

CHAPTER X ISSUE OF INDIAN DEPOSITORY RECEIPTS

Applicability.

96. (1) The provisions of this Chapter shall apply to an issue of Indian Depository Receipts (hereinafter referred to as “IDR”) made in terms of section 605A of the Companies Act, 1956 and Companies (Issue of Indian Depository Receipts) Rules, 2004.

(2) All provisions of these regulations shall be applicable in case of issue of IDR, except the disclosure requirements with respect to public issue and rights issue of specified securities as provided in these regulations and the following:

- (a) clauses (a), (b), (c) and (f) of sub-regulation (2) of regulation 4;
- (b) sub-regulations (1), (2) and (3) of regulation 6,
- (c) clauses (c),(d) and (e) of sub-regulation (1) of regulation 8;
- (d) sub-regulations (2) and (3) of regulation 8;
- (e) regulations 10,16,17,19, 20,21,22,23,24,26,27,31,41, 42,⁴⁷[***] 45,47, 49 and 68;
- (f) sub-regulation (2) of regulation 11;
- (g) sub-regulation (2) of regulation 28;
- (h) clauses (b) and (c) of regulation 29;
- (i) Parts III and IV of Chapter III;
- ⁴⁸[(ia) regulation 43, except sub-regulation (3) thereof;]
- (j) Chapter IV;
- (k) sub-regulation (3) of regulation 65;
- (l) Chapters VII, VIII and IX.

(3) Further, the applicability of regulation 60 shall be as follows:

- (a) the applicability of sub-regulations (1) and (7) and Explanation II shall be restricted to any issue advertisements made in India or any research report circulated in India, pertaining to the IDR issue of the issuing company;
- (b) the applicability of sub-regulations (2) and (3) shall be restricted to any public communications and publicity material issued or published in any media in India;
- (c) the applicability of sub-regulations (5) and (6) shall be restricted to any material or information released in India and any issue advertisements and publicity materials issued or published in any media in India;
- (d) the applicability of sub-regulation (13) shall be restricted to any product advertisement of an issuing company issued or published in any media in India;
- (e) all other provisions of regulation 60 shall be applicable.

Eligibility.

97. An issuing company making an issue of IDR shall also satisfy the following:

- (a) the issuing company is listed in its home country;
- (b) the issuing company is not prohibited to issue securities by any regulatory body;
- (c) the issuing company has track record of compliance with securities market regulations in its home country.

⁴⁷ Figure and mark “43,” omitted by SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2009, w.e.f. 11.12.2009.

⁴⁸ Inserted, *ibid.*

Explanation: For the purpose of this regulation, the term “home country” means the country where the issuing company is incorporated and listed.

Conditions for issue of IDR.

98. An issue of IDR shall be subject to the following conditions:

- (a) issue size shall not be less than fifty crore rupees;
- (b) procedure to be followed by each class of applicant for applying shall be mentioned in the prospectus;
- (c) minimum application amount shall be twenty thousand rupees;
- (d) at least fifty per cent. of the IDR issued shall be allotted to qualified institutional buyers on proportionate basis as per illustration given in **Part C of Schedule XI**;
- (e) the balance fifty per cent. may be allocated among the categories of non-institutional investors and retail individual investors including employees at the discretion of the issuer and the manner of allocation shall be disclosed in the prospectus. Allotment to investors within a category shall be on proportionate basis:

⁴⁹[Provided that at least thirty per cent. of the IDRs being offered in the public issue shall be available for allocation to retail individual investors and in case of under subscription in retail individual investor category, spillover to other categories to the extent of under subscription may be permitted.

Explanation: For the purpose of this regulation, “employee” shall mean a person who,-

- (a) is a resident of India, and
 - (b) is a permanent and full-time employee or a director, whether whole time or part time, of the issuer or of the holding company or subsidiary company or of the material associate(s) of the issuer, whose financial statements are consolidated with the issuer’s financial statements, working in India and does not include promoters and an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse).]
- (f) At any given time, there shall be only one denomination of IDR of the issuing company.

Minimum subscription.

99. (1) For non-underwritten issues:

- (a) If the issuing company does not receive the minimum subscription of ninety per cent. of the offer through offer document on the date of closure of the issue, or if the subscription level falls below ninety per cent. after the closure of issue on account of cheques having being returned unpaid or withdrawal of applications, the issuing company shall forthwith refund the entire subscription amount received.
- (b) If the issuing company fails to refund the entire subscription amount within fifteen days from the date of the closure of the issue, it is liable to pay the amount with interest to the subscribers at the rate of fifteen per cent. per annum for the period of delay.

(2) For underwritten issues: If the issuing company does not receive the minimum subscription of ninety per cent. of the offer through offer document including devolvement of underwriters within

⁴⁹ Substituted by SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2010, w.e.f. 13.04.2010. Prior to its substitution, proviso as inserted by SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2009, w.e.f. 11.12.2009, read as under:

“Provided that atleast thirty per cent. of the said fifty per cent. IDR issued shall be allocated to retail individual investors and in case of under-subscription in retail individual investor category, spill over to the extent of under-subscription shall be permitted to other categories.”

sixty days from the date of closure of the issue, the issuing company shall forthwith refund the entire subscription amount received with interest to the subscribers at the rate of fifteen per cent. per annum for the period of delay beyond sixty days.

Fungibility.

100. The Indian depository Receipts shall not be automatically fungible into underlying equity shares of issuing company.

Filing of draft prospectus, due diligence certificates, payment of fees and issue advertisement for IDR.

101. (1) The issuing company making an issue of IDR shall enter into an agreement with a merchant banker on the lines of format of agreement specified in **Schedule II**.

(2) Where the issue is managed by more than one merchant banker, the rights, obligations and responsibilities, relating inter-alia to disclosures, allotment, refund and underwriting obligations, if any, of each merchant banker shall be predetermined and disclosed in the prospectus on the lines of format as specified in **Schedule I**.

(3) The issuing company shall file a draft prospectus with the Board through a merchant banker along with the requisite fee, as prescribed in Companies (Issue of Indian Depository Receipts) Rules, 2004.

(4) The prospectus filed with the Board under this regulation shall also be furnished to the Board in a soft copy on the lines specified in **Schedule V**.

(5) The lead merchant bankers shall:

- (a) submit a due diligence certificate as per format given in **Part C of Schedule XIX** to the Board along with the draft prospectus.
- (b) certify that all amendments, suggestions or observations made by the Board have been incorporated in the prospectus
- (c) submit a fresh due diligence certificate as per format given in **Part C of Schedule XIX**, at the time of filing the prospectus with the Registrar of the Companies.
- (d) furnish a certificate as per format given in **Part C of Schedule XIX**, immediately before the opening of the issue, certifying that no corrective action is required on its part.
- (e) furnish a certificate as per format given in **Part C of Schedule XIX**, after the issue has opened but before it closes for subscription.

(6) The issuing company shall make arrangements for mandatory collection centres as specified in **Schedule III**.

(7) The issuing company shall issue an advertisement in one English national daily newspaper with wide circulation and one Hindi national daily newspaper with wide circulation, soon after receiving final observations, if any, on the publicly filed draft prospectus with the Board, which shall be on the lines of the format and contain the minimum disclosures as given in **Part A of Schedule XIII**.

Display of bid data.

102. The stock exchanges offering online bidding system for the book building process shall display on their website, the data pertaining to book built IDR issue, in the format specified in **Part B(II) of Schedule XI**, from the date of opening of the bids till at least three days after closure of bids.

Disclosures in prospectus and abridged prospectus.

103. (1) The prospectus shall contain all material disclosures which are true, correct and adequate so as to enable the applicants to take an informed investment decision.

- (2) Without prejudice to the generality of sub-regulation (1), the prospectus shall contain:
- (a) the disclosures specified in Schedule to Companies (Issue of Indian Depository Receipts) Rules, 2004; and
 - (b) the disclosures in the manner as specified in **Part A of Schedule XIX**.
- (3) The abridged prospectus for issue of Indian Depository Receipts shall contain the disclosures as specified in **Part B of Schedule XIX**.

Post-issue reports.

104. (1) The merchant banker shall submit post-issue reports to the Board in accordance with sub-regulation (2).

- (2) The post-issue reports shall be submitted as follows:
- (a) initial post issue report on the lines of Parts A and B of Schedule XVI, within three days of closure of the issue;
 - (b) final post issue report on the lines of Parts C and D of Schedule XVI, within fifteen days of the date of finalisation of basis of allotment or within fifteen days of refund of money in case of failure of issue.

Undersubscribed issue.

105. In case of undersubscribed issue of IDR, the merchant banker shall furnish information in respect of underwriters who have failed to meet their underwriting devolvment to the Board on the lines of the format specified in **Schedule XVII**.

Finalisation of basis of allotment.

106. The executive director or managing director of the stock exchange, where the IDR are proposed to be listed, along with the post issue lead merchant bankers and registrars to the issue shall ensure that the basis of allotment is finalised in a fair and proper manner in accordance with the allotment procedure as specified in **Schedule XV**.

⁵⁰[CHAPTER XA
RIGHTS ISSUE OF INDIAN DEPOSITORY RECEIPTS

Applicability.

106A. (1) In addition to compliance with Chapter X, a listed issuer offering IDR through a rights issue shall satisfy the conditions specified in this Chapter at the time of filing the offer document:

Provided that the provisions of the following regulations shall not be applicable in case of rights issue of IDRs:

- (a) clauses (a), (b), (c), (d) and (e) of regulation 98;
- (b) regulation 102; and
- (c) regulation 103.

(2) Every listed issuer offering IDRs through a rights issue shall prepare the offer document in accordance with the home country requirements along with an addendum containing disclosures as specified in Part A of Schedule XXI and regulation 106F and file the same with the Board and the stock exchanges on which the IDRs of the issuer are listed.

Eligibility.

106B. No issuer shall make a rights issue of IDRs:

- (a) if at the time of undertaking the rights issue, the issuer is in breach of ongoing material obligations under the IDR Listing Agreement as may be applicable to such issuer or material obligations under the deposit agreement entered into between the domestic depository and the issuer at the time of initial offering of IDRs; and
- (b) unless it has made an application to all the recognised stock exchanges in India, where its IDRs are already listed, for listing of the IDRs to be issued by way of rights and has chosen one of them as the designated stock exchange.

Renunciation by an IDR holder.

106C. Unless the laws of the home jurisdiction of the issuer company otherwise provide, the rights offering shall be deemed to include a right exercisable by the person concerned to renounce the IDRs offered to the IDR holder in favour of any other person subject to applicable laws and the same shall be disclosed in the offer document.

Depository.

106D. The domestic depository shall, in accordance with the depository agreement executed with the issuer at the time of initial offering of IDRs, take such steps as are necessary to enable the IDR holders to have entitlements under the rights offering and issue additional IDRs to such IDR holders, distribute the rights to the IDR Holders/renounees or arrange for the IDR holders/renounees to subscribe for any additional rights which are available due to lack of take-up by other holders of underlying shares.

⁵⁰ Inserted by SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2011, w.e.f. 23.09.2011.

Record Date.

106E. (1) A listed issuer making a rights issue of IDRs shall in accordance with provisions of the listing agreement, announce a record date for the purpose of determining the shareholders eligible to apply for IDRs in the proposed rights issue.

(2) If the issuer withdraws the rights issue after announcing the record date, it shall notify the Board about the same and shall notify the same in one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where principal office of the issuer is situated in India. If the issuer withdraws the rights issue after announcing the record date, it shall not make an application for offering of IDRs on a rights basis for a period of twelve months from the said record date.

Disclosures in the offer document and the addendum for the rights offering.

106F. (1) The offer document for the rights offering shall contain disclosures as required under the home country regulations of the issuer.

(2) Apart from the disclosures as required under the home country regulations, an additional wrap (addendum to offer document) shall be attached to the offer document to be circulated in India containing information as specified in Part A of Schedule XXI and other instructions as to the procedures and process to be followed with respect to rights issue of IDRs in India.

(3) Without prejudice to the generality of sub-regulations (1) and (2), the offer document and the addendum attached with it, shall contain all material information, which are true, correct and adequate, so as to enable the applicants to take an informed investment decision.

Filing of draft offer document and the addendum for rights offering.

106G. (1) The issuer shall appoint one or more merchant bankers, one of whom shall be a lead merchant banker and shall also appoint other intermediaries, in consultation with the lead merchant banker, to carry out the obligations relating to the issue.

(2) The issuer shall, through the lead merchant banker, file the draft offer document prepared in accordance with the home country requirements along with an addendum containing disclosures as specified in Part A of Schedule XXI with the Board, as a confidential filing accompanied with fees as specified in Part A of Schedule IV.

(3) The Board may specify changes or issue observations, if any, on the draft offer document and the addendum within thirty days or from the following dates, whichever is later:

- (a) the date of receipt of the draft offer document prepared in accordance with the home country requirements along with an addendum under sub-regulation (2); or
- (b) the date of receipt of satisfactory reply from the lead merchant bankers, where the Board has sought any clarification or additional information from them; or
- (c) the date of receipt of clarification or information from any regulator or agency, where the Board has sought any clarification or information from such regulator or agency; or
- (d) the date of receipt of a copy of in-principle approval letter issued by the recognised stock exchanges.

(4) If the Board specifies changes or issues observations on the draft offer document and the addendum under sub-regulation(3), the issuer and the merchant banker shall file the revised draft offer document and the updated addendum after incorporating the changes suggested or specified by the Board.

(5) The issuer shall also submit an undertaking from the Overseas Custodian and Domestic Depository addressed to the issuer, to comply with their obligations with respect to the said rights issue under their respective agreements entered into between them, along with the offer document.

(6) The issuer shall ensure that the Compliance Officer, in charge of ensuring compliance with the obligations under this Chapter, functions from within the territorial limits of India.

Fast track issue.

106H. (1) Nothing contained in sub-regulations (1), (2), (3) and (4) of regulation 106G shall apply, if the issuer satisfies the following conditions:

- (a) the issuer is in compliance in all material respects with the provisions of deposit agreement and the provisions of listing agreements (or listing conditions) applicable in all the jurisdictions wherever the issuer is listed, for a period of at least three years immediately preceding the date of filing of the offer document, and a certification to this effect is provided by the issuer;
- (b) the offer document for the rights offering of the securities of the issuer has been filed and reviewed by the securities regulator in the home country of the issuer;
- (c) there are no pending show-cause notices or prosecution proceedings against the issuer or its promoters, where applicable, or whole time directors on the reference date by the Board or the regulatory authorities in its home country restricting them from accessing the capital markets; and
- (d) the issuer has redressed at least ninety five per cent. of the complaints received from the IDR holders before the end of the three months period immediately preceding the month of date of filing the letter of offer with the designated stock exchange.

(2) Where the conditions in sub-regulation (1) are satisfied, the issuer may opt for rights issue of IDRs by filing a copy of the offer document prepared in accordance with the home country requirements along with an addendum containing disclosures as specified in Part A of Schedule XXI with the Board for record purposes, before filing the same with the recognised stock exchanges.

Dispatch of abridged letter of offer and application form.

106I. (1) The abridged letter of offer, containing disclosures as specified in Part B of Schedule XXI, for a rights offering, along with application form, shall be dispatched through registered post or speed post to all the eligible IDR holders at least three days before the date of opening of the issue and shall be made available on the website of the issuer with appropriate access restrictions at the same time it is made available to the holders of its equity shares.

Provided that a hard copy of the offer document for a rights offering along with the addendum shall be made available at the principal office of the issuer or lead merchant banker to any existing IDR holder who has made a request in this regard.

(2) The eligible IDR holders who have not received the application form may apply in writing on a plain paper to the domestic depository, along with the requisite application money within the time frame for acceptance.

(3) The eligible IDR holders making an application otherwise than on the application form shall not renounce their rights and shall not utilise the application form for any purpose including renunciation even if it is received subsequently.

(4) Where any eligible IDR holder makes an application on an application form as well as on plain paper, such application is liable to be rejected.

(5) The issue price and the ratio shall be decided simultaneously with record date in accordance with the home country regulations.

Period of subscription.

106J. A rights issue shall be open for subscription in India for a period as applicable under the laws of its home country but in no case less than 10 days.

Pre-Issue Advertisement for rights issue.

- 106K.** (1) The issuer shall issue an advertisement for the rights issue disclosing the following:
- (a) the date of completion of despatch of the abridged letter of offer and the application form;
 - (b) the centres other than principal office of the issuer in India where the eligible IDR holders may obtain duplicate copies of the application forms in case they do not receive the application form within a reasonable time after opening of the rights issue;
 - (c) a statement that if the eligible IDR holders have neither received the original application forms nor they are in a position to obtain the duplicate forms, they may make application in writing on a plain paper to subscribe to the rights issue;
 - (d) a format to enable the eligible IDR holders, to make the application on a plain paper specifying therein necessary particulars such as name, address, ratio of rights issue, issue price, number of IDRs held, ledger folio numbers, depository participant ID, client ID, number of IDRs entitled and applied for, amount to be paid along with application, and particulars of cheque, etc. to be drawn in favour of the issuer's account;
 - (e) a statement that the applications can be directly sent by the eligible IDR holders through registered post together with the application moneys to the issuer's designated official at the address given in the advertisement;
 - (f) a statement to the effect that if the eligible IDR holder makes an application on plain paper and also on application form both his applications shall be liable to be rejected at the option of the issuer.
- (2) The advertisement shall be made in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where principal office of the issuer is situated in India at least three days before the date of opening of the issue.

Utilisation of funds raised in rights issue.

- 106L.** (1) The issuer shall utilise funds raised in relation to the IDRs pursuant to the rights offering only upon completion of the allotment process.

⁵¹[⁵² CHAPTER XB
ISSUE OF SPECIFIED SECURITIES BY SMALL AND MEDIUM ENTERPRISES]

Applicability.

⁵³[106M.] (1) An issuer whose post-issue face value capital does not exceed ten crore rupees shall issue its specified securities in accordance with provisions of this Chapter.

(2) An issuer, whose post issue face value capital is more than ten crore rupees and upto twenty five crore rupees, may also issue specified securities in accordance with provisions of this Chapter.

(3) The provisions of these regulations, in respect of the matters not specifically dealt or excluded under this Chapter, shall mutatis mutandis apply to any issue of specified securities under this Chapter:

Provided that provisions of sub-regulations (1), (2) and (3) of regulation 6, regulation 7, regulation 8, regulation 9, regulation 10, regulation 25, regulation 26, regulation 27 and sub-regulation (1) of regulation 49 of these regulations shall not apply to an issue of specified securities made under this Chapter.

Definitions.

⁵⁴[106N.] (1) In this Chapter, unless the context otherwise requires, -

(a) “Main Board” means a recognized stock exchange having nationwide trading terminals, other than SME exchange;

(b) “nominated investor” means a qualified institutional buyer or private equity fund, who enters into an agreement with the merchant banker to subscribe to the issue in case of under-subscription or to receive or deliver the specified securities in the market-making process;

Explanation: “private equity fund” means a fund registered with any regulatory authority or a fund established by any person registered with any regulatory authority;

(c) “SME exchange” means a trading platform of a recognised stock exchange having nationwide trading terminals permitted by the Board to list the specified securities issued in accordance with this Chapter and includes a stock exchange granted recognition for this purpose but does not include the Main Board;

(2) All other words and expression used in this Chapter but not defined under sub-regulation (1) shall derive their meaning from regulation 2 of these regulations.

Filing of offer document and due diligence certificate.

⁵⁵[106O.] (1) The issuer making a public issue or rights issue of specified securities under this Chapter shall not file the draft offer document with the Board:

⁵¹ Substituted for “CHAPTER XA” by SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2011, w.e.f. 23.09.2011.

⁵² Inserted by SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2010, w.e.f. 13.04.2010.

⁵³ Substituted for “106A” by SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2011, w.e.f. 23.09.2011.

⁵⁴ Substituted for “106B”, *ibid.*

⁵⁵ Substituted for “106C”, *ibid.*

Provided that the issuer shall file a copy of the offer document with the Board through a merchant banker, simultaneously with the filing of the prospectus with the SME exchange and the Registrar of Companies or letter of offer with the SME Exchange:

Provided further that the Board shall not issue any observation on the offer document.

(2) The merchant banker shall submit a due-diligence certificate as per Form A of Schedule VI including additional confirmations as provided in Form H of Schedule VI alongwith the offer document to the Board.

(3) The offer document shall be displayed from the date of filing in terms of sub-regulation (1) on the websites of the Board, the issuer, the merchant banker and the SME exchange where the specified securities offered through the offer document are proposed to be listed.

Underwriting by merchant bankers and underwriters.

⁵⁶[106P.] (1) The issue made under this Chapter shall be hundred per cent. underwritten.

Explanation: The underwriting under this regulation shall be for the entire hundred percent of the offer through offer document and shall not be restricted upto the minimum subscription level.

(2) The merchant banker/s shall underwrite at least fifteen per cent of the issue size on his/ their own account/s.

(3) The issuer in consultation with merchant banker may appoint underwriters in accordance with Securities and Exchange Board of India (Underwriters) Regulations, 1993 and the merchant banker may enter into an agreement with nominated investor indicating therein the number of specified securities which they agree to subscribe at issue price in case of under-subscription.

(4) If other underwriters fail to fulfill their underwriting obligations or other nominated investors fail to subscribe to unsubscribed portion, the merchant banker shall fulfill the underwriting obligations.

(5) The underwriters other than the merchant banker and the nominated investors, who have entered into an agreement for subscribing to the issue in case of under-subscription, shall not subscribe to the issue made under this Chapter in any manner except for fulfilling their obligations under their respective agreements with the merchant banker in this regard.

(6) All the underwriting and subscription arrangements made by the merchant banker shall be disclosed in the offer document.

(7) The merchant banker shall file an undertaking to the Board that the issue has been hundred per cent. underwritten along with the list of underwriters and nominated investors indicating the extent of underwriting or subscription commitment made by them, one day before the opening of issue.

Minimum Application Value.

⁵⁷[106Q.] The issuer shall stipulate in the offer document, the minimum application size in terms of number of specified securities which shall not be less than one lakh rupees per application.

Minimum Number of Allottees.

⁵⁸[106R.] No allotment shall be made pursuant to any initial public offer made under this Chapter, if the number of prospective allottees is less than fifty.

Listing of specified securities.

⁵⁹[106S.] (1) Specified securities issued in accordance with this Chapter shall be listed on SME exchange.

⁵⁶ Substituted for "106D" by SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2011, w.e.f. 23.09.2011.

⁵⁷ Substituted for "106E", *ibid.*

⁵⁸ Substituted for "106F", *ibid.*

⁵⁹ Substituted for "106G", *ibid.*

(2) Where any listed issuer issues specified securities in accordance with provisions of this Chapter it shall migrate the specified securities already listed on any recognized stock exchange/s to the SME exchange.

Migration to SME exchange.

⁶⁰[106T.] A listed issuer whose post-issue face value capital is less than twenty five crore rupees may migrate its specified securities to SME exchange if its shareholders approve such migration by passing a special resolution through postal ballot to this effect and if such issuer fulfils the eligibility criteria for listing laid down by the SME exchange:

Provided that the special resolution shall be acted upon if and only if the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal.

Migration to Main Board.

⁶¹[106U.] (1) An issuer, whose specified securities are listed on a SME Exchange and whose post issue face value capital is more than ten crore rupees and upto twenty five crore rupees, may migrate its specified securities to Main Board if its shareholders approve such migration by passing a special resolution through postal ballot to this effect and if such issuer fulfils the eligibility criteria for listing laid down by the Main Board:

Provided that the special resolution shall be acted upon if and only if the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal.

(2) Where the post issue face value capital of an issuer listed on SME exchange is likely to increase beyond twenty five crore rupees by virtue of any further issue of capital by the issuer by way of rights issue, preferential issue, bonus issue, etc. the issuer shall migrate its specified securities listed on SME exchange to Main Board and seek listing of specified securities proposed to be issued on the Main Board subject to the fulfilment of the eligibility criteria for listing of specified securities laid down by the Main Board:

Provided that no further issue of capital by the issuer shall be made unless –

- (a) the shareholders of the issuer have approved the migration by passing a special resolution through postal ballot wherein the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal;
- (b) the issuer has obtained in- principle approval from the Main Board for listing of its entire specified securities on it.

Market Making.

⁶²[106V.] (1) The merchant banker shall ensure compulsory market making through the stock brokers of SME exchange in the manner specified by the Board for a minimum period of three years from the date of listing of specified securities issued under this Chapter on SME exchange or from the date of migration from Main Board in terms of regulation ⁶³[106T], as the case may be.

(2) The merchant banker may enter into agreement with nominated investors for receiving or delivering the specified securities in the market making subject to the prior approval by the SME exchange where the specified securities are proposed to be listed.

(3) The issuer shall disclose the details of arrangement of market making in the offer document.

⁶⁰ Substituted for “106H”, by SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2011, w.e.f. 23.09.2011.

⁶¹ Substituted for “106I”, *ibid.*

⁶² Substituted for “106J”, *ibid.*

⁶³ Substituted for “106H”, *ibid.*

(4) The specified securities being bought or sold in the process of market making may be transferred to or from the nominated investor with whom the merchant banker has entered into an agreement for the market making:

Provided that the inventory of the market maker, as on the date of allotment of the specified securities, shall be at least five per cent. of the specified securities proposed to be listed on SME exchange.

(5) The market maker shall buy the entire shareholding of a shareholder of the issuer in one lot, where value of such shareholding is less than the minimum contract size allowed for trading on the SME exchange:

Provided that market maker shall not sell in lots less than the minimum contract size allowed for trading on the SME exchange.

(6) Market maker shall not buy the shares from the promoters or persons belonging to promoter group of the issuer or any person who has acquired shares from such promoter or person belonging to promoter group, during the compulsory market making period laid down under sub-regulation (1).

(7) The promoters' holding shall not be eligible for offering to the market maker under this Chapter during the period specified in sub-regulation (1):

Provided that the promoters' holding which is not locked-in as per these regulations can be traded with prior permission of the SME exchange, in the manner specified by the Board.

(8) Subject to the agreement between the issuer and the merchant banker/s, the merchant banker/s who have the responsibility of market making may be represented on the board of the issuer.]