

**REVIEW OF PREFERENTIAL ISSUE GUIDELINES**  
**{CHAPTER XIII OF SEBI**  
**(DISCLOSURE AND INVESTOR PROTECTION) GUIDELINES, 2000}**

The [Primary Market Advisory Committee](#) (PMAC) has received suggestions regarding preferential issue guidelines and it has been decided to upload the same on SEBI website for inviting public comments. The suggestions can be viewed on SEBI's website ([www.sebi.gov.in](http://www.sebi.gov.in)) under the heading "Review of SEBI (DIP) Guidelines : Preferential Issue guidelines - Proposals –Series VII" in the section "Reports/Documents" and sub-classification "Reports for Public Comments". Comments on the same may be sent to Ms. Neelam Bhardwaj, DGM, Division of Issues & Listing, SEBI or emailed to [neelamb@sebi.gov.in](mailto:neelamb@sebi.gov.in) / [ushar@sebi.gov.in](mailto:ushar@sebi.gov.in) or faxed to 91-22-22045633 on or before December 31, 2004.

**Suggestions received on Chapter XIII of SEBI (DIP) Guidelines.**

**Price**

The proposed guidelines involve changes in the manner in which the minimum price is to be calculated. Instead of the weekly high and low of the closing prices of shares, the weighted average price of the shares based on all transactions on the exchange is to be reckoned. The weighted average price is more representative. The concept of 130 trading days and 10 trading days has been introduced, in place of six months and two weeks, to address situations arising out of quotations not being available on account of stock exchanges holidays. Adjustment for corporate action in calculation of price is a new requirement. A specific reference has been made to the provisions of Section 79 of the Companies Act, 1956, where the issue is at a discount.

For the purpose of identification of frequently or infrequently traded shares and valuation of infrequently traded shares, the provisions of SEBI (Substantial Acquisition of shares and Takeover) Regulations 1997, is being made applicable.

**Issue of Shares with Differential Voting Rights**

The concept of 'relevant equity shares' is being introduced to create the requisite regulatory framework for preferential issue of shares with differential voting rights in terms of Section 86 of the Companies act, 1956, read with Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001. In this context, to ensure the availability of reference stock market quotations, the requirement of prior listing for a minimum of 12 months has been introduced.

**Prohibit indirect dilution of price condition**

In order that there is no indirect dilution of the minimum price requirement, by advantageous issue terms on convertibles by way of discount on issue, premium on redemption and high coupon rates, a condition that the annual IRR of the instrument is not to exceed the PLR of SBI for a comparable tenure has been brought in.

### **Single 'relevant date' for Warrants**

The choice with respect to relevant dates for warrants available in terms of the current dispensation is dropped. With a single 'relevant date', the price at which shares are to be issued against the warrants is crystallized at the time of adoption of the resolution, with clarity on the minimum amount to be paid at the time of allotment of warrants.

### **Non-transferability - promoter and promoter group**

The existing condition with respect to lock-in on shares issued to promoter and promoter group is being made onerous with the requirement that the entire preferential allotment is to be locked-in for three years, without any reference to the "20% rule". Under the current dispensation, the operation of the non-transferability condition was dependent on the lock-in profile (the percentage of holding and the residual period of lock-in) of the pre-preferential holding of promoters and promoter group. This is sought to be de-linked. Further, an additional requirement extending the non-transferability condition to the pre-preferential issue holding of promoter and their relatives (enlarged definition as in Schedule 1A to the Companies Act) is introduced.

### **Disclosure in Explanatory Statement**

In terms of the proposed guidelines, more detailed disclosures are required in the Explanatory Statement of the Notice under Section 173(2) of the Companies Act.

### **Issues for Open Offer**

Issue of securities on a selective basis to the shareholders of a listed company may be required for effecting an open offer for acquisition of shares in that company in terms of the provisions of the SEBI (Substantial Acquisition of Shares and Take Over) Guidelines. A new clause has been introduced to deal with such issues and relaxations required in respect thereof duly specified.

### **Time-line**

The existing time-line of 15 days for completion of allotment from the date of resolution has been extended to 21 days with a caveat that, in addition to allotment, all effective steps for listing and trading should have been completed within the period.

### **Issues to Asset Reconstruction Companies**

Some of the relaxations provided for in the existing guidelines with respect to preferential issues under a scheme of corporate restructuring, as per the framework of the Reserve Bank of India, are being extended to preferential issues to securitisation and asset reconstruction companies referred to in Section 4A(1)(vii) of the Companies Act, 1956.

### **Issuers other than companies, etc.**

The guidelines seek to specifically cover preferential issues by issuers other than companies. Further, issues by issuers whose FCDs/PCDs, etc. *alone* are listed and not equity have also been specifically covered. Similarly instruments (which merely confer a right on the holder to apply for and get allotted equity shares) are to be issued in accordance with the guidelines if they are to be issued on a preferential basis. The existing reference to issue on a private placement basis has been dropped, in view of the proviso to sub-section (3) of Section 67 of the Companies Act, 1956.

### **Allotment in terms of Sec.81(3) of Companies Act 1956**

The scope of SEBI preferential issue guidelines is being enhanced to bring issue/allotment of shares under the provision of Section 81(3) of Companies Act, 1956 within the purview of Chapter XIII of SEBI (DIP) Guidelines, 2000.

## **PREFERENTIAL ISSUE GUIDELINES – CHAPTER XIII OF DIP**

### **COMPARATIVE STATEMENT**

<b>Existing Clause No.</b>	<b>Existing Guidelines</b>	<b>Revised Guidelines</b>	<b>Comments</b>
13.0	The preferential issue of equity shares/ Fully Convertible Debentures (FCDs) / Partly Convertible Debentures (PCDs) or any other financial instruments which would be converted into or exchanged with equity shares at a later date, by listed companies whose equity share capital is listed on any stock exchange, to any select group of persons under section 81(1A) of the Companies Act 1956 on private placement basis shall be governed by these guidelines.	<b>13.1.1</b> Preferential issue means issue of equity shares or securities convertible into or exchangeable for or conferring a right to apply for and get allotted equity shares of the issuer (by way of fully or partly, or compulsorily or optionally convertible preference shares, debentures, warrants or otherwise) made to a select group of persons pursuant to a resolution under Section 81(1-A) and Sec.81(3) of the Companies Act, 1956, in case the issuer is a company or under similar provisions applicable in the case of an issuer other than a company.	Preferential issue is being re-defined to include  (1) Issues by non-company issuers (example State Bank of India) (2) Instruments which confer a right to apply for and get allotted equity shares (3) Approval under a section corresponding to Section 81(1-A) in case of non-company issuers (4) Equity shares issued on conversion of convertible preference shares (5) To cover allotments under Sec.81(3) of Companies Act.
13.1	Such preferential issues by listed companies by way of equity shares/ Fully Convertible Debentures (FCDs) / Partly Convertible Debentures (PCDs) or any other financial instruments which would be converted into / exchanged with equity shares at a later date, shall be made in accordance with the pricing provisions mentioned below:		Covered in 13.1.2
13.1.1	<b>Pricing of the issue</b>	<b>13.4 Pricing of Issue, amount payable on allotment, etc.</b>	
13.1.1.1	<p>The issue of shares on a preferential basis can be made at a price not less than the higher of the following:</p> <p>i) The average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the six months preceding the relevant date;</p> <p>OR</p> <p>ii) The average of the weekly high and low of the closing prices of the related shares quoted on a stock exchange during the two weeks preceding the relevant date.</p> <p><b>Explanation</b></p> <p>a) "relevant date" for the purpose of this clause means</p>	<p><b>13.4.1</b> In case of frequently traded shares, Issue of equity shares on a preferential basis shall be at a price not lower than the higher of the following:</p> <p>(i) the average price of the relevant equity shares of the issuer for a period of one-hundred thirty trading days preceding the relevant date calculated by dividing the total value of the relevant equity shares traded during the period by the total number of relevant equity shares traded during the period; and</p> <p>(ii) the average price of the relevant equity shares of the issuer for a period of ten trading days preceding the relevant date calculated by dividing the total value of the relevant equity shares traded during the period by the total number of relevant equity shares traded during the period.</p> <p><b>13.4.2</b> In case of infrequently traded shares, the pricing of shares shall be done in terms of the relevant provisions of</p>	<p>Instead of 6 months and 2 weeks currently being used, it is proposed to introduce the concept of 130 and 10 trading days so that the effect of quotes not being available on account of stock exchanges being closed is eliminated. The concepts of month and week were susceptible to multiple interpretations which can be avoided by introducing the concept of trading day. Also being dropped is the concept of average of high and low. Instead the price being determined is the weighted average price for the period.</p>

Existing Clause No.	Existing Guidelines	Revised Guidelines	Comments
	<p>the date thirty days prior to the date on which the meeting of general body of shareholders is held, in terms of Section 81(1A) of the Companies Act, 1956 to consider the proposed issue.</p> <p>b) "stock exchange" for the purpose of this clause means any of the recognized stock exchanges in which the shares are listed and in which the highest trading volume in respect of the shares of the company has been recorded during the preceding six months prior to the relevant date.</p>	<p>SEBI(Substantial Acquisition of shares and Takeover) Regulations 1997.</p> <p><b>Explanation:</b></p> <p>Where the relevant equity shares of the issuer are listed on more than one exchange, the prices of the relevant equity shares of the issuer as reported by the exchange which has recorded the highest trading volume in respect of the relevant equity shares of the issuer during one-hundred thirty trading days preceding the relevant date shall be taken.</p> <p>'relevant equity shares' shall mean the equity shares of the issuer carrying rights identical in all respect, in terms of voting, dividend-entitlement or otherwise, to the shares proposed to be issued on a preferential basis .</p> <p>'relevant date' shall mean the date thirty days prior to the date on which the general meeting of the shareholders of the issuer is held to consider the issue in terms of Section 81(1-A) of the Companies Act or in the case of an issuer other than a company under the corresponding applicable provisions.</p> <p>Frequently traded shares and infrequently traded shares shall have the same meaning as assigned to them in SEBI (Substantial Acquisition of shares and Takeover) Regulations 1997.</p> <p><b>13.4.2</b> The prices referred to above shall be adjusted in an appropriate manner in the event the issuer had declared during the period of one-hundred thirty trading days referred to above any record date for effecting a corporate action in respect of equity shares of the issuer other than for the purpose of payment of dividend.</p> <p><b>13.4.3</b> Pricing of relevant equity shares to be allotted on conversion, exchange or other rights attached to an instrument issued on a preferential basis shall be determined in the same manner as specified above.</p> <p><b>13.4.4</b> No issuer shall make any preferential issue of equity shares at a price lower than its face value except in accordance with the provisions of Section 79 of the Companies Act, 1956.</p> <p><b>13.4.5</b> The annual internal rate of return (IRR) on any preferential issue of securities convertible into equity shares, derived by taking into account the issue price, coupon rate and redemption value</p>	<p>This concept is being introduced to take care of issue of shares with differential voting rights in terms of the amended provisions of Section 86 of the Companies Act, 1956 read with Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001.</p> <p>The existing guidelines do not provide for any such adjustment, whereas it is required. The non-inclusion of dividend is in line with the current practices adopted in the derivatives market.</p> <p>This is designed to explicitly make clear that compliance with Section 79 is a must in case of a company issuer.</p> <p>The idea is to prevent issue of shares on a preferential basis effectively at a price lower than the price envisaged, by paying to the allottee interest on the debt element at a rate higher than what is prevalent in the market or by issuing the securities at a discount or by paying a premium on redemption.</p>

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		shall not exceed the prime lending rate of the State Bank of India prevalent on the relevant date for a tenure similar to or nearer the tenure of the instrument.  <b>13.4.6</b> Equity shares or instruments convertible into equity shares issued on a preferential basis shall be fully paid-up on allotment.	
13.1.2	<b>Pricing of shares arising out of warrants, etc.</b>		
13.1.2.1	(a) Where warrants are issued on a preferential basis with an option to apply for and be allotted shares, the issuer company shall determine the price of the resultant shares in accordance with Clause 13.1.1.1 above.  (b) The relevant date for the above purpose may, at the option of the issuer be either the one referred in explanation (a) to Clause 13.1.1.1 above or a date 30 days prior to the date on which the holder of the warrants becomes entitled to apply for the said shares.		Covered in 13.4.3  Choice of relevant dates for warrants is done away with.
13.1.2.2	The resolution to be passed in terms of section 81(1A) shall clearly specify the relevant date on the basis of which price of the resultant shares shall be calculated.		Covered in 13.9.1
13.1.2.3	(a) An amount equivalent to atleast ten percent of the price fixed in terms of Clause 13.1.1.1 above shall become payable for the warrants on the date of their allotment.  (b) The amount referred to in sub-clause (a), shall be adjusted against the price payable subsequently for acquiring the shares by exercising an option for the purpose.  (c) The amount referred to in sub-clause (a) shall be forfeited if the option to acquire shares is not exercised.	<b>13.4.7</b> Not less than 10% of the price of the equity shares determined in terms of clauses 13.4.1 to 13.4.3 shall be payable at the time of allotment of warrant or such other instrument issued on a preferential basis, to be adjusted against the price payable for the shares or forfeited in case the option to apply for shares is not exercised.	
13.1.3	<b>Pricing of shares on conversion</b>		
13.1.3.1	Where PCDs/FCDs/other convertible instruments, are issued on a preferential basis, providing for the issuer to allot shares at a future date, the issuer shall determine the price at which the shares could be allotted in the same manner as specified for pricing of shares allotted in lieu of warrants as indicated in paras 13.1.2.1 &		Covered in 13.4.3

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	13.1.2.2 above.		
13.1A	<p>The explanatory statement to the notice for the general meeting in terms of section 173 of the Companies Act, 1956 shall contain -</p> <p>i. the object/s of the issue through preferential offer,</p> <p>ii. intention of promoters/directors/ key management persons to subscribe to the offer</p> <p>iii. shareholding pattern before and after the offer,</p> <p>iv. proposed time within which the allotment shall be complete</p> <p>v. the identity of the proposed allottees and the percentage of post preferential issue capital that may be held by them.</p> <p>A listed company shall not make any preferential issue of equity shares, Fully Convertible Debentures, Partly Convertible Debentures or any other instrument which may be converted into or exchanged with equity shares at a latter date if the same is not in compliance with the conditions for continuous listing.</p>	<p><b>13.9.1</b> The explanatory statement to the notice of the resolution circulated to the shareholders for approving the preferential issue shall contain:</p> <p>(i) the relevant date and the price as determined in accordance with Clauses 13.4.1 to 13.4.3;</p> <p>(ii) the objects of the issue and the manner in which the proceeds of the issue are to be deployed;</p> <p>(iii) the name and address and relationship between the proposed allottees and the issuer clearly indicating where the proposed allottees are promoter/promoter group, related parties, directors, their relatives and key management personnel; and</p> <p>(iv) the shareholding pattern before and after the issue, indicating separately the holdings (both in terms of number and percentage) in respect of each of the proposed allottee.</p> <p><b>13.1.2</b> No issuer whose equity shares or securities convertible into or exchangeable for or conferring a right to apply for and get allotted equity shares of the issuer are listed on any stock exchange shall make a preferential issue except in accordance with these guidelines and in compliance with the conditions for continuous listing.</p>	<p>The disclosure requirements are being strengthened.</p> <p>13.1.2 seeks to apply the guidelines even to those issuers whose FCDs/PCDs or other instruments convertible /exchangeable into equity shares alone are listed (Example: Noida Toll Bridge). That is, where an issuer whose equity shares are not listed seeks to make an issue which will result in creation of equity shares immediately or later.</p>
<b>13.2</b>	<b>Currency of financial instruments</b>	<b>13.5 Tenure</b>	
13.2.1	In case of Warrants/PCDs/FCDs/or any other financial instruments with a provision for the allotment of equity shares at a future date, either through conversion or otherwise, the currency of the instruments shall not exceed beyond 18 months from the date of issue of the relevant instrument.	<p><b>13.5.1</b> The tenure of any instrument issued on a preferential basis entitling the holder thereof to an allotment of equity shares by way of conversion, exchange or otherwise shall not exceed eighteen months from the date of allotment of the instrument.</p> <p>Provided that the tenure aforesaid shall not exceed thirty-six months from the date of allotment in case of a preferential issue to banks and lending institutions under a scheme of corporate debt restructuring as per the Corporate Debt Restructuring framework specified by the Reserve Bank of India or to a securitisation or reconstruction company referred to in Section 4A(1)(vii) of the Companies Act, 1956 whether acting for itself or as trustee.</p>	It is sought to allow a longer duration for securities issued to banks pursuant to a corporate debt restructuring scheme of the RBI or in the case of securities issued to a securitisation or reconstruction company referred to in Section 4A(1)(vii) of the Companies Act.
<b>13.3</b>	<b>Non-transferability of financial instruments</b>	<b>13.6 Non-transferability and Lock-in</b>	
13.3.1	(a) The instruments allotted on a preferential basis to the promoter / promoter group as defined in Chapter VI in Clause [6.4.2 (m)] of these guidelines, shall be subject to lock-in of 3	<b>13.6.1</b> Instruments issued on a preferential basis to the promoter or promoter group (as defined in the Explanations to Clause 6.4.2 of Chapter VI of these Guidelines) shall not be transferable for a period of three years	The current reference to 20% lock-in is being removed. The idea is that since promoters are in a dominant position, and have a long-term stake in the company, any preferential issue to them would need to be non-

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	<p>years from the date of their allotment.</p> <p>(b) In any case, not more than 20% of the total capital of the company, including capital brought in by way of preferential issue, shall be subject to lock-in of three years from the date of allotment.</p> <p>(c) In addition to the requirements for lock in of instruments allotted on preferential basis to promoters/promoter group as per clause 13.3.1 (a) and (b), the instruments allotted on preferential basis to any person including promoters/promoters group shall be locked-in for a period of one year from the date of their allotment</p> <p>(d) The lock-in on shares acquired by conversion of the convertible instrument /exercise of warrants, shall be reduced to the extent the convertible instrument warrants have already been locked-in.</p> <p>(e) the lock-in period in respect of the shares issued on preferential basis pursuant to a scheme approved under Corporate Debt Restructuring framework of Reserve Bank of India, shall commence from the date of allotment and shall continue for a period of one year and in case of allotment of partly paid up shares the lock-in period shall commence from the date of allotment and continue for a period of one year from the date when shares become fully paid up.</p> <p>(f) no listed company shall make preferential issue of equity shares / warrants / convertible instruments to any person unless the entire shareholding of such persons in the company, if any, is held by him in dematerialized form.</p> <p>(g) where the shares / warrants/ convertible instruments are issued on preferential basis, the entire pre preferential allotment</p>	<p>from the date of its allotment and shall be subject to lock-in accordingly.</p> <p><b>13.6.2</b> Instruments issued on a preferential basis to a person other than the promoter or promoter group (as defined in the Explanations to Clause 6.4.2 of Chapter VI of these Guidelines) shall not be transferable for a period of one year from the date of its allotment and shall be subject to lock-in accordingly.</p> <p><b>13.6.3</b> The period of lock-in on equity shares arising out of a preferential issue of any instrument convertible into or exchangeable for equity shares shall not extend beyond three years from the date of allotment of the instrument pursuant to a preferential issue in the case of promoter and promoter group and one year in any other case.</p> <p><b>13.7.1</b> No issuer shall make any preferential issue to any person unless the entire shareholding of such person in the issuer is held in the electronic form with a depository.</p> <p><b>13.7.2</b> Any issue of security pursuant to these guidelines shall be in electronic form only.</p> <p><b>13.6.4</b> No issuer shall make any preferential issue to a promoter or a person belonging to the promoter group (as defined in the Explanations to Clause 6.4.2 of Chapter VI of these Guidelines) unless the entire pre-preferential issue shareholding of such person and of his relative (as defined in Schedule 1A to the Companies Act, 1956) is under lock-in from the relevant date up to six months from the date of allotment pursuant to the issue. Provided that in the case of a preferential issue to any other person only the person's entire pre preferential issue shareholding shall be required to be under lock-in for the aforesaid period.</p> <p><b>13.8.1</b> No issuer shall make any preferential issue to a promoter or a person belonging to the promoter group</p>	<p>transferable for a period of three years. The existing arrangement applying a reference to 20% rule leads to anomalous situations.</p> <p>The expression 'dematerialized form' is being replaced by 'electronic form'.</p> <p><b><u>The condition of non-sale is being extended even to relatives in case of promoters/promoter group. This</u></b></p>



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13.3.2	<p>shareholding of such allottees shall be under lock – in from the relevant date upto a period of six months from the date of preferential allotment.</p> <p>(h) where the shares / warrants / convertible instruments are issued on preferential basis, the shareholders who have sold their shares during the six months period prior to the relevant date shall not be eligible for allotment of shares on preferential basis.”</p> <p><b>EXPLANATION:</b>  (a) For the purpose of this clause “total capital” of the company shall mean -  (i) equity share capital issued by way of public/rights issue including equity shares emerging at a later date out of any convertible securities/exercise of warrants and  (ii) equity shares or any other security convertible at a later date into equity issued on a preferential basis in favour of promoter/promoter groups.  (b)  (i) For computation of 20% of the total capital of the company, the amount of minimum promoters contribution held and locked-in, in the past as per guidelines shall be taken into account.  (ii) The minimum promoters contribution shall not again be put under fresh lock-in, even though it is considered for computing the requirement of 20% of the total capital of the company, in case the said minimum promoters contribution is free of lock-in at the time of the preferential issue.</p> <p>These locked in shares/instruments may be transferred to and amongst promoter/promoter group or to a new promoter(s) or person(s) in control of the company, subject to continuation of lock-in in the hands of transferee(s) for the</p>	<p>(as defined in the Explanations to Clause 6.4.2 of Chapter VI of these Guidelines) if such person or the relative (as defined in Schedule 1A to the Companies Act, 1956) of the promoter has sold and/or transferred any equity share of the issuer during the period of six months prior to the relevant date.</p> <p><b>13.8.2</b> No issuer shall make any preferential issue to a person not being a person who is a promoter or a person belonging to the promoter group if such other person has sold and/or transferred any equity shares of the issuer during the period of six months prior to the relevant date.</p> <p><b>13.6.5</b> <i>Inter-se</i> transfer of instruments allotted to promoter/promoter group pursuant to a preferential issue is permissible provided such transfer is in accordance with the requirements of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 as applicable.</p>	<p><b><u>is required as non-transferability clause does not restrict inter-se transfer.</u></b></p> <p>Reference to 20% is not relevant as the entire preferential issue is to be locked for 3 years.</p>

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	remaining period and compliance of Securities and Exchange Board of India (Substantial Acquisition of shares and Takeovers) Regulations, 1997, as applicable.		
13.4	<b>Currency of shareholders resolutions</b>	<b>13.11 Issue Completion</b>	
13.4.1	<p>Allotment pursuant to any resolution passed at a meeting of shareholders of a company granting consent for preferential issues of any financial instrument, shall be completed within a period of fifteen days from the date of passing of the resolution</p> <p>Provided that where the allotment on preferential basis is pending on account of pendency of any approval of such allotment by any regulatory authority or the Central Government, the allotment shall be completed within 15 days from the date of such approval.</p>	<p><b>13.11.1</b> Allotment of equity shares or other instrument pursuant to a preferential issue and all effective steps for listing and trading thereof shall be completed not later than twenty-one days from the date of adoption of the resolution for issue by the shareholders of the issuer.</p> <p>Provided that where approvals are required from any regulatory authority or the Central Government the issuer shall complete the allotment and take all effective steps for listing and trading not later than twenty-one days from the date of last such approval.</p>	The current time period of 15 days is being extended to 21 days. However, the requirement of all effective steps for listing and trading is being imposed.
13.4.2	The equity shares and securities convertible into equity shares at a later date, allotted in terms of the above said resolution shall be made fully paid up at the time of their allotment.	<b>13.4.8</b> Equity shares allotted on conversion, exchange or otherwise of any instrument issued on a preferential basis shall be fully paid-up at the time of such allotment.	This condition is being made explicit.
13.4.2A	<p>Nothing contained in clauses 13.4.1 and 13.4.2 shall apply in case of allotment of shares and securities convertible into equity shares at a later date on preferential basis pursuant to a scheme of corporate debt restructuring as per the Corporate Debt Restructuring framework specified by the Reserve Bank of India</p> <p><b>Provided that</b> payment in case of warrants shall be made in terms of clause 13.1.2.3 above.</p>	<b>13.12.1</b> Nothing contained in clauses 13.4.6, 13.4.8 and 13.11.1 shall apply in case of allotment of equity shares or securities convertible into or exchangeable for or conferring a right to apply for and get allotted equity shares of the issuer (by way of fully or partly, or compulsorily or optionally convertible preference shares, debentures, warrants or otherwise) pursuant to a preferential issue to banks and lending institutions under a scheme of corporate debt restructuring as per the Corporate Debt Restructuring framework specified by the Reserve Bank of India or to a securitisation or reconstruction company referred to in Section 4A(1)(vii) of the Companies Act, 1956 whether acting for itself or as trustee.	The proposal seeks to allow more leeway in case of preferential issues pursuant to a scheme of corporate debt restructuring of the RBI or in case of issues to securitisation or reconstruction company referred to in Section 4A(1)(vii) of the Companies Act, 1956.
13.4.3	If allotment of instruments and dispatch of certificates is not completed within three months from the date of such resolution, a fresh consent of the shareholders shall be obtained and the relevant date referred to in explanation (a) in paragraph 13.1.1.1 above will relate to the new resolution.		Not applicable in as much as the entire preferential issue is to be made in electronic form only and all formalities are to be completed within 21 days.
<b>13.5</b>	<b>Other Requirements</b>		
13.5.1	(a) In case of every issue of shares/warrants/FCDs/PCDs/ or other financial instruments	<b>13.9.2</b> There shall be laid before the meeting of the shareholders voting on a resolution for approving a preferential	

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	<p>having conversion option, the statutory auditors of the issuer company shall certify that the issue of said instruments is being made in accordance with the requirements contained in these guidelines.</p> <p>(b) Copies of the auditors certificate shall also be laid before the meeting of the shareholders convened to consider the proposed issue.</p> <p>(c) In case of preferential allotment of shares to promoters, their relatives, associates and related entities, for consideration other than cash, valuation of the assets in consideration for which the shares are proposed to be issued shall be done by an independent qualified valuer and the valuation report shall be submitted to the exchanges on which shares of the issuer company are listed.</p> <p>Explanation – For the purpose of this clause the word valuer shall have the same meaning as assigned to the term under clause (r) of sub-regulation (1) of Regulation 2 of the SEBI (Issue of Sweat Equity) Regulations, 2002</p>	<p>issue a certificate from the statutory auditors of the issuer to the effect that the issue is in compliance with the requirements of these guidelines. A copy of the certificate shall also be furnished to the stock exchanges where the shares of the issuer are listed.</p> <p><b>13.9.3</b> In case of a preferential issue for consideration other than cash, there shall also be laid before the meeting of the shareholders voting on the resolution a report by an independent valuer with respect to the valuation of the assets. A copy of the report shall also be furnished to the stock exchanges where the shares of the issuer are listed.</p> <p><i>Explanation:</i> For the purpose of this clause the word valuer shall have the same meaning as assigned to the term under clause (r) of sub-regulation (1) of Regulation 2 of the SEBI (Issue of Sweat Equity) Regulations, 2002.</p>	
13.5A	The details of all monies utilised out of the preferential issue proceeds shall be disclosed under an appropriate head in the balance sheet of the company indicating the purpose for which such monies have been utilised. The details of unutilised monies shall also be disclosed under a separate head in the balance sheet of the company indicating the form in which such unutilised monies have been invested	<b>13.13.1</b> There shall be reviewed under a separate head in the Directors' Report to shareholders the details of monies raised through preferential issue in the financial year to which the report pertains, the purpose for which it was raised, the actual utilization thereof and the manner in which the unutilized portion, if any, was dealt with. The review and disclosure shall continue in the subsequent Directors' Reports till the issue proceeds are utilized in full.	
13.6	<b>Preferential allotments to FIIs</b>	<b>13.3 Issue to Foreign Institutional Investors</b>	
13.6.1	Preferential allotments, if any to be made in case of Foreign Institutional Investors, shall also be governed by the guidelines issued by the Government of India/Board/Reserve Bank of India on the subject.	<b>13.3.1</b> Preferential issues to Foreign Institutional Investors shall in addition be in compliance with the extant guidelines of the Government of India, the Board and the Reserve Bank of India.	
13.7	<b>Non-Applicability of the guidelines</b>	<b>13.15 Non applicability</b>	
13.7.1	Clauses 13.1 to 13.5 shall not be applicable in the following cases: (i) where the further shares are allotted in pursuance to the merger and amalgamation scheme approved by the High	<b>13.15.1</b> These Guidelines are not applicable where equity shares are allotted (i) in pursuance of a scheme of merger or amalgamation sanctioned by a Tribunal under Chapter V of the provisions of the Companies Act, 1956.	

Existing Clause No.	Existing Guidelines	Revised Guidelines	Comments
	<p>court.</p> <p>(ii) (a) where further shares are allotted to a person / group of persons in accordance with the provisions of rehabilitation packages approved by BIFR.</p> <p>(b) In case, such persons are promoters or belong to promoter group as defined in (Explanation I and II, Clause 6.4.2.1) of Chapter VI of these guidelines, the lock-in provisions shall continue to apply unless otherwise stated in the BIFR order.</p> <p>(iii) where further shares are allotted to All India public financial institutions in accordance with the provision of the loan agreements signed prior to August 4, 1994.</p>	<p>(ii) in accordance with the provisions of a rehabilitation package approved by BIFR. Provided however that in the case of allotment to persons who are promoters or who belong to the promoter group, the lock-in provisions shall apply unless otherwise stated in the BIFR order.</p> <p>(iii) to Public Financial Institutions (as defined in Section 4A of the Companies Act) in accordance with the conditions of loan agreements signed prior to August 4, 1994.</p>	
		<b>13.2.1</b> No preferential issue shall be made by an issuer during the pendency of any of its scheme of amalgamation, compromise or arrangement pursuant to the provisions of the Companies Act, 1956 or the corresponding provisions applicable to an issuer other than a company.	Modification seeks to deny a preferential issue unless earlier issues have been completed.
		<b>13.2.2</b> No preferential issue shall be made by an issuer till the completion of all allotment, listing and trading formalities pertaining to any pending issue of securities of the issuer.	
		<b>13.2.3</b> No preferential issue of equity shares or instruments convertible into or exchangeable for and entitling the holder to apply for and get allotted equity shares shall be permitted unless equity shares of the issuer identical in all respects are already listed on a stock exchange for a period not less than twelve months on the 'relevant date'.	This is to take care of a situation that will arise once issuers commence issuing shares with differential rights. Since price of a preferential issue requires a reference obtained from the quotes on a stock exchange, preferential issue of a security not already listed is sought to be prohibited.
		<b>13.10.1</b> No preferential issue shall be made unless the issuer has made an application to and obtained from the Central Listing Authority a letter precedent to listing under the provisions of the Securities and Exchange Board of India (Central Listing Authority) Regulations 2003 and the Central Listing Authority (Preferential Issue) Guidelines, 2004.	In terms of CLA Regulations, LPL is required to be obtained before the issue. This clause is being introduced to make a reference to LPL from CLA.
		<p><b>13.14.1</b> Any issue of equity shares or other instruments consequential upon the issuer making an open offer, whether voluntary or otherwise, to the shareholders of a body corporate shall be made in compliance with the provisions of these guidelines except</p> <p>(i) the price for the issue shall be determined in accordance with the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997.</p> <p>(ii) the provisions relating to non-</p>	Issue on a preferential basis may be required for effecting an open offer in another company. Since open offers are governed by SAST, certain exemptions are required. Some conditions relating to no prior sale are also required to be omitted.

Existing Clause No.	Existing Guidelines	Revised Guidelines	Comments
		<p>transferability and lock-in as per Clauses 13.6.1, 13.6.2, 13.6.3 and 13.6.4. Provided however that if the shares tendered in the open offer were subject to lock-in, instruments issued in respect thereof shall also be subject to lock-in for the residual period.</p> <p>(iii) the condition of no sale as per Clauses 13.8.1 and 13.8.2.</p> <p>(iv) the requirement of holding and issue in electronic form as per Clause 13.7.1 and 13.7.2.</p> <p>(v) the provisions of Clause 13.11.1.</p>	

LIST OF MEMBERS OF PMAC		
SR. NO.	NAME OF MEMBER	Name of the Organisation
1	Shri Deepak S Parekh, Chairman	HDFC
2	Shri V K Bansal, Chairman	Association of Merchant Bankers of India
3	Shri R Narayanan, Central Council Member	Institute of Company Secretaries of India
4	Ms. Sucheta Dalal	CERC
5	Shri Paul Joseph, Economic Advisor	Ministry of Company Affairs
6	Shri UK Sinha / Shri PP Mitra, MOF	Dept. of Economic Affairs, MOF
7	Mr.Vipul Modi, Secretary	Investors Grievances Forum
8	Mr. Prithvi Haldea, MD	Prime Database
9	Shri Ravi Mohan, MD	CRISIL
10	Mr.Ravi Narain, MD	NSE
11	Shri N J Jhaveri	Individual Capacity
12	Shri Rajnikant Patel, ED & CEO	BSE
13	Dr. Amit Mitra, Sec. General	FICCI
14	Shri Ishaat Hussain	CII
15	Shri Jerry Rao	NASSCOM
16	Dr.Arun Kumar Jain	Prof., IIM Lucknow
17	Shri Pankaj Kumar Gupta, FCA	Accounting expert
18	Mr.Brian Brown	Citi Group Global Markets Ltd.
19	Shri S.C.Das	ED, SEBI
20	Shri R S Loona	ED, SEBI
21	Smt. Neelam Bhardwaj	DGM, SEBI