

Regulatory Update

Amendments to SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999

SEBI wide its circular no. SEBI/CFD/DIL/ESOP/5/2009/03/09 dated September 3, 2009, has amended the guidelines.

All disclosures relating to public issue are now covered under the new SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009. The disclosures relating to IPO have been deleted from the ESOP guidelines accordingly.

The amendments have been summarized here.

1. Clause 15

Clause 15 which dealt with disclosures to be made in the prospectus on IPO has been deleted. These clauses now form part of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 under Schedule VIII, Part A, Clause VI (D) (2) (r).

The deleted clause has been reproduced below -

“15. Options outstanding at Public Issue:

15.1 The provisions of the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines prohibiting initial public offering by companies having outstanding warrants and financial instruments shall not be applicable in case of outstanding option granted to employees in pursuance of ESOS.

15.2 If any option is outstanding at the time of an initial public offering by a company, the promoters' contribution shall be calculated with reference to the enlarged capital which would arise on exercise of all vested options.

15.3 If any options granted to employees in pursuance of pre-IPO ESOS are outstanding at the time of IPO, the IPO document of the company shall disclose all the information specified in clause 12.1 and also the following information:

(a) The impact on the profits and on the EPS of the last three years if the company had followed the accounting policies specified in clause 13 in respect of options granted in the last three years.

(b) The intention of the holders of shares allotted on exercise of option granted under ESOS or allotted under ESPS, to sell their shares within three (3) months after the date of listing of shares in such IPO (aggregate number of shares intended to be sold by option holders), if any, has to be disclosed. In case of ESOS the same shall be

disclosed regardless of whether the shares arise out of options exercised before or after the IPO.

(c) Specific disclosures about the intention to sell shares arising out of ESOS or allotted under ESOS within three (3) months after the date of listing, by directors, senior managerial personnel and employees having ESOS or ESOS shares amounting to more than 1% of the issued capital (excluding outstanding warrants and conversions), which inter-alia shall include name, designation and quantum of ESOS or ESOS shares and quantum they intend to sell within three (3) months.”

2. Clause 22.2

The clause talked about listing of shares arising out of a pre-IPO scheme if the Company complies with Clause 15.3 and 22.2A. This clause has been amended to insert compliance with SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 instead of the deleted clause 15.3.

The Clause now reads as follows -

“22.2 The shares arising after the IPO, out of options granted under any ESOS framed prior to its IPO shall be listed immediately upon exercise in all the recognized stock exchanges where the equity shares of the company are listed subject to compliance with ~~clause 15.3~~ **SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009** and, where applicable, clause 22.2A.”

3. Clause 22.3

This clause required application to the Central Listing Authority as per SEBI (Central Listing Authority) Regulations, 2003. This requirement has been done away with.

The Clause now reads as follows -

“22.3 For listing of shares issued pursuant to ESOS or ESOS the company shall ~~make application to the Central Listing Authority as per SEBI (Central Listing Authority) Regulations, 2003 and~~ obtain the in-principle approval from Stock Exchanges where it proposes to list the said shares.”

4. Clause 22.4 and 22.5

These clauses dealt with the lock-in provisions for employees and promoters. These clauses have been deleted. They have been added in SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 under Chapter III, Part IV, Clause 36 (for promoters lock-in) and 37 (exemption to shares allotted to employees under an employee stock option or employee stock purchase scheme of the company prior to the public offer, if company complies with Part A of Schedule VIII).

The deleted clauses have been reproduced below -

“22.4 The provisions relating to lock-in of pre-IPO shares specified in SEBI (Disclosure and Investor Protection) Guidelines, 2000 shall not be applicable to the shares allotted to employees other than promoters before the IPO under a pre-IPO ESOS / ESPS, subject to compliance with clauses 15.3 and

22.5 The ESOS / ESPS shares held by the promoters prior to Initial Public offering shall be subject to lock-in as per the provisions of SEBI (Disclosure and Investor Protection) Guidelines, 2000.”