

ISSUE OF SPECIFIED SECURITIES BY SMALL AND MEDIUM ENTERPRISES

Chapter XB of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Applicability- 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 up to 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 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- 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 recognized 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.

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Filing of offer document and due diligence certificate- 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:

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 along-with 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- 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 up-to 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 there in the number of specified securities which they agree to subscribe at issue price in case of under subscription.

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(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 percent 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- 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-106R

No allotment shall be made pursuant to any initial public offer made under this Chapter, if the number of prospective allottee is less than fifty.

Listing of specified securities- 106S

(1) Specified securities issued in accordance with this Chapter shall be listed on SME exchange.

(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.

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Migration to SME exchange- 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 favor 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- 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 up-to 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 favor 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;

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(b) The issuer has obtained in principle approval from the Main Board for listing of its entire specified securities on it.

Market Making- 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 [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.

(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):

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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.

RELEVANT DEFINITIONS

Book Building- Regulation 2(1) (f)

Means a process undertaken to elicit demand and to assess the price for determination of the quantum or value of specified securities or Indian Depository Receipts, as the case may be, in accordance with these regulations.

Control- Regulation 2(1) (i)

Shall have the same meaning as assigned to it under clause (e) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisitions of Shares and Takeovers) Regulation.

Control- includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner. (Same meaning under section 2(27) of Companies Act, 2013)

Initial Public Offer- Regulation 2(1) (q)

Means an offer of specified securities by an unlisted issuer to the public for subscription and includes an offer for sale of specified securities to the public by any existing holders of such securities in an unlisted issuer.

Issue size- Regulation 2(1) (r)

Includes offer through offer document and promoters' contribution.

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Issuer- Regulation 2(1) (r)

Means any person making an offer of specified securities;

Key management personnel- Regulation 2(1) (s)

Means the officers vested with executive powers and the officers at the level immediately below the board of directors of the issuer and includes any other person whom the issuer may declare as a key management personnel.

Section 2(51) of Companies Act, 2013- Key Managerial Personnel, in relation to a company, means:-

- (i) The Chief Executive Officer or the managing director or the manager;*
- (ii) The company secretary;*
- (iii) The whole-time director;*
- (iv) The Chief Financial Officer; and*
- (v) Such other officer as may be prescribed*

Net worth- Regulation 2(1) (v)

Means the aggregate of the paid up share capital, share premium account, and reserves and surplus (excluding revaluation reserve) as reduced by the aggregate of miscellaneous expenditure (to the extent not adjusted or written off) and the debit balance of the profit and loss account.

Section 2(57) of Companies Act, 2017- Net worth means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

Non institutional investor- Regulation 2(1) (w)

Means an investor other than a retail individual investor and qualified institutional buyer.

Offer document- Regulation 2(1) (x)

Means a red herring prospectus, prospectus or shelf prospectus and information memorandum in terms of section 60A of the Companies Act, 1956 in case of a public issue and letter of offer in case of a rights issue.

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Offer through offer document- Regulation 2(1) (y)

Means net offer to public and reservations.

Preferential issue- Regulation 2(1) (z)

Means an issue of specified securities by a listed issuer to any select person or group of persons on a private placement basis and does not include an offer of specified securities made through a public issue, rights issue, bonus issue, employee stock option scheme, employee stock purchase scheme or qualified institutions placement or an issue of sweat equity shares or depository receipts issued in a country outside India or foreign securities.

Promoter- Regulation 2(1) (za)

Includes:

- (i) The person or persons who are in control of the issuer;
- (ii) The person or persons who are instrumental in the formulation of a plan or program pursuant to which specified securities are offered to public;
- (iii) the person or persons named in the offer document as promoters:

Provided that a director or officer of the issuer or a person, if acting as such merely in his professional capacity, shall not be deemed as a promoter:

Provided further that a financial institution, scheduled bank, foreign portfolio investor other than Category III foreign portfolio investor] and mutual fund shall not be deemed to be a promoter merely by virtue of the fact that ten per cent or more of the equity share capital of the issuer is held by such person;

Provided further that such financial institution, scheduled bank and foreign portfolio investor other than Category III foreign portfolio investor shall be treated as promoter for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them.

Section 2(69) of Companies Act, 2013- Promoter means a person:-

- (a) Who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or*
- (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or*
- (c) In accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:*

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity.

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Promoter group- Regulation 2(1) (zb)

Includes:

- (i) The promoter;
- (ii) 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); and
- (iii) in case promoter is a body corporate:
 - (A) A subsidiary or holding company of such body corporate;
 - (B) Any body corporate in which the promoter holds ten per cent or more of the equity share capital or which holds ten per cent or more of the equity share capital of the promoter;
 - (C) Any body corporate in which a group of individuals or companies or combinations thereof which hold twenty per cent or more of the equity share capital in that body corporate also holds twenty per cent or more of the equity share capital of the issuer; and
- (iv) In case the promoter is an individual:
 - (A) Any body corporate in which ten per cent. or more of the equity share capital is held by the promoter or an immediate relative of the promoter or a firm or Hindu Undivided Family in which the promoter or any one or more of his immediate relative is a member;
 - (B) Any body corporate in which a body corporate as provided in (A) above holds ten per cent or more, of the equity share capital;
 - (C) Any Hindu Undivided Family or firm in which the aggregate shareholding of the promoter and his immediate relatives is equal to or more than ten per cent of the total; and
- v) All persons whose shareholding is aggregated for the purpose of disclosing in the prospectus under the heading "shareholding of the promoter group":

Provided that a financial institution, scheduled bank, foreign portfolio investor other than Category III foreign portfolio investor] and mutual fund shall not be deemed to be promoter group merely by virtue of the fact that ten per cent or more of the equity share capital of the issuer is held by such person:

Provided further that such financial institution, scheduled bank and [foreign portfolio investor other than Category III foreign portfolio investor] shall be treated as promoter group for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them.

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Public issue-Regulation 2(1) (zc)

Means an initial public offer or further public offer.

Prospectus- Section 2(70) of Companies Act, 2013

Means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of body corporate;

Red Herring Prospectus

Red Herring Prospectus is a prospectus, which does not have details of either price or number of shares being offered, or the amount of issue. This means that in case price is not disclosed, the number of shares and the upper and lower price bands are disclosed. On the other hand, an issuer can state the issue size and the number of shares are determined later. An RHP for and FPO can be filed with the ROC without the price band and the issuer, in such a case will notify the floor price or a price band by way of an advertisement one day prior to the opening of the issue. In the case of book-built issues, it is a process of price discovery and the price cannot be determined until the bidding process is completed. Hence, such details are not shown in the Red Herring prospectus filed with ROC in terms of the provisions of the Companies Act. Only on completion of the bidding process, the details of the final price are included in the offer document. The offer document filed thereafter with ROC is called a prospectus.