock Exchanges shall be binding on other Stock Exchanges on which the shares of the company are listed.

- IV. This circular is issued in exercise of powers conferred by sub-section (1) of Section 11, read with sub-section (2) of Section 11A, of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in

securities and to promote the development of, and to regulate the securities market. The provisions of SEBI circular no. SMDRP/POLICY/CIR-28/01 dated May 02, 2001 regarding Clause 40A of Equity Listing Agreement shall stand superseded with effect from May 1, 2006. The provisions of SEBI circular no. SMDRP/POLICY/CIR-7/01 dated February 1, 2001 regarding Clause 35 of Equity Listing Agreement shall stand superseded with immediate effect.

V. This circular is available on SEBI website at www.sebi.gov.in.

Yours faithfully,

Neelam Bhardwaj

Encl.: 1. Annexure I - Revised Clause 40A of Equity Listing Agreement.
2. Annexure II - Revised Clause 35 of Equity Listing Agreement
3. Annexure III - Format of Report indicating Compliance with Minimum level of Public Shareholding (Clause 40A of Equity Listing Agreement).

ANNEXURE I

The existing Clause 40A of Equity Listing Agreement shall be substituted by the following, namely:-

“40A Minimum level of public shareholding

- (i) The company agrees to maintain on a continuous basis, public shareholding of at least 25% of the total number of issued shares of a class or kind, for every such class or kind of its shares which are listed.
- (ii) Where the company offers or has in the past offered a particular class or kind of its shares to the public to the extent of at least 10% of the issue size in terms of Rule 19(2)(b) of the Securities Contracts (Regulations) Rules, 1957, it agrees to maintain on a continuous basis, public shareholding of at least 10% of the total number of issued shares of such class or kind.
- (iii) Where the number of outstanding listed shares of any class or kind of the company are two crore or more and the market capitalization of such company in respect of shares of such class or kind is Rs. 1000 crore or more, it agrees to maintain on a continuous basis, public shareholding of at least 10% of the total number of issued shares of such class or kind.
- (iv) Where, as on May 1, 2006, the shares of a particular class or kind issued by the company are listed and the public shareholding in respect of shares of such class or kind is less than 25% or 10%, as the case may be, of the total number of issued shares of such class or kind, the company agrees to increase public shareholding in respect of shares of such class or kind to 25% or 10%, as the case may be, within such period as may be approved by the Specified Stock Exchange (SSE) but not exceeding two years from the said date.

Provided that the SSE may, on an application made by the company and after satisfying itself about the adequacy of steps taken by the company to increase its public shareholding and genuineness of the reasons submitted by the company for not reaching the minimum level of public shareholding and after recording reasons in writing, extend the time for compliance with the requirement of minimum level of public shareholding by a further period not exceeding one year.

- (v) Where the public shareholding in a company in respect of shares of such class or kind is less than 25% or 10%, as the case may be, of the total number of issued shares of such class or kind, the company agrees not to dilute in any way its public shareholding, except for supervening extraordinary events, including, but not limited to events specified in sub-clause (vii) of Clause 40A, with the prior approval of the SSE.

(vi) The company agrees not to make any allotment of its shares to its promoters or entities belonging to its promoter group, except on account of supervening extraordinary events, including, but not limited to events specified in sub-clause (vii) of Clause 40A, or make any offer to buyback its shares or buy its shares for the purpose of making sponsored issuance of depository receipts or take any other step, including issuance of depository receipts, if it results in reducing the public shareholding below the minimum level of 25% or 10%, as the case may be.

(vii) Where the public shareholding in any class or kind of shares of a company falls below the minimum level of public shareholding on account of supervening extraordinary events, including, but not limited to -

- (a) issuance or transfer of shares in compliance with directions of a regulatory or statutory authority or court or tribunal;
- (b) issuance or transfer of shares in compliance with the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997;
- (c) re-organization of capital by way of a scheme of arrangement; and
- (d) issuance or transfer of shares under a restructuring plan approved in compliance with the Corporate Debt Restructuring System laid down by the Reserve Bank of India,

the SSE may, after examining and satisfying itself about the circumstances of the case and after recording reasons in writing, extend the time for compliance with the requirement of minimum level of public shareholding by a further period not exceeding one year.

Provided that the SSE may, on an application made by the company and after satisfying itself about the adequacy of steps taken by the company to increase its public shareholding and genuineness of the reasons submitted by the company for not reaching the minimum level of public shareholding and after recording reasons in writing, extend the time for compliance with the requirement of minimum level of public shareholding by a further period not exceeding one year.

(viii) The company agrees that in the event of sub-clauses (iv) or (vi) becoming applicable, it shall forthwith adopt any of the following methods to raise the public shareholding to the minimum level:

- (a) issuance of shares to public through prospectus;
- (b) offer for sale of shares held by promoters to public through prospectus;
- (c) sale of shares held by promoters through the secondary market; or
- (d) any other method which does not adversely affect the interest of minority shareholders.

Provided that for the purpose of adopting methods specified at sub-clauses (c) and (d) above, the company agrees to take prior approval of the SSE which may impose such conditions as it deems fit.

- (ix) Where a company fails to comply with this clause, its shares shall be liable to be delisted in terms of the Delisting Guidelines / Regulations, if any, prescribed by SEBI in this regard and the company shall be liable for penal actions under the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992.
- (x) Nothing contained in sub-clauses (i) to (vii) shall apply to—
 - (a) a company in respect of which reference is or has been made to the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 or to the National Company Law Tribunal under Section 424A of the Companies Act, 1956 and such reference is pending or a company in respect of which any rehabilitation scheme is sanctioned by the Board for Industrial and Financial Reconstruction or the National Company Law Tribunal pursuant thereto and is pending full implementation or any appeal is pending regarding such reference or scheme before the Appellate Authority for Industrial and Financial Reconstruction or National Company Law Appellate Tribunal;
 - (b) a government company as defined under Section 617 of the Companies Act, 1956; or,
 - (c) an infrastructure company as defined in clause 1.2.1(xv) of the SEBI (Disclosure and Investor Protection) Guidelines, 2000.

Explanation: For the purposes of this clause—

1. The term “market capitalization” shall mean the average market capitalization for the previous financial year. The average shall be computed as the sum of daily market capitalization over one year, divided by the number of trading days. The market capitalization so arrived at shall be considered for the succeeding four quarters.
2. The term “public shareholding” shall exclude –
 - (a) shares held by promoters and promoter group; and
 - (b) shares which are held by custodians and against which depository receipts are issued overseas.
3. The terms “promoter” and “promoter group” shall have the same meaning as is assigned to them under Explanations I, II and III to sub-clause (m) of clause 6.8.3.2 of the SEBI (Disclosure and Investor Protection) Guidelines, 2000.

Provided that for the purposes of Clause 40A, clause (c) of the said Explanation I shall be read as under:

“the person or persons named in the prospectus as promoter(s) or the person or persons named as promoter(s) in the filings with the stock exchanges, whichever is later.”

4. The terms “prospectus” and “Qualified Institutional Buyers” shall have the same meaning as is assigned to them under the SEBI (Disclosure and Investor Protection) Guidelines, 2000.
5. The term “Specified Stock Exchange (SSE)” shall mean -
 - (a) in cases where the company is listed in one stock exchange only, then that stock exchange;
 - (b) in cases where the company is listed in one or more than one stock exchange having nation wide trading terminal and / or in one or more stock exchange not having nation wide trading terminal, then all such stock exchanges having nation wide trading terminals ; and
 - (c) in cases where the company is listed in more than one stock exchange and all such stock exchanges do not have nationwide trading terminals, then the stock exchange which was chosen as the Designated Stock Exchange by the company for the previous issue of its shares. Or the regional Stock Exchange, as may be applicable.

Annexure II

The existing Clause 35 of Equity Listing Agreement shall be substituted by the following, namely: -

“35. The company agrees to file the following details with the Exchange on a quarterly basis, within 21 days from the end of each quarter, in the format specified as under:

(I)(a) **Statement showing Shareholding Pattern**

Name of the Company:	
Scrp Code:	Quarter ended:

Category code	Category of shareholder	Number of shareholders	Total number of shares	Number of shares held in de materialized form	Total shareholding as a percentage of total number of shares	
					As a percentage of (A+B) ¹	As a percentage of (A+B+C)
(A)	Shareholding of Promoter and Promoter Group²					
(1)	Indian					
(a)	Individuals/ Hindu Undivided Family					
(b)	Central Government/ State Government(s)					
(c)	Bodies Corporate					
(d)	Financial Institutions/ Banks					
(e)	Any Other (specify)					
	Sub-Total (A)(1)					
(2)	Foreign					
(a)	Individuals (Non-Resident Individuals/ Foreign					

¹ For determining public shareholding for the purpose of Clause 40A.

² For definitions of “Promoter” and “Promoter Group”, refer to Clause 40A.

	Individuals)					
(b)	Bodies Corporate					
(c)	Institutions					
(d)	Any Other (specify)					
	Sub-Total (A)(2)					
	Total Shareholding of Promoter and Promoter Group (A)= (A)(1)+(A)(2)					
(B)	Public shareholding³					
(1)	Institutions					
(a)	Mutual Funds/ UTI					
(b)	Financial Institutions/ Banks					
(c)	Central Government/ State Government(s)					
(d)	Venture Capital Funds					
(e)	Insurance Companies					
(f)	Foreign Institutional Investors					
(g)	Foreign Venture Capital Investors					
(h)	Any Other (specify)					
	Sub-Total (B)(1)					
(2)	Non-institutions					
(a)	Bodies Corporate					
(b)	Individuals - i. Individual shareholders holding nominal share					

³ For definitions of "Public Shareholding", refer to Clause 40A.

	capital up to Rs. 1 lakh . ii. Individual shareholders holding nominal share capital in excess of Rs. 1 lakh.					
(c)	Any Other (specify)					
	Sub-Total (B)(2)					
	Total Public Shareholding (B)= (B)(1)+(B)(2)					
	TOTAL (A)+(B)					
(C)	Shares held by Custodians and against which Depository Receipts have been issued				xxx	
	GRAND TOTAL (A)+(B)+(C)				xxx	

(l)(b) **Statement showing Shareholding of persons belonging to the category “Promoter and Promoter Group”**

Sr. No.	Name of the shareholder	Number of shares	Shares as a percentage of total number of shares {i.e., Grand Total (A)+(B)+(C) indicated in Statement at para (l)(a) above}
1.			
2.			
TOTAL			

(l)(c) **Statement showing Shareholding of persons belonging to the category “Public” and holding more than 1% of the total number of shares**

Sr. No.	Name of the shareholder	Number of shares	Shares as a percentage of total number of shares {i.e., Grand Total (A)+(B)+(C) indicated in Statement at para (l)(a) above}
1.			
2.			
TOTAL			

(I)(d) **Statement showing details of locked-in shares**

Sr. No.	Name of the shareholder	Number of locked-in shares	Locked-in shares as a percentage of total number of shares {i.e., Grand Total (A)+(B)+(C) indicated in Statement at para (I)(a) above}
1.			
2.			
TOTAL			

(II)(a) **Statement showing details of Depository Receipts (DRs)**

Sr. No.	Type of outstanding DR (ADRs, GDRs, SDRs, etc.)	Number of outstanding DRs	Number of shares underlying outstanding DRs	Shares underlying outstanding DRs as a percentage of total number of shares {i.e., Grand Total (A)+(B)+(C) indicated in Statement at para (I)(a) above}
1.				
2.				
TOTAL				

(II)(b) **Statement showing Holding of Depository Receipts (DRs), where underlying shares are in excess of 1% of the total number of shares**

Sr. No.	Name of the DR Holder	Type of outstanding DR (ADRs, GDRs, SDRs, etc.)	Number of shares underlying outstanding DRs	Shares underlying outstanding DRs as a percentage of total number of shares {i.e., Grand Total (A)+(B)+(C) indicated in Statement at para (I)(a) above}
1.				
2.				
TOTAL				

ANNEXURE III

Report indicating Compliance with Minimum level of Public Shareholding **(Clause 40A of Equity Listing Agreement)**

For quarter ending on

Sr. No.	Particulars	As at the end of previous quarter ending on	As at the end of current quarter ending on
(A)	Total number of listed companies		
(B)	Number of listed companies having public shareholding as required under Clause 40A(i), (ii) and (iii)		
(C)	Number of listed companies not having public shareholding as required under Clause 40A(i), (ii) and (iii)		
(D)	Out of (C) above, number of listed companies which have initiated steps as required under Clause 40A(iv)		
(E)	Details of extensions/ exemptions, if any, granted by Specified Stock Exchanges		