

Date: June 8, 2012

To
Corporation Finance Department
Division of Corporate Restructuring
Securities and Exchange Board of India
Plot No.C4-A, 'G' Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051
India.

Kind attention: Mr. V. S. Sundaresan, Chief General Manager

Dear Sir,

Subject: Request for interpretative letter under the SEBI (Informal Guidance) Scheme, 2003 in connection with SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 and SEBI (Delisting of shares), Regulations, 2009

We are currently in discussion with a promoter of a listed company who is desirous of delisting the company from all the stock exchanges ("**Listed Company**") (hereinafter referred to as "**Client**" or the "**Promoters**"). In this regard, we submit this letter for seeking informal guidance in the form of an 'interpretative letter' under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 ("**Informal Guidance Scheme**") in connection with the provisions on 'persons acting in concert' under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**Takeover Code**") and Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 ("**Delisting Regulations**").

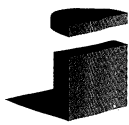
We have given below the relevant information and details along with our understanding of the applicable provisions of the Takeover Code and Delisting Regulations.

We request, as per Regulation 11 of the Informal Guidance Scheme, that confidential treatment of 90 days be granted in respect of the query raised herein. The information provided and the guidance sought under this Letter is confidential, material and sensitive to the Client. Actions on inactions to be taken by the Client may be based on reliance of the response to the guidance sought under this Letter within the confidential timeframe prescribed under the Informal Guidance Scheme. Therefore if confidentiality is not granted to the Client, it may constitute grave impediment to the Client.

I. **Background**

- a) The Promoters are in control of the Listed Company. The Promoters hold approximately 60% of the share capital of the Listed Company. The remainder of the share capital of the Listed Company is held by the public (as defined under the Securities Contract (Regulations) Rules, 1957. The Listed Company has not issued any form of convertible or other instruments. The shareholding of the Listed Company is as under:



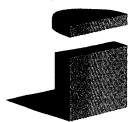


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Category of shareholder	Percentage (%)
Promoter and Promoter Group	
Indian	38.0
Foreign	21.5
Total Promoter and Promoter Group	59.5
Public	
Foreign Institutional Investors	5.0
Domestic Institutional Investors	0.2
Non-Institutions	35.3
Total Public	40.5
Grand Total	100.0

- b) The public shareholding of the Listed Company includes certain independent non-resident private equity investors ("PE Investors") that invested in the Listed Company through primary purchases at different times during the period 2009 to 2010. The PE Investors hold approximately 16.5% of the share capital of the Listed Company.
- c) In terms of the Takeover Code including any predecessor legislation thereto, the Promoters have never 'acted in concert' (as the term is defined in the Takeover Code) ("PAC") with the PE Investors in connection with the Listed Company or *vice-versa*.
- d) The Promoters want to delist the Listed Company from all the stock exchanges where the shares of the Listed Company are listed for the following reasons: (i) to concentrate the ownership of the Promoters in the Listed Company; (ii) to achieve greater operational and administrative efficiencies and flexibility with respect to the business of the Listed Company.
- e) The Promoters want to give an exit opportunity to the public shareholders of the Listed Company. The Delisting Regulations only permit the promoters of a listed company to acquire the shareholding from the public in the event of a voluntary delisting. Since financing from the company's resources is prohibited, the acquirers, being promoters, are obliged to find financiers to assist with the process. Therefore, for the sole purpose of financing the delisting, the Promoters are looking to avail of financial assistance from the PE Investors. In case the PE Investors agree to assist the Promoters with the financing of the delisting of the Listed Company, as a result of this arrangement between the Promoters and the PE Investors, the PE Investors would be regarded as persons acting in concert with the Promoters for the purposes of delisting and accordingly will not be able to tender their shares in the delisting offer.
- f) The Delisting Regulations refers to the Takeover Code for the definition of PAC. The proposed arrangement between the Promoters and the PE Investors if entered into, shall be purely and solely for the purposes of delisting and is proposed to be such that in the event that the proposed delisting offer of Listed Company is not successfully completed for any reason whatsoever, no subsisting arrangements or cooperation will continue between the Promoters and the PE Investors and the parties resume status quo. This arrangement will be with the promoter entity to provide funding for the purpose of delisting and will not involve any change in control with respect to the Listed Company.





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II. Informal guidance required

Based on the facts of the case as stated above and more specifically in context of the financing arrangement between the Promoters and the PE Investors for the purpose of delisting, we seek informal guidance on behalf of our Client in the form of interpretative letter from SEBI as to:

1. Whether, the Promoters and PE Investors would be regarded as 'PAC' solely for the purposes of Delisting Regulations pursuant to the financing arrangement and not for the purposes of Takeover Code?

III. Our understanding of the legal provisions

We have reproduced below the applicable legal provisions and our understanding as regards the same. Provisions of law referred to in this letter are set out in the Appendix.

A. *Definition of the term 'PAC'*

Although the definition of the term PAC is common for both the Delisting Regulations and the Takeover Code, it is our understanding that given the relationship of a PAC is situational and the different objectives of the two legislations, viz. the Delisting Regulations and the Takeover Code, the determination of whether persons are acting in concert for the purposes of the Delisting Regulations and for the purposes of the Takeover Code is independently determined.

The Delisting Regulations regulate how listed companies cease to be publicly traded so that the minority shareholders are protected. The objective of the Takeover Code is to provide shareholders an opportunity to exit his investment in the target company in case of substantial acquisition of shares or takeover. Therefore, the obligations under the Takeover Code pre-suppose that the acquirer wants to acquire / takeover a listed company. It is on account of the differences in objectives that matters relating to delisting and takeovers were separated from each other into different legislations.

B. *PAC under Delisting Regulations and Takeover Code*

PACs under the Delisting Regulations and the Takeover Code serve different purposes.

The objective of determining a PAC for the purpose of the Delisting Regulations is as follows:

- (i) to determine what percentage of the public shareholders actually need to be given an exit and consequently at what point in time is the delisting considered successful (*See Regulation 17 of the Delisting Regulations*).
- (ii) Impose certain obligations on the PAC in terms of not tendering his shares in the reverse bid. (*See Regulation 14(2) of the Delisting Regulations*).

Further, under the Takeover Code, the objective of determining a PAC is to ensure that the Takeover Code obligations are not averted by an acquirer through someone acting in concert with such acquirer. The consequence of becoming a person in concert is the requirement of making an open offer to members of the public to give them an exit option.



We believe that for the different objectives of the Delisting Regulations and the Takeover Code and the jurisprudence on the subject matter, the determination of a PAC relationship under the Delisting Regulations should not automatically amount to a PAC relationship under the Takeover Code. The same also follows from the bright line test requirements prescribed by the Bhagwati Committee Report of 1998 on Takeovers as set out below:

"To be acting in concert with an acquirer, persons must fulfill certain "bright line" tests. They must have commonality of objectives and a community of interests which could be acquisition of shares or voting rights beyond the threshold limit, or gaining control over the company and their act of acquiring the shares or voting rights in a company must serve this common objective. Implicit in the concerted action of these persons must be an element of cooperation. And as has been observed, this cooperation could be extended in several ways, directly or indirectly, or through an agreement - formal or informal."

We further understand that these tests were also subsequently relied on by the Supreme Court in *Daiichi Sankyo Company Ltd v. Jayaram Chigurupati & Ors.* in determining the PAC relationship.

Since the objective of acting in concert for the purposes of the Delisting Regulations is entirely different from that under the Takeover Code, and since the PE Investors and the Promoters would be acting in concert for the limited purposes of delisting the Listed Company and not to take over a listed company, there is no commonality of objectives under the Takeover Code. Consequently, acting in concert for the purposes of the Delisting Regulations should not by itself make the PE Investors and the Promoters acting in concert for the purposes of the Takeover Code.

Regulation 10(1)(f) of the Takeover Code exempts 'acquisitions' pursuant to the provisions of Delisting Regulations from the requirements of making an open offer. Since the Promoters and the PE Investors will be acting in concert only for the limited purposes of delisting the Listed Company, which is an exempt transaction for the purposes of the open offer obligations under the Takeover Code, this relationship will trigger no obligations relating to open offer under the Takeover Code.

IV. Objective of seeking this informal guidance

We seek your informal guidance on the above with the following objectives:

- a) Before advising the Client to pursue any financing arrangement with the PE Investors for the purpose of delisting, we would like to understand the consequences of such discussions and arrangements under the Takeover Code;
- b) Relying on the facts as stated above and based on the guidance received, the Client would pursue the discussions with the PE Investors to negotiate suitable financing arrangement and thereafter proceed with the delisting offer to the shareholders, without any adverse consequences for the Promoter and the PE Investors under the Takeover Code; and
- c) Based on the guidance received from SEBI in response to this application and if necessary, apply for an exemption to the Takeover Panel from applicability of open offer provisions under the Takeover Code.



V. Request for confidentiality

As already stated above we hereby request that this application receives confidential treatment of 90 days since the proposal of delisting contemplated above is at a preliminary stage and the facts contained in this letter are not available to the public at large.

We enclose a demand draft for INR 25,000 in favour of 'Securities and Exchange Board of India' payable at Mumbai towards the prescribed fee.

We request you to kindly provide us the guidance on the aforementioned at the earliest. We will be happy to provide any further information or meet you in person, as required. The contact details of undersigned are given below.

Thank you.

Yours faithfully,

For IDFC Capital Limited



Name: *Achishhek Jain*
Designation: *SVP*

APPENDIX

RELEVANT LEGAL PROVISIONS

The definition of person acting in concert in the Delisting Regulations, vide Regulation 2(2) thereof, refers to the definition of person acting in concert as under the Takeover Code.

Regulation 2(1)(q) of the Takeover Code, defines PAC as follows:

"Persons acting in concert" means,—

(1) *persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.*

(2) *Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established,—*

- i. *a company, its holding company, subsidiary company and any company under the same management or control;*
- ii. *a company, its directors, and any person entrusted with the management of the company;*
- iii. *directors of companies referred to in item (i) and (ii) of this sub-clause and associates of such directors;*
- iv. *promoters and members of the promoter group;*
- v. *immediate relatives;*
- vi. *a mutual fund, its sponsor, trustees, trustee company, and*
- vii. *asset management company;*
- viii. *a collective investment scheme and its collective*
- ix. *investment management company, trustees and trustee*
- x. *company;*
- xi. *a venture capital fund and its sponsor, trustees, trustee*
- xii. *company and asset management company;*
- xiii. *a foreign institutional investor and its sub-accounts;*
- xiv. *a merchant banker and its client, who is an acquirer;*
- xv. *a portfolio manager and its client, who is an acquirer;*
- xvi. *banks, financial advisors and stock brokers of the acquirer, or of any company which is a holding company or subsidiary of the acquirer, and where the acquirer is an individual, of the immediate relative of such individual:*

Provided *that this sub-clause shall not apply to a bank whose sole role is that of providing normal commercial banking services or activities in relation to an open offer under these regulations;*

- xvii. *an investment company or fund and any person who has an interest in such investment company or fund as a shareholder or unit holder having not less than 10 per cent of the paid-up capital of the investment company or unit capital of the fund, and any other investment company or fund in which such person or his associate*



holds not less than 10 per cent of the paid-up capital of that investment company or unit capital of that fund:

Provided that nothing contained in this sub-clause shall apply to holding of units of mutual funds registered with the Board;

Explanation — For the purposes of this clause “associate” of a person means,—

- i. any immediate relative of such person;
- ii. trusts of which such person or his immediate relative is a trustee;
- iii. partnership firm in which such person or his immediate relative is a partner; and
- iv. members of Hindu undivided families of which such person is a coparcener;”

Regulation 10 of the Takeover Code - General exemptions

10. (1) The following acquisitions shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 subject to fulfillment of the conditions stipulated therefor

.....
(f) acquisition pursuant to the provisions of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009;
.....”

Regulation 14 of the Delisting Regulations - Right of shareholders to participate in the book building process

14. (1) All public shareholders of the equity shares which are sought to be delisted shall be entitled to participate in the book building process in the manner specified in Schedule II.

(2) A promoter or a person acting in concert with any of the promoters shall not make a bid in the offer and the merchant banker shall take necessary steps to ensure compliance with this sub-regulation.

(3) Any holder of depository receipts issued on the basis of underlying shares held by a custodian and any such custodian shall not be entitled to participate in the offer.

(4) Nothing contained in sub-regulation (3) shall affect the right of any holder of depository receipts to participate in the book building process under sub-regulation (1) if the holder of depository receipts exchanges such depository receipts with shares of the class that are proposed to be delisted.

Regulation 17 of the Delisting Regulations - Minimum number of equity shares to be acquired

17. An offer made under chapter III shall be deemed to be successful if post offer, the shareholding of the promoter (along with the persons acting in concert) taken together with the shares accepted through eligible bids at the final price determined as per Schedule II, reaches the higher of –

- (a) ninety percent of the total issued shares of that class excluding the shares which are held by a custodian and against which depository receipts have been issued overseas; or
- (b) the aggregate percentage of pre offer promoter shareholding (along with persons acting in concert with him) and fifty percent of the offer size.

