

Discussion Paper on “Re-classification of Promoters as Public”

Background:

1. Regulations 2(1)(za) and (zb) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as ‘ICDR Regulations’) define promoter and promoter group as under:

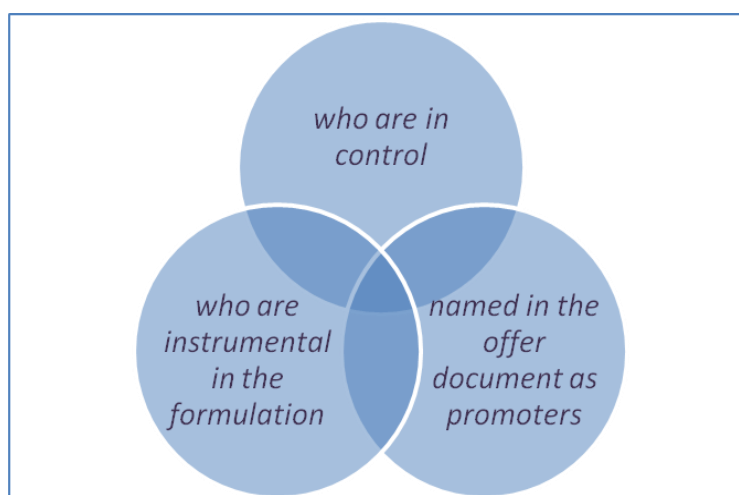
(za) “promoter” includes:

- (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 programme 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 institutional 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 institutional investor shall be treated as promoter for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them;



(zb) “promoter group” 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 institutional 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 institutional investor shall be treated as promoter group for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them”

2. Regulation 2(1)(s) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as ‘SAST Regulations’) defines promoter as under:

““Promoter” has the same meaning as in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and includes a member of the promoter group.”

3. Thus, under the SAST Regulations, promoters are defined in reference to ICDR Regulations. As per ICDR Regulations, promoter also includes person/s named in the

offer document as promoters. This may lead to a scenario of “once a promoter, always a promoter”.

4. Further, there are various disclosure requirements on the promoter/s under the said SAST Regulations viz. on acquisition, disposal of shares, pledge, etc. Thus, timely and accurate disclosure of promoter / promoter group is essential.
5. While implementing the mandatory requirement of minimum 25% public holding in private listed companies in terms of Rule 19A of Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as ‘SCRR’), it was observed that some companies attempted to comply with the minimum public shareholding norm by reclassifying a part of the promoter group entities as public.

Need for review:

6. A few examples wherein promoters may desire to re-classify their holding as public have been explained below:
 - a. ‘Group A’ was classified as the promoters of the company ‘X’. ‘Group B’ entered into an agreement with ‘Group A’ and the company, to acquire substantial shares of the company. Later ‘Group A’ requested the company to terminate the Shareholders Agreement and wanted to classify themselves as public shareholders. Shareholding Agreement was terminated and stock exchanges were intimated about the same. After obtaining the consent of shareholder through postal ballot, the company amended the Articles of Association of the company by removing all the special rights and privileges available to ‘Group A’.
Whether in such a case can ‘Group A’ re-classify its holding to public category?
 - b. ‘X’ Ltd is a listed company. ‘A’ is the daughter of one of the promoters. After marriage of ‘A’ with a family member of a business competitor, ‘A’ desired to re-classify her holding in the public category in ‘X’.
Whether ‘A’ may be permitted to re-classify herself as public shareholder?

- c. 'A' is promoter of a company and holds 70% of the shares of the said company along with his family members. 'B' a strategic investor, wants to have a controlling stake in the company and therefore enters into an agreement with 'A' and the company. After the said agreement 'A' would hold 25% stake and the strategic investor would have 50% stake. 'A' would continue to be the Chairman of the said company.

In such a scenario, whether 'A' may be re-classified as public shareholder?

- d. 'A' and 'B' are family members and jointly promoted various companies. Due to a family dispute, 'A' and 'B' decided to enter into a family separation agreement which was registered. As part of the agreement, 'A' will transfer majority of its holding in some of the companies to 'B' and similarly 'B' will transfer majority of its holding in some other companies to 'A'.

In such a case, 'A' would desire to be re-classified as public shareholder in companies where 'B' would hold substantial shares and vice-versa.

Should such re-classifications be permitted?

- e. There is a company run by family members initially. However, the said family members want to exit from the day to day operations of the company and would hold a minor stake in the company. The said members would like to handover the management of the company to professionals and would not have any special rights in the company.

Should the holding of such family members be re-classified as public holding?

7. As the present regulatory framework does not prescribe criteria for re-classification, it is proposed to prescribe specific criteria to lend objectivity to the process of reclassification of promoters of listed companies as public shareholders under various circumstances.

Review process:

8. Accordingly, the matter was discussed by the Primary Market Advisory Committee

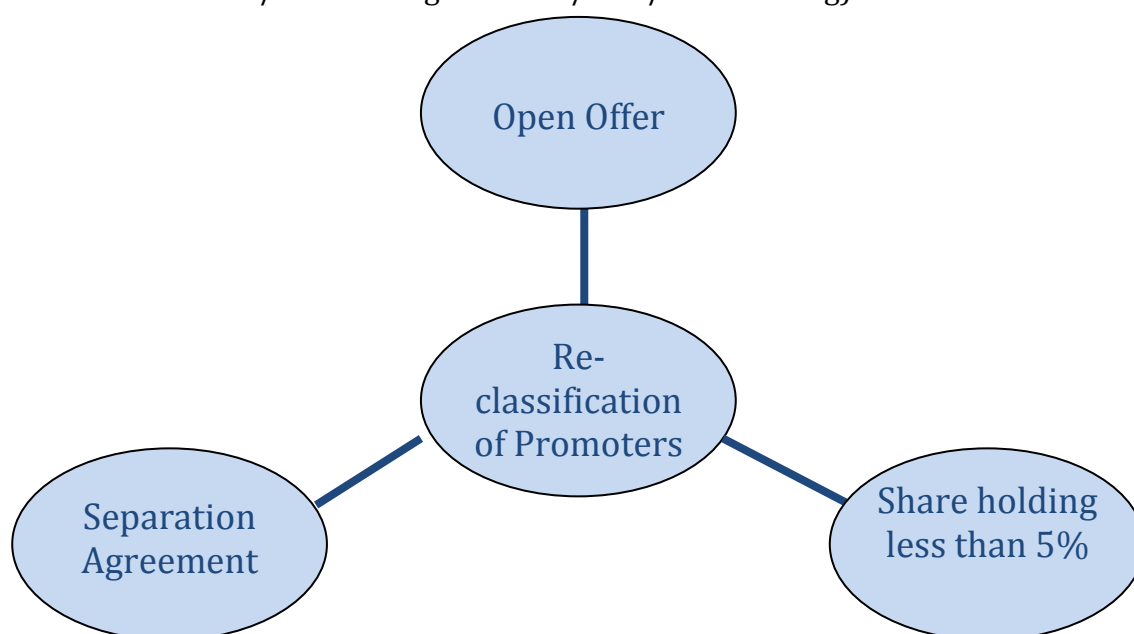
("PMAC") of SEBI in its meetings held on October 30, 2013, December 19, 2013 and August 11, 2014.

9. Based on the deliberations/recommendations of PMAC, a policy framework which details the various scenarios and conditions under which a promoter/promoter group entity can be re-classified as a public shareholder is proposed in the subsequent paragraphs.

Proposed Policy Framework:

10. An entity belonging to promoter / promoter group of listed companies may re-classify its shareholding to public category under the following three scenarios, subject to certain conditions as stated thereafter:

- I. Pursuant to an open offer under the SAST Regulations or on account of an exemption granted by SEBI under the said Regulations.
- II. In case of a separation agreement - The said agreement shall be duly registered under the Registration Act, 1908 **or** the material terms of the separation agreement should be disclosed to the stock exchanges, prior to the reclassification.
- III. The promoter along with the entire promoter group to which the promoter belongs, taken together, holds less than 5% shares in the company (including any convertibles/outstanding warrants/ADR/GDR Holding).





Common Conditions with respect to Scenario I, II and III:

- a. Post reclassification, no shareholding agreement shall exist and all past agreements between (i) outgoing promoter / promoter group entities and the continuing promoter / promoter group entities and (ii) outgoing entities and the company, shall be made null and void. In other words, such outgoing entities shall have only such rights as any other public shareholder. No special rights shall be with the outgoing entity through any formal or informal arrangements
- b. Outgoing entities shall not hold any Key Management Personnel (“KMP”) position in the company and the other group or associate companies. Further, in case the promoter is a corporate entity, KMP’s of such corporate promoter shall not hold any KMP position in the company and the other group / associate companies
- c. The outgoing entities and/or company should not have been debarred from accessing the capital market
- d. Such outgoing entities shall not exercise, directly or indirectly, any control over the affairs of the company or any of the group / associate companies
- e. If such outgoing entities want to classify themselves as promoters again in future, they shall be required to make an open offer to the public and would not be eligible for exemption from the said obligation

Additional conditions with respect to Scenario II and III:

- f. The promoter group entity / company shall give intimation to Stock Exchanges for the re-classification along with all the relevant details including reason for re-classification, shareholding of the said promoter group, copy of agreements and other relevant documents. The re-classification shall be permitted after expiry of 1 year from such intimation
- g. Post the initial 1 year, such promoter group entity may be classified as public. However, they shall not be considered to be part of public shareholders for another 3 years for the purpose of compliance with minimum public shareholding requirements under Securities Contracts (Regulation) Rules, 1957

Further additional conditions with respect to Scenario III:

- h. Such promoters should have been disclosed as promoters since at least 3 financial years prior to the year in which the said promoter/promoter group entities desires to re-classify its holding as public
- i. Such outgoing entities shall not fall within the definition of 'promoter group' category in respect of the continuing promoter

Conditions with respect to disclosure and procedures:

- j. As per the disclosure in the Offer Document, all entities falling under promoter and promoter group shall be disclosed separately on the Stock Exchange's website along with the specific relevant head (e.g. family member of the promoter, corporate entity where promoter holds more than 10%, person in control of the issuer, etc) under which the said entity has been disclosed. For existing listed companies, the said information should be submitted to all the recognized stock exchanges where the company is listed.
- k. The said list shall be allowed to be updated by the Stock Exchange where the securities are listed, only after receipt of a request from the company / promoter along with all relevant documentary evidences
- l. Stock Exchanges shall satisfy themselves with the above mentioned conditions and only thereafter, shall allow any update to the list
- m. SEBI or Stock Exchanges shall have the right to specify any other condition on a case to case basis
- n. SEBI may, for reasons recorded in writing, relax any of the conditions specified above, on a case to case basis

Public comments:

- 11. Considering the implications of the said matter on the market participants including listed companies, promoters/promoter group of the said companies and investors, public comments on the policy framework proposed above at paragraph 10 are solicited. Specific comments/suggestions as per the format given below would be highly appreciated:



Name of entity / person / intermediary:			
Name of organization (if applicable):			
Sr. No.	Pertains to serial number (alphabet) under paragraph 10	Proposed / suggested changes	Rationale

12. Such comments may please be e-mailed on or before January 16, 2015, to reclassification@sebi.gov.in or sent by post, to:-

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