REPORT OF THE

TAKEOVER REGULATIONS ADVISORY COMMITTEE

UNDER THE CHAIRMANSHIP OF

MR. C. ACHUTHAN

JULY 19, 2010

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1. GLOSSARY OF TERMS USED IN THE REPORT

(in Alphabetical Order)

Term	Meaning
Board	Securities and Exchange Board of India
Companies Act	The Companies Act, 1956
Delisting Regulations	Securities and Exchange Board of India (Delisting of Shares) Regulations, 2009.
Delisting Threshold	A shareholding entitling exercise of ninety per cent of the voting rights in a target company, excluding voting rights on shares held by a custodian and against which depository receipts have been issued overseas, with reference to the share capital of the target company as of the last day of the tendering period.
ICDR Regulations	Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009
Open offer	Offer made to shareholders of a listed company in terms of Takeover Regulations/ proposed Takeover Regulations.
Proposed Takeover Regulations	Proposed draft of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2010 contained in this Report
M&A	Mergers & Acquisitions
Maximum permissible non public shareholding	Such percentage shareholding in the target company excluding the minimum public shareholding required under the listing agreement.
SEBI	Securities and Exchange Board of India
SEBI Act	Securities and Exchange Board of India Act, 1992
Takeover Regulations of 1994	Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1994
Takeover Regulations of 1997	Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997

The Committee	The Takeover Regulations Advisory Committee constituted by SEBI under the Chairmanship of Mr. C. Achuthan on September 4, 2009.
SCRR	The Securities Contracts (Regulations) Rules, 1957

2. PREFACE

Background

1. The existence of an efficient and smooth-functioning market for takeovers plays an important role in the economic development of a country. It is a widely recognized fact that one of the key elements of a robust corporate governance regime in any country is the existence of an efficient and well-administered set of Takeover Regulations. Regulations on takeovers seek to ensure that the takeover markets operate in a fair, equitable and transparent manner.

2. In keeping with the foregoing, India also has seen a steady evolution of a set of capital market regulations in respect of substantial acquisition of shares and takeovers. While the initial threads of regulation were incorporated in the late 1980s through Listing Agreement, provisions for a legal framework was provided in 1992 by a statute, viz. the SEBI Act, 1992. The SEBI Act, 1992 expressly mandated SEBI to regulate substantial acquisition of shares and takeovers by suitable measures. Accordingly, SEBI provided a legal framework by making the Takeover Regulations of 1994, which came into force on November 4, 1994.

3. In November 1995, SEBI appointed a committee to review the Takeover Regulations of 1994 under the chairmanship of Justice P.N. Bhagwati (the Bhagwati Committee). The said committee submitted its report in January 1997. Taking into consideration its recommendations, the Takeover Regulations of 1997 were notified by SEBI on February 20, 1997, repealing the Takeover Regulations of 1994. These regulations were periodically amended in response to events and developments in the marketplace, regulatory and judicial rulings as well as evolving global practices as considered appropriate. In 2001, a review of the Takeover Regulations of 1997 was carried out by a reconstituted committee chaired by Justice P.N. Bhagwati. The reconstituted Bhagwati committee submitted its report in May 2002. Based on the same, further amendments were made to the Takeover Regulations of 1997. So far, the Takeover Regulations of 1997 have been amended 23 times.

4. There has been a steady increase in corporate restructuring by Indian companies to adapt to the evolving competitive landscape. This can be seen from the number of takeovers of listed companies increasing from an average of 69 a year during the period between 1997 and 2005 to an average of 99 a year during the period between 2006 and 2010.

5. Taking into consideration the growing level of M&A activity in India, the increasing sophistication of takeover market, the decade-long regulatory experience and various judicial pronouncements, it was felt necessary to review the Takeover Regulations of 1997.

6. Accordingly, SEBI, vide its order dated September 4, 2009, constituted the Takeover Regulations Advisory Committee with the mandate to examine and review the Takeover Regulations of 1997 and to suggest suitable amendments, as deemed fit.

7. The composition of the Committee is as under:

   (a) **Mr. C. Achuthan**, Former Presiding Officer, Securities Appellate Tribunal – **Chairman**.
   (b) **Mr. Kumar Desai**, Advocate, High Court.
   (c) **Mr. Somasekhar Sundaresan**, Advocate; Partner, J. Sagar Associates.
   (d) **Mr. Y. M. Deosthalee**, Group Chief Financial Officer, Larsen and Toubro Ltd.
   (e) **Mr. Koushik Chatterjee**, Group Chief Financial Officer, Tata Steel Ltd.
   (f) **Mr. Raj Balakrishnan**, Managing Director - M&A, DSP Merrill Lynch Ltd.
   (g) **Mr. Sourav Mallik**, Executive Director - M&A, Kotak Mahindra Capital Company Ltd.
   (h) **Mr. A. K. Narayan,** President, Tamil Nadu Investors' Association.
   (i) **Prof N. Venkiteswaran,** Professor, Indian Institute of Management, Ahmedabad.
   (j) **Ms. Usha Narayanan**, Executive Director, Corporation Finance Department, SEBI.
   (k) **Mr. J. Ranganayakulu**, Executive Director, Legal Department, SEBI, and
   (l) **Ms. Neelam Bhardwaj**, General Manager, Division of Corporate Restructuring, SEBI – **Member Secretary**.

Approach of the Committee:

8. Substantial acquisition of shares in, or takeover of, a listed company impacts a host of stakeholders, such as, the acquirer, the target company, the management and the public shareholders. It is critical that the legal framework regulating such substantial acquisition of shares and takeovers is precise, unambiguous and predictable, and balances multiple, and at times, conflicting interests of such stakeholders. For instance, the public shareholder of the target company would be keen to get the highest possible price for his shares, while the acquirer would want to shoulder the least possible financial and regulatory burden. The target company may wish to support, oppose or remain neutral to, a transaction, often depending on who the acquirer is. It then falls upon the regulator to balance the interests of various stakeholders and to provide for a fair, equitable and transparent regime that addresses the concerns of all stakeholders.

9. In drafting the Proposed Takeover Regulations, the Committee adopted an approach of balancing and calibrating such conflicting objectives. While the Committee believes that the Proposed Takeover Regulations, by and large, strike such a balance, the Regulations do recognize and accord primacy to the goal of protection of the interests of the public shareholders in takeover situations.

10. The Committee also recognizes that no regulation would be able to provide for every situation that may arise in the domain of economic activity. However, if the regulatory intent, purpose and underlying philosophy are clearly understood and articulated, these can provide guidance even in ambiguous situations.

11. The Committee believes that the stated objectives of the Takeover Regulations of 1997 continue to remain valid and relevant. As the Committee is recommending substantive changes to the Takeover Regulations of 1997, it decided to draft a new text of Takeover Regulations.

12. It is important to restate the fundamental objectives of the Proposed Takeover Regulations. These are:-

    a. To provide a transparent legal framework for facilitating takeover activities;

b. To protect the interests of investors in securities and the securities market, taking into account that both the acquirer and the other shareholders or investors and need a fair, equitable and transparent framework to protect their interests;

c. To balance the various, and at times, conflicting objectives and interests of various stakeholders in the context of substantial acquisition of shares in, and takeovers of, listed companies.

d. To provide each shareholder an opportunity to exit his investment in the target company when a substantial acquisition of shares in, or takeover of a target company takes place, on terms that are not inferior to the terms on which substantial shareholders exit their investments;

e. To provide acquirers with a transparent legal framework to acquire shares in or control of the target company and to make an open offer;

f. To ensure that the affairs of the target company are conducted in the ordinary course when a target company is subject matter of an open offer;

g. To ensure that fair and accurate disclosure of all material information is made by persons responsible for making them to various stakeholders to enable them to take informed decisions;

h. To regulate and provide for fair and effective competition among acquirers desirous of taking over the same target company; and

i. To ensure that only those acquirers who are capable of actually fulfilling their obligations under the Takeover Regulations make open offers.

Methodology:

13. The Committee held its first meeting on September 17, 2009. The Committee felt that the views from the public on as many issues as possible should be considered while undertaking a comprehensive review of such an important area of corporate activity.

14. For the purpose, a press release was issued on September 17, 2009 seeking suggestions and inputs in a structured manner from the public on any issue considered relevant. The public comments and suggestions received were thematically collated and classified for consideration by the Committee. The Committee held 21 meetings. In addition to this, the sub-committees constituted by the Committee to examine certain specific issues had also met several times.

15. The Committee noted that over the years, SEBI had issued various interpretative letters and informal guidance letters. The Securities Appellate Tribunal and the Supreme Court have interpreted several provisions of the existing regulations. The Committee has considered these developments while formulating the text of the Proposed Takeover Regulations.

16. The Committee has also taken into consideration the prevailing practices and key regulatory requirements relating to takeovers in several other jurisdictions such as Australia, Brazil, Canada, European Union, Germany, Hong Kong, Indonesia, Japan, Malaysia, Singapore, South Africa, Switzerland, UK and USA. The Committee has benefited from such a comparative study in formulating its approach for the Proposed Takeover Regulations.

Structure of the Report:

17. This Report is in three parts:-

    a. Part I contains the salient features of the Proposed Takeover Regulations;
    b. Part II contains the Committee deliberations and key recommendations;
    c. Part III contains the draft text of the Proposed Takeover Regulations.

18. Since the text of the draft regulations has been provided in Part III, Part II of the Report is focused on major policy framework and the process involved.

19. The Committee has also taken note of the observation of the Supreme Court of India in a recent judgment where a statement of objects and reasons for provisions of subordinate legislation has been recommended. The Committee has provided an initial draft of explanatory notes on clauses and has suggested that SEBI finalize the same along with the text of the Proposed Takeover Regulations.

20. The Committee wishes to thank the large number of individuals and institutions who readily responded to the Committee's request for their views and comments on the existing Takeover Regulations, which facilitated the deliberations of the Committee. The Committee also wishes to place on record its profound appreciation for the committed and sincere efforts of Mr. Deep Mani Shah, Assistant General Manager, SEBI and Ms. Rashmi Menon, Manager, SEBI who assisted the Committee in researching and analyzing various facets and worked within tight timelines while drafting the report.

21. Members of the sub-group of the Committee, comprising of Mr. Deep Mani Shah and Ms. Rashmi Menon from SEBI, and also Ms. Anna Abraham Mr. Vikas Verma, Mr. Shailesh Rathi and Mr. Rachit Sabharwal from Kotak Mahindra Capital Company Limited, and Mr. Sohit Kapoor, Mr. Devendra Dhanesha, Ms. Nivedita Joshi and Mr. Abhinandan Raghuthaman from DSP Merrill Lynch, under the overall guidance of Ms. Neelam Bhardwaj, deserve a special mention for their timely inputs and assistance in compilation and analysis of various market data.

22. The Committee would also like to thank the SEBI team in the Division of Corporate Restructuring, including Mr Srikant Kumar Mishra, Mr V. Balakrishnan, Ms Suchismita Sahoo and Ms. Shameen Ahammed, for their efforts in the preparation, collation and analysis of diverse data and documents for the perusal and consideration of the Committee.

23. The Committee is grateful to Mr. C. B. Bhave, Chairman, SEBI, for providing requisite support to the Committee to enable it to complete the assignment of reviewing the Takeover Regulations and making appropriate recommendations.

PART I: SALIENT FEATURES OF THE PROPOSED TAKEOVER REGULATIONS

Open Offer Obligation

Initial Trigger.

- Acquisitions of an aggregate of 25 % or more voting rights in a target company would require the acquirer to make an open offer. *[See Regulation 3(1)]*.

Creeping Acquisition Trigger.

- An acquirer holding 25 % or more voting rights in a target company is allowed to acquire additional voting rights in the target company up to 5 % within a financial year, without making an open offer. *[See Regulation 3(2)]*.

Control Trigger.

- Regardless of the level of shareholding and acquisition of shares, acquisition of control over a target company would require the acquirer to make an open offer. *[See Regulation 4]*.

Indirect Acquisitions.

- Acquisition of shares or voting rights in, or control over any entity that would enable the acquirer to exercise or direct the exercise of such percentage voting rights in, or control over the target company, as would attract the obligation to make an open offer, would be regarded as an indirect acquisition, requiring the acquirer to make an open offer. *[See Regulation 5(1)]*.

- If the indirectly acquired target company is a predominant part of the business or entity being acquired, the Proposed Takeover Regulations would treat such indirect acquisition as a direct acquisition for all purposes. *[See Regulation 5(2)]*.

Voluntary Open Offer

- Shareholders holding shares entitling them to exercise 25 % or more of the voting rights in the target company may, without breaching minimum public shareholding requirements under the listing agreement, voluntarily make an open offer to consolidate their shareholding. *[See Regulation 6]*.

Offer Size

General Rule.

- Any open offer under the Proposed Takeover Regulations would be for 100 %, i.e., for all the shares held by all the other shareholders of the target company [*See Regulation 7(1)]*.

Exception for Voluntary Open Offer.

- As an exception to the 100 % offer rule, a voluntary open offer can be made for the acquisition of shares representing at least 10 % but shall not exceed such number of shares which will take the holding of the acquirer and persons acting in concert with him to beyond maximum non-public shareholding permitted under the listing agreement. *[See Regulation 7(2)]*.

- An acquirer who has acquired shares in the preceding fifty two weeks would not be eligible to make such a voluntary open offer *[See Proviso to Regulation 6(1)]*.

- Such an acquirer would also be barred from making any acquisition for six months after the open offer. *[See Regulation 6(2)]*.

- Upon a competing offer being made, such an acquirer would be permitted to increase his offer size to a normal full-sized open offer within fifteen business days. *[See Proviso to Regulation 7(2)]*.

Public Shareholding

- An acquirer, who is making a mandatory offer triggered by either substantial acquisition (viz. above 25 %) or acquisition of control, but not pursuant to creeping acquisition, would be permitted to state upfront while making the open offer that if his holding in the target company along with persons acting in concert crosses the delisting threshold pursuant to the open offer, the target company may be delisted. *[See Regulation 7(4)]*.

- If such an intention to delist is not stated upfront, or the response to the open offer is such that the public shareholding could fall below the minimum level required under the listing agreement but remains above the delisting threshold, the acquirer would be required to either bring his holding down to ensure compliance by the target company with the listing agreement, or proportionately reduce both his acquisitions under the agreement that triggered the open offer and the acquisitions under the open offer. *[See Regulation 7(5)]*.

Exemption from open offer obligations

- Exemptions have been streamlined and classified on the basis of the specific charging provision from which exemptions would be available, with conditions for eligibility for such exemptions. Some of the areas where changes have been recommended include increase in voting rights due to buy-back of shares, schemes of arrangement that do not involve the target company, certain *inter se* transfers, corporate debt restructuring and rights issues. *[See Regulation 10]*.

- SEBI would continue to have the power to grant exemption from making an open offer. SEBI would also continue to have the discretion to give relaxation from strict compliance with procedural requirements and the same would be linked to specific conditions that would have to be met. However, the requirement of making a mandatory reference to a Panel by SEBI before granting an exemption has been done away with and such requirement has now been made discretionary. *[See Regulation 11]*.

Offer Price

- The minimum price payable as the offer price continues to be regulated and shall be the highest of:
  - the negotiated price under the agreement that attracted the open offer;
  - volume-weighted average price paid by the acquirer and persons acting in concert in the preceding fifty-two weeks;
  - highest price paid by the acquirer or persons acting in concert with him during the preceding twenty-six weeks;
  - sixty trading day volume weighted average market price (for frequently traded shares).

- To compute the offer price for indirect acquisitions, in addition to the above parameters, any higher price paid during the period between contracting of the primary transaction and the public announcement has also to be considered.

- In case of indirect acquisitions of the target company, the offer price would stand increased at the rate of 10 % per annum calculated on a pro-rata basis for the period from the date of the primary transaction being announced in the public domain until the date of actual detailed public statement in respect of the target company. Such revised offer price shall be payable to all shareholders who tender their shares in the open offer.
  [See Regulation 8].

Mode of payment

- The offer price may be paid in the form of cash or securities like shares, convertibles, secured debt instruments of the acquirer or of persons acting in concert with him or a combination of these modes. To ensure that the equity shares given in consideration for the open offer are liquid, eligibility conditions have been stipulated. However, if shares of the target company carrying more than 10 % voting rights have been acquired for cash in the preceding 52 weeks, shareholders to whom the open offer is made may opt to receive the offer price only in cash. *[See Regulation 9]*.

Conditional offers

- An acquirer may make an open offer conditional as to the minimum level of acceptance.

- Where an offer is made conditional upon minimum level of acceptances, the acquirer and persons acting in concert with him shall not acquire, during the offer period, any shares in the target company.
  [See Regulation 19]

Competing offers

- An acquirer having made a voluntary offer is permitted to switch to a normal full-sized offer when a competing offer is made.

- Within twenty-one business days from expiry of the offer period, any competing acquirer would be free to negotiate and acquire the shares tendered to the other competing acquirer, at the same price that was offered by him to the public. However, the holding of the acquirer and persons acting in concert with him ought not to increase beyond the maximum permitted non-public shareholding.
  [See Regulation 20]

Completion of transaction that triggered the open offer

- The agreement that attracts an open offer obligation may be acted upon during the pendency of the open offer provided 100 % of the consideration payable under the open offer is placed in escrow. *[See Regulation 22(2)]*.

- An agreement that triggered an open offer obligation would have to be completed within twenty-six weeks after the offer period. *[See Regulation 22(3)]*.

Governance Issues

- The board of directors of the target company would be required to conduct the operations of the target company in the ordinary course and consistent with past practice. Material

transactions outside the ordinary course of business cannot be undertaken during the offer period, either at the level of the target company or at the level of any subsidiary of the target company without approval of shareholders of the target company. *[See Regulation 26(1)]*.

- A committee of independent directors of the target company shall be formed to consider and give its reasoned recommendations on the open offer, which shall be published by the target company. *[See Regulation 26(6)]*.

- No appointment of representatives of the acquirer to the board of directors of the target company would be permitted unless the acquirer places in escrow 100 % of the consideration under the open offer in cash. Such appointment may be made only after the deadline for making competing offers expires. During the pendency of competing offers, irrespective of the amount deposited in escrow account by acquirers, there shall be no appointment of additional directors to the board of directors of the target company. *[See Regulation 24]*.

Activities and Timelines in open offer process

- Timelines of various activities in the open offer process have been revised. A normal open offer process would be completed within 57 Business Days from the date of Public Announcement. ***(See Para 10.6 in Part II of this Report)***

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PART II: COMMITTEE DELIBERATIONS AND KEY RECOMMENDATIONS

1.0 Offer Size and Minimum Public Shareholding Requirement

Offer Size

Current Provisions:

1.1 The Regulations currently require that on acquisitions resulting in triggering regulations 10, 11 and 12, the acquirer is mandatorily required to make an open offer for a minimum of 20 % of the voting capital (reckoned as on the fifteenth day after closure of the offer).

Committee Deliberations:

1.2 Although acquirers are currently allowed to make open offers for more than the minimum 20 %, such open offers have been rare. Data reveals that during the last four years, in less than 15 % of the open offers, the offer size has been higher than the mandatory minimum requirement of 20 %. ***(See Annexure 1)***

1.3 The Committee observed that such a framework gives rise to inequity – a substantial shareholder would get superior treatment by way of a complete exit as opposed to the public shareholder who would get to exit only partially if the response to the open offer is larger than the size of the open offer. For example, a shareholder holding 60 % would be able to sell his entire stake to the acquirer triggering an open offer. However, if the consequential open offer is made for only 20 % of the target company (the current minimum offer size), the remaining shareholders *viz*. the shareholders holding 40 % would not have an opportunity for a full exit, especially if all or most of them desire to do so. The shares tendered in response to the open offer would then have to be accepted on a proportionate basis in case of over-acceptance, and if all of them tender their acceptance, then each such public shareholder would be able to sell only half of their shareholding, with the balance being returned to them after the open offer is completed. One of the attendant consequences is that the public shareholder is currently unable to exit fully and realize the full premium, if any, on his entire share holding.

1.4 The Committee observed that several international jurisdictions require that pursuant to a change in control, acquirers must make an offer for 100 % of the outstanding

voting capital of a company. The Committee also observed that a majority of the suggestions received from the public in this regard sought increase in the offer size.

1.5 The Committee observed that historically only a minority of open offers have been over-accepted (Only 42 cases out of total 392 open offers in the last 4 years were over-accepted). An analysis of these 42 cases revealed that in majority of these cases (approx. 52 %), the market price as on the fifteenth day after the closure of offer was substantially (viz. over 20 %) less than the offer price. The analysis revealed that the offers which were over-accepted were those offers where the offer price represented a large premium to the post offer price, and where the potential loss to shareholders who did not receive full acceptance was the highest. Hence the Committee concluded that the fact that most open offers were not over accepted was not a reason to assume that shareholders were not interested in receiving full acceptance of shares tendered in open offers.

1.6 The Committee is of the view that mandating an open offer to acquire every share tendered by any shareholder in acceptance of the open offer would be equitable, just and fair. Should a shareholder desire to exit a target company at the offer price mandated under the Takeover Regulations, there ought to be no reason for the law to pre-empt him from a complete exit.

1.7 Besides, the obligation under the Takeover Regulations is to only make an "open offer" to the shareholders. There is no obligation on the shareholders to sell their shares to the acquirer.

1.8 The Committee is mindful of an apprehension voiced about the lack of required bank finance presently available to Indian acquirers for Indian acquisitions. Therefore, acquirers instead have to approach diversified public markets or private investors to finance acquisitions. It was pointed out that public market investors are not approached for funds before a transaction is announced for confidentiality reasons – transactions are announced based on a bridge loan, and permanent funding, either from equity markets or public market debt investors like mutual funds and insurance companies, is arranged subsequently. Foreign acquirers may not be subjected to similar regulatory restrictions on access to bank finance under their respective jurisdictions.

1.9 The Committee is of the view that allowing more flexible norms for grant of loans for strategic investments in Indian listed entities, particularly for funding open offers in deserving cases under the Takeover Regulations is a matter of policy requiring

consideration by the concerned authorities. This could help create a level playing field for domestic acquirers vis-à-vis foreign acquirers for speedy deal execution. The case for flexible acquisition financing is reinforced by the fact that the open offers are made in terms of the regulatory framework laid down by SEBI, and therefore such acquisitions would be under regulatory supervision.

1.10 The Committee has also recommended measures to enhance the ability to pay for open offers in the form of non-cash consideration (discussed elsewhere in the Report). The Committee reiterates that the philosophy of equitable and fair treatment of *all* shareholders should have a primacy over other considerations.

1.11 The Committee also observed that consistent with the changes that it has recommended in the threshold triggering an open offer, there is very little justification to continue with a restricted offer size that would result in all shareholders not having a right to full exit.

1.12 Having considered all relevant factors, the Committee has concluded that there is a very strong case for allowing ***all*** public shareholders to obtain a ***complete*** exit whenever an open offer is made. This recommendation is based on several aspects including sound conceptual underpinnings, international best practices and feedback from the public.

1.13 The Committee also considered whether the offer should be extended to holders of any equity-linked instruments which are not currently eligible for conversion into equity shares as on the expected date of close of the tendering period. The Committee concluded that given the uncertainty about the response to the open offer, any change in terms of equity linked instruments including acceleration of vesting, would not be justified.

Committee Recommendation:

1.14 The Committee recommends that every open offer pursuant to a substantial acquisition of shares in, or change of control over a target company under the Takeover Regulations ought to be for every share held by all the shareholders of the target company, as on the expected date of the close of the tendering period. Holders of equity-linked instruments eligible to be converted into equity shares prior to the aforementioned date may do so and tender their equity shares in the open offer.

(See Regulation 7 of the Proposed Takeover Regulations)

Minimum Public Shareholding Requirements

Current Provisions:

1.15 The Takeover Regulations currently provide that if the acquisition made pursuant to an open offer results in the public shareholding in the target company falling below the minimum level required as per the listing agreement, the acquirer shall take necessary steps to facilitate compliance with the relevant provisions thereof, within the time period specified therein.

Committee Deliberations:

1.16 An attendant consequence of increasing the open offer size to 100 % of the voting capital of the target company would indeed be that an acquirer may end up acquiring shares in excess of the maximum permissible non-public shareholding of the target company or even the delisting threshold of the target company. The Committee considered this position and concluded that certain corresponding changes are required in the Takeover Regulations to achieve consistency with the proposed new regime of an open offer for 100 % of the voting capital of the target company.

1.17 Moreover, there was feedback from various quarters suggesting that the regime for substantial acquisition of shares, takeover of companies and eventual delisting of companies should work in a composite and seamless manner so that M&A activity is transparent and predictable not only for acquirers (who are themselves investors in securities), but also for public shareholders to exit a listed company when a substantial acquisition or a takeover is effected.

1.18 The Committee felt that, it would be unfair to require acquirers to necessarily sell-down their shareholding to meet the minimum public shareholding requirements if they have crossed the delisting threshold through an open offer. It would also be onerous to require such an acquirer to make another offer under the Delisting Regulations. The Committee therefore felt that if the acquirer declares his intention to delist the target company, and the shares tendered in response to the open offer enable him to cross the delisting threshold, such a company should be allowed to delist.

1.19 In the event of an acquirer crossing the delisting threshold, the Committee also considered the feasibility of adopting the concept of "squeeze out" of minority shareholders in the Takeover Regulations on the lines of international practice i.e. conferring the acquirer with a statutory right to acquire minority shareholders on same

terms when the acquirer's shareholding crosses a certain high percentage of the voting capital of the target company. However, the Committee is conscious of the fact that squeeze out can not be legally effected through SEBI regulations in the absence of a statutory provision.

1.20 The Committee believes that its recommendation to permit delisting of a company if the holding of the acquirer crosses the delisting threshold via a single open offer is in the interest of investors in securities and the securities market. If the post-open offer holding of the acquirer were to fall short of the delisting threshold, then there should be no scope for delisting under the Takeover Regulations.

1.21 Further, the Committee took note of the varying levels of shareholding that the acquirer could end up with on completion of an open offer, and the implications that such variations could have for compliance with minimum public shareholding requirements. For example, if the acquirer were to end up with a holding above the maximum permitted non-public shareholding but below the delisting threshold, the target company would have to eventually become compliant with the minimum public shareholding requirements.

1.22 The SCRR requires public shareholding to be at least 25 % (excluding shares held by custodians against which depository receipts have been issued overseas) while the delisting threshold as prescribed by Delisting Regulations is at minimum of 90 % of the total issued shares (excluding the shares which are held by a custodian and against which depository receipts have been issued overseas). It is beyond the scope of the Takeover Regulations to determine such thresholds, and hence there may be situations where the target company would not be compliant with minimum public shareholding and yet not cross the delisting threshold.

1.23 In view of the variations and the need to be in compliance with the current regulatory framework regarding listing thresholds, the Committee is of the view that should the acquirer not succeed in getting the response that would take his holding beyond the delisting threshold, the acquirer may either bring down the non-public shareholding within the time permitted, or, proportionately reduce the acquisitions under the open offer and under the agreement which attracted the obligation to make the open offer. The Committee believes that not forcing acquirers to sell-down, and allowing them to proportionately reduce their acquisition balances the interest of the public and the acquirer, in the context of a regime which has a differential delisting threshold and maximum permissible non-public shareholding. Further, such an ability to

proportionately reduce the acquisition under the agreement and the offer is in keeping with the principle of equity, as both the contracting party and public shareholders would have similar levels of acceptance of their respective shareholdings in the company. Such proportionate reduction in acquisitions would not apply to allotments made by the target company that have triggered the open offer, as the Companies Act does not provide for reversal of allotments already made.

1.24 The Committee recognized that SEBI has notified the Delisting Regulations to provide a framework for voluntary delisting, and hence has also consciously sought to prevent substantial shareholders from using open offer as a means to delist. The possibility of combining the Delisting Regulations and the Takeover Regulations is also outside the scope of this Committee. The very decision to make a creeping acquisition which does not lead to a change in control, and thereby trigger an open offer would be a voluntary one, and therefore, one ought to differentiate between an open offer triggered by voluntary consolidation and an open offer triggered by a substantial acquisition or a change in control. Therefore, such an avenue for delisting under the Takeover Regulations would be available only in the case of open offers made pursuant to substantial acquisition of shares in, or a change of control over a target company.

1.25 The Committee believes that within the constraint of different levels of shareholding threshold as prescribed under different regulations, the framework as suggested would best reconcile various regulatory provisions contained in the Takeover Regulations, Delisting Regulations and the Listing Agreement and the SCRR.

Committee Recommendation:

1.26 The Committee recommends that the target company should stand delisted, should the acquirer have stated its intention to delist the target company and the response to the open offer is such that the acquirer's shareholding crosses the delisting threshold.

1.27 The Committee recommends that in the event the shares of the target company stand delisted pursuant to the open offer, every shareholder who has not tendered an acceptance of the open offer shall be entitled to require the acquirer to acquire his shares at the offer price at any time within a period of twelve months from the fifteenth day from the date on which the shares are delisted from the stock exchanges. This exit window would also be available to the holders of all equity-linked instruments in the company. The company and the acquirer shall take necessary steps

to facilitate the provision of an option to such holders to accelerate the conversion / vesting of such instruments during the period of this exit window.

1.28 The Committee also recommends that should the acquirer's shareholding reach a level between the maximum permissible non-public shareholding and the delisting threshold, such acquirer be given an option to proportionately reduce the acquisitions. The acquisitions that are proportionately reduced would be those under the open offer, the agreement (if any) and immediate past purchases (except acquisitions due to allotments by the target company). Such reduction would enable the acquirer not to breach the maximum permissible non-public shareholding.

(See Regulation 7 of the Proposed Takeover Regulations)

2.0 Thresholds for Open Offers

Initial Threshold

Current Provisions:

2.1 The Takeover Regulations currently provide that if an acquirer acquires or agrees to acquire shares or voting rights such that his voting rights exceed 15 % of the voting capital of the target company, he is required to make an open offer.

Committee Deliberations:

2.2 The Committee observed that the existing threshold of 15 % had been fixed in an environment where the shareholding pattern in corporate India was such that it was possible to control listed companies with holdings as low as 15 %, and therefore the threshold was considered to be a substantial voting power.

2.3 The Committee also reviewed the recent trends in shareholding pattern of the companies listed on the national stock exchanges, and took into consideration the public comments received in this regard. A significant change in the shareholding pattern in listed companies has been observed over the last few years. The mean and median of promoter shareholdings in the listed companies are currently at 48.9 % and 50.5 % of the total equity capital of the company respectively, and the number of companies declared to be controlled by promoters holding 15 % or less is less than 8.4 %. ***(See Annexure 2)***

2.4 The Committee concluded that the existing trigger threshold of 15 % has outlived its contextual relevance and would require an upward revision. The Committee also observed that there are only about 6.1 % companies listed on the BSE where promoter shareholding is between 15 % and 25 %. Hence, the Committee concluded in favor of increasing the initial trigger threshold.

2.5 The Committee observed that in the UK, the first trigger point is at 30 %. Initial trigger points in other jurisdictions such as Singapore, Hong Kong, EU and South Africa were also found to be in the range of 30 % to 35 %. These trigger levels were set primarily based on the level at which a potential acquirer can exercise *de facto* positive control over a company, *viz*. the level at which the potential acquirer is likely to be able to get a majority of votes cast in a general meeting of shareholders.

2.6 It was observed that despite the increase in the mean level of promoter shareholding, there are a number of prominent companies in India, which are controlled by shareholders holding between 25 % and 30 % of the voting capital of the company. The Committee is of the view that this trend suggests that 25 % is the level at which promoters would be capable of exercising *de facto* control. Further, in India, the Companies Act recognizes any holding in excess of 25 % as the threshold at which special resolutions can be blocked. Taking into account both the ability of promoters to exercise *de facto* control at 25 %, and the law governing special resolutions, 30 % threshold would be too high.

2.7 The Committee felt that 25 % shareholding would be an appropriate level at which a new incumbent shareholder could reasonably expect to exercise positive control in the current environment. Thus the Committee concluded that since a holding level of 25 % permits the exercise of *de facto* control over a company, this could be fixed as the appropriate open offer trigger threshold in the Indian context.

Committee Recommendation:

2.8 The Committee therefore recommends that the initial acquisition threshold for a mandatory open offer be raised to 25 % of the voting capital of the target company.

(See Regulation 3(1) of the Proposed Takeover Regulations)

Creeping Acquisitions

Current Provisions:

2.9 The Takeover Regulations currently provide that if an acquirer already holds more than 15 % but less than 55 %, he may acquire additional shares carrying not more than five % of voting rights within a financial year without having to make an open offer.

2.10 Further, where the holding is above 55 % but less than 75 %, a one-time allowance to increase their shareholding by 5 % through market purchases or pursuant to a Buy back by the target company, without having to make an open offer, has been permitted since October 28, 2008 provided that post acquisition holding of acquirer does not go beyond 75 %.

Committee Deliberations:

2.11 The Committee observed that at present the existing limit on additional acquisitions for consolidation purposes within a financial year (generally termed as "creeping acquisitions") under the Takeover Regulations has been set at 5 %.

2.12 The Committee explored the desirability of introducing another open offer trigger at 50 % after the initial trigger at 25 %. In such a scenario, creeping acquisition would be restricted to a nominal/low level between the initial threshold and 50 % and would be relatively easier after 50 %. However, the Committee also observed that more than 50 % of the companies listed on BSE have promoter shareholding less than 50 % and approximately 27 % companies have promoter shareholding less than 35 %. Such a regime, while making it restrictive for new acquirers obtaining control, may impose an unduly heavy burden on the existing promoters of companies in their consolidation efforts.

2.13 During deliberations, it was felt that, a holding of more than 50 % does not seem to confer a significant and material advantage warranting a full-scale open offer, given that even shareholders with slightly less than 50 % would have *de facto* control in almost all instances. In addition, another open offer trigger at 50 % coupled with a regulatory requirement to have minimum 25 % public shareholding would result in avoidable complexities.

2.14 The Committee also felt that the current threshold beyond which creeping acquisition is no longer permitted is not appropriate in the context of a mandatory 100 % open

offer and hence recommended that creeping acquisition of 5 % per annum be allowed up to the maximum permissible non-public shareholding limit.

2.15 The Committee was also mindful of the fact that as per the current Regulations, a voluntary open offer has to be for a minimum of 20 %. The Committee debated the size of the voluntary open offer (discussed elsewhere in this report) and decided to reduce the size of the voluntary open offer to a minimum level of 10 %.

2.16 The Committee underscored the fact that the creeping acquisition route is meant to facilitate consolidation by persons already in control or holding substantial number of shares. Therefore, the Committee does not find it necessary to disturb the current policy in this regard in that gross purchases (ignoring any sales or dilution of stake due to equity issuances in which the existing shareholder did not participate) would count towards ascertaining if this limit has been reached. However, in case of situations where the acquisition is carried out through the issue of new shares by the company (whether through a preferential allotment solely to the substantial shareholder, or through simultaneous preferential allotment both to the existing substantial shareholder and others, or through subscription by a existing substantial shareholder in a public or rights offering), the percentage of shares acquired would be reckoned as the difference between the post issue and pre issue shareholding of the substantial shareholder, rather than based on the number of shares issued to such substantial shareholder.

Committee Recommendation:

2.17 The Committee recommends a creeping acquisition limit of 5 % per financial year computed on a gross basis for all shareholders holding more than 25 % so long as the maximum non-public shareholding limit is not breached.

(See Regulation 3(2) of the Proposed Takeover Regulations)

<u>Voluntary Offers</u>

Current Provisions:

2.18 Currently, the Takeover Regulations provide for consolidation of shareholding by an acquirer who is desirous of maximizing his shareholding without breaching the minimum public shareholding requirements. The offer size for an open offer under

this provision is the lower of 20 % or the maximum permissible acquisition without breaching the minimum public shareholding requirement.

Committee Deliberations:

2.19 The Committee observed that with the proposed increase in the open offer size to 100 % of the voting capital of the target company, there is a need to provide for flexibility to acquirers to voluntarily make open offers outside the mandatory public offer requirements. The Committee felt that voluntary offers are an important means for substantial shareholders to consolidate their stake and therefore recognized the need to introduce a specific framework for such open offers. However, to discourage non-serious voluntary offers, the Committee decided to set a minimum offer size of 10 %.

2.20 The Committee also observed that, inasmuch as the voluntary open offer is permitted as an exception to the general rule on the offer size, the ability to voluntarily make an open offer should not be available if in the proximate past, any of such persons have made acquisitions within the creeping acquisition limits permitted under the Regulations. Similarly, such an acquirer should be prohibited from making acquisitions outside the open offer during the offer period, and should also be prohibited from any further acquisitions for six months after the open offer. Also, such an offer should not lead to breach of the maximum permissible non-public shareholding.

Committee Recommendation:

2.21 The Committee therefore recommends that acquirers collectively holding shares entitling them to exercise 25 % or more voting rights in the target company may voluntarily make an open offer to consolidate their shareholding. The Committee has proposed a minimum open offer size of 10 % consistent with the rationale of consolidation option outside the creeping route. Voluntary offers should not, however, be of a size that could lead to breach of the maximum permissible non-public shareholding.

(See Regulation 6 of the Proposed Takeover Regulations)

3.0 Control

Current Provisions:

3.1 The Takeover Regulations currently provide for inclusive definition of "control". It is provided under the Takeover Regulations that control shall include the right to appoint majority of 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 shareholder agreements or voting agreements or in any other manner.

Committee Deliberations:

3.2 The concept of "control" was deliberated in the context of the public comments received in this regard. Diverse perspectives on whether affirmative rights relating to governance of a listed company (whereby a party to the agreement could object to a specific set of decisions) *ipso facto* constituted "control" or otherwise were also debated.

3.3 It was observed that the same set of provisions could vary in its import and reach across different target companies depending on the facts, circumstances and nature of each target company. In any event, the Committee felt that the existence or non-existence of "control" over a listed company would be a question of fact, or at best a mixed question of fact and law, to be answered on a case to case basis. The Committee also recognized that any blanket provision whereby a right to say "no" is in all circumstances deemed to either constitute "control" or not to constitute "control" may be liable to misuse.

3.4 The Committee was conscious of the interpretation of such provision in the facts and circumstances of a specific case by the Securities Appellate Tribunal, and observed that an appeal against such decision was pending before the Supreme Court of India.

3.5 In the circumstances, given the case-specific nature of "control" as a concept, the Committee decided to refrain from stipulating whether the power to say "no" would constitute "control" for purposes of the Takeover Regulations. Whether a person has acquired control by virtue of affirmative rights would therefore have to be discerned from the facts and circumstances surrounding each case.

3.6 The Committee observed that it was desirable to underline and emphasize that acquisition of *de facto* control, and not just *de jure* control should expressly trigger an

open offer obligation. The Committee also felt it desirable to clarify that merely by virtue of holding the position of a director or officer of a target company, such a person ought not to be regarded as being in control over the target company.

Committee Recommendations:

3.7 The Committee recommends that the definition of "control" be modified to include "ability" in addition to "right" to appoint majority of the directors or to control the management or policy decisions would constitute control. It is also clarified that a director or officer of the target company would not be regarded as being in control merely by virtue of holding such position.

(See Regulation 4 of the Proposed Takeover Regulations)

4.0 Offer Price

Current Provisions:

4.1 The Takeover Regulations currently provide the parameters to be considered for determining the minimum offer price depending on whether or not the shares of the target company are "frequently traded" (shares which have annualized trading volume of 5 % or more of the listed share capital during a period of 6 calendar months preceding the month in which the public announcement is made). Such parameters for frequently traded shares include the price under the agreement for acquisition that attracted the open offer, any price paid by the acquirer or persons acting in concert during a 26-week period preceding the public announcement (termed as the "look back period"), and the historical market average price of the shares for a proximate past period.

4.2 For "infrequently traded" shares, the Takeover Regulations require the computation of the offer price on the basis of financial parameters such as return on net worth, industry price-earnings multiples and the like, apart from any price actually paid by the acquirer or persons acting in concert during the look back period, or in the transaction that triggers the open offer obligation.

4.3 The Takeover Regulations also require addition to the open offer price, of any amount paid towards non-compete fee in excess of 25 % of the open offer price.

Committee Deliberations:

4.4 The Committee observed that the Takeover Regulations have historically regulated the minimum price at which an open offer is required to be made and was unanimous in its view that there is a continued need to stipulate a minimum price that ought to be offered to the shareholders. In fact, one of the fundamental principles underlying the Takeover Regulations is to give public shareholders an exit on terms not inferior to the terms obtained by a substantial shareholder from the acquirer for his large shareholding. Further, the minimum price should also prevent acquirers from building a stake over a period of time without offering that price to shareholders in the offer.

4.5 However, there was considerable deliberation as to whether the price that must be payable for an open offer should be one that is "not inferior" to that received by substantial shareholders / paid by the acquirer or should the price that must be payable be a "fair price". In arriving at a decision on this aspect, the Committee went back to the fundamental objectives of the Takeover Regulations, and finally concluded that the Takeover Regulations need to preserve the concept of equity for all shareholders, and in that context, the offer price payable to public shareholders should be "not inferior" to that paid for substantial shareholders. As there is no justification for a premium payable to substantial shareholders, there is also no justification for any regulated mechanism or premium payable to public shareholders.

4.6 In the context of the foregoing, the Committee examined whether the price parameters currently applicable have served well, and whether any revision is warranted in any of them in the face of the regulatory experience over the years.

4.7 **Market Price based parameters for frequently traded shares**

4.7.1 The Committee considered whether a market-price based parameter was at all fair or appropriate for pricing open offers, particularly when the transaction that triggers an open offer itself prices the share specifically. In other words, if parties to a transaction actually were contracting a specific negotiated price, the issue that arises is whether it would be fair or appropriate or equitable to require an open offer to be made a price different from such price.

4.7.2 The Committee observed that most jurisdictions did not use market price parameters at all in regulating the minimum offer price i.e. most of the European Union, most of Asia and other jurisdictions which the Committee

considered in its deliberations. However, the Committee noted that Germany is one major jurisdiction that uses a market-price-based parameter (volume-weighted average) for determining the offer price. The Committee also observed that the price discovered in the market and the price paid in M&A transactions were not necessarily consistent.

4.7.3 The Committee also observed that reliance on a historical price average distorted the value of the shares and such an average was not reflective of the prevailing market price. The Committee examined data on spot price movements compared with the 26 week average, which showed that at times, the market price parameter mandates excessively large premia to spot prices. A chart illustrating such a feature on the basis of the SENSEX (which is typically less volatile than individual stocks, and hence would understate the impact of this parameter) over a period of 5 years is annexed at ***Annexure 3***.

4.7.4 As may be observed from the aforesaid chart, the 26 week average can diverge considerably from the spot price on the date of announcement of an offer and such a distortion would impact the ability to strike M&A transactions in bear markets, e.g. there were periods in the 2008-09 bear market when the 26 week average price was over 60 % above the spot price for the SENSEX. Further, for several individual stocks, the 26-week average often implies an even larger premium to the prevailing market price. What this meant that even if acquirers were willing to pay a 10-20 % premium to spot prices to carry out M&A transactions, they would be regulated by a regime that requires minimum offer prices that are as high as 60 % above the spot price. Hence, such an M&A transaction would not take place, and such a regulation would have the impact of being detrimental to all shareholders, including public shareholders. Also, in bull markets, the 26-week average was significantly below the prevailing market price, rendering the parameter irrelevant, as acquirers tend to be guided by the spot prices when making a decision.

4.7.5 The Committee also examined if the two-week average formula should be retained. It was found that the two week average at announcement for the SENSEX is much closer to the spot price. However, it was found that the price at the time of completion of the open offer diverges materially from the two-week average at the time of the public announcement – the two-

week average thus represents an almost unscientific random variable. A chart illustrating this phenomenon is annexed at ***Annexure 4***. What this really meant was that given the timelines for making an offer (75 days), the 2-week price at the time of the public announcement also diverges significantly from the market prices at the time of closure of the offer, which is when shareholders make a decision whether or not to tender in an offer.

4.7.6 The Committee also commissioned a study to explore as to how often the market price parameter had ended up as the actual offer price. An analysis of the historical open offer data showed that among the offers which were triggered by share acquisition agreements, the price discovered through the market price parameter ended up as the offer price only in a small percentage of open offers (30 %). Also, less than half of the where shares were frequently traded were made based on the market price parameter (approx. 35 %). In all other cases, a higher price was offered as a result of the other more relevant parameters mentioned in Regulation 20(4). Please see ***Annexure 5*** for a detailed analysis.

4.7.7 Members of the Committee stated that eliminating this parameter would be well-advised since, rather than delivering substantial benefits to investors, this parameter could be a potential dampener for M&A activity. Besides, it was felt that it would be inequitable and unfair to require a price to be paid under the open offer that is different from the principal triggering transaction. Generally if the market price formula were to lead to a value greater than what a potential acquirer is willing to pay, in most cases, the potential acquirer would either drop the deal or implement any other legitimate deal structure that would not attract the Takeover Regulations. All of the foregoing argues for the market-price parameter being dropped, particularly for direct acquisitions where the price based on other parameters is easily discernible. This principle is also consistent with the principle of equity dictated by a 100% offer regime, and the further refinements suggested in the following sub-sections.

4.7.8 However, the Committee also considered the comments from the public shareholders, which seemed to favour a continued regime of minimum price under an offer to be linked to a market price parameter. There also were apprehensions that our corporate governance framework, though

significantly improved especially for larger companies, is not yet evolved for the entire listed company universe, and hence the linked with a market price parameter should remain.

4.7.9 Thus, the Committee believes that the Takeover Regulations should make an eventual transition to a regime, in which the offer price has no linkage with the market price parameter. However, in the interim the Committee concluded that a linkage with the market price parameter be maintained for the current draft of the Takeover Regulations.

4.7.10 While considering the continued market price linkage, the Committee concluded (for reasons mentioned earlier), that the 26-week average is too long a period to consider and that a 2-week average is a too volatile period to consider. The Committee considered 4-week and 12-week averages i.e. 20 and 60 trading day averages in its consideration set to arrive at the optimum period for the market price linkage, and data for 46 randomly selected companies (from the top 1000 by market capitalization) for the last 3 years is presented in **Annexure 6**. While the 4-week average was closer to the spot price, the Committee felt that it faced issue of higher volatility, similar to the 2-week average.

4.7.11 Another change the Committee has proposed is the use of volume-weighted average price (VWAP) in lieu of the average of the weekly high and low of the closing prices /daily intra-day high and low prices of shares under the existing Regulations, since the daily volume weighted average price data are currently readily available. Use of VWAP would ensure that the resultant price is more representative and eliminates the outlier effects of high and low prices and is a more accurate determinant of the prices at which shares are actually transacted.

4.7.12 Based on the data and deliberations, the Committee concluded on using the 60 trading day VWAP as a market price parameter, and recommends that this be incorporated in the Takeover Regulations, with a clear view to doing away with this parameter as soon as practicable.

4.8 **Look-back parameter**

4.8.1 As per the current Takeover Regulations the look-back clause requires the acquirer to take into account the highest price paid by him or by persons

acting in concert, over a period of twenty-six weeks prior to the date of the public announcement.

4.8.2 An examination of the relevant provisions in other jurisdictions suggests that such a look-back period ranges from three months (in the case of voluntary offers in Singapore and Hong Kong) to twelve months (United Kingdom).

4.8.3 It is felt that a look-back period longer than the currently applicable 26-week period would ensure that an acquirer does not get to postpone the public announcement at a marginal carrying cost, just to overcome paying the public shareholder the price he has actually paid in the proximate past. A longer look-back period thus would make it more expensive to defer the public announcement intended by the acquirer. Therefore, after debating various possible look-back periods, the Committee concluded that investor interest would be best served if the acquirer has to pay the highest of:

i. The 52 week volume-weighted average price for acquisitions carried out by the acquirer or persons acting in concert with him (whether already paid or agreed to be paid), or

ii. The highest price paid (or agreed to be paid) by the acquirer or persons acting in concert with him, in the 26 weeks preceding the public announcement.

4.9 **Non Compete Fees**

4.9.1 Most takeover regulations do not contain any express provisions about treatment of non-compete fees in negotiated contracts that trigger a tender offer. However, there are jurisdictions that require the addition to the offer price of any consideration paid and couched in any form in concurrent and collateral transactions. In India, a tolerance limit of twenty-five % on non-compete payments was brought in as a measure of curbing the practice of paying large non-compete payments, outside the share price.

4.9.2 The Committee considered the argument for retaining a non-compete payment from the selling shareholders' perspective to the effect that the non-compete terms constitute a distinct benefit which the selling shareholder is conferring to the acquirer – which needs to be separately compensated for, as this is distinct from the price for the shares which must be paid to all shareholders.

4.9.3 The Committee also considered the alternate view that it is very difficult to assess whether such non-compete consideration is reasonable, and that such payments may therefore be a disguise for making payments to controlling shareholders without paying the same to the public shareholders. The Committee also felt that there was a strong merit in the view that non-compete fee, if any, should accrue to the company and not to one group of shareholders as this is in the nature of compensation for loss of potential value on account of opportunity sacrificed. The Committee also debated whether it would be fair to allow payment of a control premium solely to large shareholders. The Committee noted that control was an incidental benefit arising out of share ownership. Based on an examination of the equities and merits involved, as also the law in other jurisdictions, and market realities, it was decided that such a payment would not be fair to minority shareholders.

4.9.4 The Committee concluded that in keeping with the spirit of equal treatment for all shareholders, and the scope for abuse of non-compete payments, the Takeover Regulations ought to be explicit that consideration paid for the shares in any form to the selling shareholder and his affiliates, concurrent with the purchase of shares, whether termed as "control premium", or "non-compete fees" or otherwise must be added to the negotiated price per share for the purpose of determining open offer pricing.

4.9.5 The Committee concluded that once the extant exemption in respect of non-compete fee is deleted from the Takeover Regulations, and it is clearly articulated that apart from the share acquisition agreement, consideration in any form inclusive of all ancillary and collateral agreements shall form part of the negotiated price, it is in the selling shareholders' interests to ensure that the negotiated price truly reflects the value of the scrip fairly. Since this negotiated price in any case would be one of the parameters for fixing the offer price, if such price were higher than other proposed parameters, all shareholders will get the same negotiated price.

4.10 **Miscellaneous**

4.10.1 The Committee also recommends that the acquirer as well as PACs should be prohibited from acquiring any shares in the target company during the 26

weeks following the completion of the open offer. This safe-guard is also aimed at ensuring that the acquirer does not under-price the offer and instead acquire shares later at a higher price.

4.10.2 The Committee took note of circular dated May 4, 2010 issued by the RBI stipulating that transfers of listed shares between persons resident outside India and persons resident in India ought not to be at a price lower than the preferential allotment price arrived at in terms of the SEBI (ICDR) Regulations. The Committee noted that such a position may render takeovers of Indian listed companies expensive for foreign acquirers and also restrict the ability of Indian acquirers to take over Indian companies owned by foreigners. Since the Takeover Regulations seek to stipulate and enforce fair value for the M&A transaction, it is but appropriate that the same fair value criteria are adopted for all other regulations including exchange controls so as to bring about regulatory consistency. The Committee therefore recommends that SEBI may like to take this up suitably with the RBI.

4.10.3 The Committee reviewed the data on trading volumes of companies listed on BSE and NSE, based on data compiled from Capitaline, and noted that about 70 % of the companies have trading volumes in excess of 10 % of their share capital.

Committee Recommendation:

4.11 The Committee therefore recommends that the minimum offer price for direct acquisitions should be the highest of:

(a) the highest negotiated price per share of the target company for any acquisition under the agreement attracting the obligation to make a public announcement of an open offer;

(b) the volume-weighted average price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him during the fifty-two weeks immediately preceding the date of the public announcement; and

(c) the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him during the twenty-six weeks immediately preceding the date of the public announcement; and

(d) the volume-weighted average market price, for frequently traded shares, during 60 trading days immediately preceding the date of the public announcement, computed based on market prices on the stock exchange where the shares of the company are most frequently traded during that period.

4.12 The Committee recommends that frequently traded shares should now be defined as shares which have a trading volume of 10 % or more of the total number of shares during a period of 12 calendar months preceding the month in which the public announcement is made.

4.13 In addition, the Committee also recommends that the clause relating to non-compete fee be deleted from the Takeover Regulations, and any consideration paid in any form inclusive of all ancillary and collateral agreements shall form part of the negotiated price.

(See Regulation 8 of the Proposed Takeover Regulations)

5.0 Indirect Acquisitions

Trigger for indirect acquisitions

Current Provisions:

5.1 The Takeover Regulations currently provide that acquirer has to make an open offer for shares of the target company when there is direct or indirect change of control of the target company irrespective of any direct acquisition of shares of the target company. The regulations also provide for deferment of open offer obligations till consummation of the original transaction.

Committee Deliberations:

5.2 The provisions of the Takeover Regulations are attracted upon acquisition of shares or voting rights in, or control over a target company regardless of whether such acquisitions are made directly, or are consequential to an acquisition of an entity other than the target company. There has been considerable debate as to whether the obligation to make an open offer for the target company should be attracted only when the target company represents a material or substantial component of, or the *raison d'etre* of the primary acquisition.

5.3 The question whether primary transactions ought not to trigger open offer obligations unless the indirectly-acquired target company represented a material component of the primary transaction, particularly in the case of global multi-national acquisitions, was also debated by the Committee in detail. One view was that indirect acquisitions should trigger open offers only if the indirectly held target company was a material part of the assets of the parent. This would be in keeping with the practice in most international jurisdictions.

5.4 Another view was to have a flexible approach depending on the type and underlying nature of each such transaction. Cases of indirect acquisition could typically fall under the following 3 categories, *viz.* (i) cases where the target company is a "significant component" of the primary transaction; (ii) cases where the target company should be regarded as an intended object or material part of the main acquisition; and (iii) cases where the target company is a non-material and unintended, incidental consequence of the primary acquisition.

5.5 The Committee believes that if there is a change of control over a listed company, or if an acquirer indirectly acquires the ability to direct the exercise of voting power in excess of the thresholds specified for attracting open offer obligations, there ought to be no differentiation in the imposition of the obligation to make an open offer. An analysis of companies listed in India, whose controlling interest is held by another listed Indian company or an international company is presented in ***Annexure 7.***

5.6 The Committee observed that most Indian companies would fall under category (iii) above (*viz.* would be non-material or incidental targets), and if such companies were to be exempted from an obligation to make an open offer, the shareholders of such target companies would be deprived of their legitimate right to get an exit opportunity despite the occurrence of a change in control. Further the Committee also believed that if there is a change of control over a company listed on a stock exchange, or if an acquirer indirectly acquires the ability to direct the exercise of voting power in excess of the thresholds specified for attracting open offer obligations, there ought to be no differentiation in the imposition of the obligation to make an open offer. Such a distinction would have the effect of giving large transactions the benefit of an exemption from an open offer and would impose such an obligation in a discriminatory manner only on small transactions.

5.7 After taking into account the above factors, the Committee by majority view, felt that materiality thresholds for attracting an open offer obligation in the case of indirect acquisitions ought not to be recommended.

Committee Recommendation:

5.8 The Committee recommends that irrespective of whether the target company is material to the parent transaction, open offer obligations have to be triggered. Where a change in control over the target company occurs, shareholders of the target company ought to rightfully get an adequate exit opportunity.

(See Regulation 5 of the Proposed Takeover Regulations)

Timing and Offer Price

Current Provisions:

5.9 The Takeover Regulations currently provide that in case of indirect acquisition of shares or change of control, a public announcement may be made by the acquirer at any time from the date of the initial announcement of the intention to acquire or entering in to the acquisition agreement, until completion of three months after the consummation of such acquisition or change in control or restructuring of the parent or the company holding shares of or control over the target company.

5.10 The Takeover Regulations currently do not differentiate between open offers arising due to direct acquisitions vis-à-vis indirect acquisitions for computation of offer price and the same offer price formula prescribed for direct acquisitions is used for indirect acquisitions as well, and the practice is to compute the offer price as of the date of the announcement of primary acquisition and as of the date of the public announcement for the target company, whichever is higher.

Committee Deliberations:

5.11 The current Takeover Regulations provide for a leeway of up to three months after consummation of the parent acquisition for a public announcement of an open offer for the indirectly-acquired target company to be made. However, shareholders would have already been given advance notice that an open offer is imminent in such a situation, except if the parent acquisition is withdrawn for some reason. Since the computation of the offer price for such an imminent open offer includes a 2-week

price formula, the Committee noticed some situations in which the market price saw a steady rise from the date of announcement of the primary acquisition until the date of the eventual public announcement.

5.12 The market price for such indirectly acquired target company would naturally be rising in anticipation of the impending open offer on the knowledge that market price would dictate the minimum offer price. The Committee concluded that in such situations, the balance is unfairly loaded against the acquirer. As the acquirer may not be in a position to launch the open offer until the primary acquisition is consummated, the market price of the target company could end up spiraling upwards before the open offer is eventually announced.

5.13 Moreover, the acquisitions between the two dates (date of announcement of the primary acquisition and the eventual date of public announcement) may fall outside the relevant look-back period. Therefore, even an actual acquisition may not get factored into the computation of the minimum offer price.

5.14 The Committee recognizes that although materiality is not a very important aspect for determining whether an open offer is required to be made, the materiality criterion is important for ascribing a value to the target company. The Committee is therefore of the view that in an indirect acquisition, the target company may have indeed formed a sizeable component of the primary transaction and may have played a role in the negotiations for such transaction, and yet, the negotiated price for the primary transaction may not specifically ear-mark the value of the target company.

5.15 The Committee believes there is a need to ascribe a separate value to the target company in situations where the target company forms a significant part of the primary transaction. The value so ascribed would help in determining a fair offer price in such cases. .

5.16 Further, to avoid the risk of transactions being structured as indirect acquisitions merely to avoid the price computation methodology and the open offer process prescribed for direct acquisitions, the Committee decided that where the proportionate net asset value, or the sales turnover, or the market capitalization of the indirectly-acquired listed company represents more than 80 % of the net asset value, sales turnover or the deal value for the parent transaction, the acquirer must specify the value of the stake in the Indian company that has been factored in and the basis of such valuation and the Takeover Regulations would treat such acquisitions as if they were direct acquisitions, with no leeway on time for making the public announcement.

5.17 The Committee is of the view that certain flexibility needs to be provided for indirect acquisitions where the target company is not a significant part of the primary transaction. In cases where the target company is not a significant part of the primary transaction, the public announcement (required to be made on the same terms as if it were a case of direct acquisition) may be made within four business days of the date on which the primary acquisition was announced in the public domain or any agreement was entered into. This shall be followed with detailed public statement to be issued within five business days of the date of completion of the primary acquisition.

5.18 However, as the acquirer would be fixing the price payable for the offer as on the date of the primary acquisition, and would have the benefit of delaying payment to the shareholders (due to time lag in completing the primary acquisition), all the shareholders tendering shares in the open offer would need to be compensated by way of an increase in the offer price at the rate of [10 %] per annum for the period between the announcement of primary acquisition and date on which the detailed public statement is actually made if such period is more than five business days.

5.19 Where the proportionate net asset value, or the sales turnover, or the market capitalization of the indirectly-acquired listed company represents more than 15 % of the net asset value, or the sales turnover, or the deal value for the parent acquisition, the acquirer shall be required to compute and disclose the per share value of the target company taken into account for the primary acquisition, and the basis for such valuation. Where such a proportion is less than 15 % on all the parameters, then such a target company would be considered to be a non-material part of the primary transaction, without the requirement to determine an attribution of value of the indirectly-acquired target company.

Committee Recommendation:

5.20 With regard to the pricing of open offers triggered on account of indirect acquisitions, the Committee recommends the following:

(a) Where the proportionate net asset value, or the sales turnover, or the market capitalization of the indirectly-acquired listed company represents more than 80 % of the net asset value, sales turnover or the deal value for the parent business or company, the acquirer must specify the value of the stake in the Indian company and the basis of

such valuation that would have been factored in, and the Takeover Regulations would treat such acquisitions as if they were direct acquisitions in all respects.

(b) For indirectly acquired target companies, the minimum offer price ought to be the highest of:

1) The highest negotiated price per share, if any, of the target company for any acquisition under the agreement attracting the obligation to make a public announcement of an open offer;

   i. Where the proportionate net asset value, or the sales turnover, or the market capitalization of the indirectly acquired listed company represents more than 15 % of the net asset value, or the sales turnover, or the deal value for the parent business or company, the acquirer shall be required to compute and disclose the per share value of the target company taken into account for the acquisition of the parent business or company and the basis of such valuation.

   ii. Where the proportionate net asset value, or the sales turnover, or the market capitalization of the indirectly acquired listed company represents less than 15 % of the net asset value, or the sales turnover, or the deal value for the parent business or company, the acquirer shall not be necessarily required to make the computation as above, but to factor in the same if the same has been carried out.

2) The volume-weighted average price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him during the fifty-two weeks immediately preceding the date on which the intention or the decision to make the primary acquisition was announced in the public domain or any agreement was entered into;

3) The highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him during the twenty-six weeks immediately preceding the date on which the intention or the decision to make the primary acquisition was announced in the public domain or any agreement was entered into; and

The highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him between the date on which the intention or the decision to make the primary acquisition was announced in the public domain or any agreement was entered into and the date of the public announcement;

(c) For frequently traded shares, the volume-weighted average market price on the stock exchange for a period of 60 trading days preceding the date on which the intention or the decision to make the primary acquisition was announced in the public domain or any agreement was entered into, as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period.

(d) The price offered as of the date of public announcement (to be calculated as detailed above) shall have to be increased by 10 % per annum for the period between the announcement of primary acquisition and date on which the detailed public statement is actually made.

5.21 With regard to the timing of the issue of public announcement, the Committee recommends that for transactions where the proportionate net asset value, or the sales turnover, or the market capitalization of the indirectly-acquired listed company represents more than 80 % of the net asset value, sales turnover or the deal value for the parent business or company, the public announcement be made on the earlier of the date on which the intention or the decision to make the primary acquisition was announced in the public domain or any agreement was entered into. In all other cases, the public announcement can be made within four business days of such date, and in such cases the detailed public statement should be issued within five business days of the consummation of the primary acquisition.

(See Regulations 8 and 13 of the Proposed Takeover Regulations)

6.0 Withdrawal of open offer

Current Provisions:

6.1 The Takeover Regulations currently provide that no open offer, once made, shall be withdrawn except under the following circumstances:

(a) the statutory approval(s) required have been refused;

(b) the sole acquirer, being a natural person, has died;

(c) such circumstances as in the opinion of SEBI merits withdrawal

Committee Deliberations:

6.2 Ordinarily, once an open offer is made, its inexorable conclusion ought to be the completion of the open offer. However, there could be circumstances where the open offer cannot be completed. These circumstances can be classified into two types *viz.* (a) where it is rendered impossible for the open offer to continue – for example, death of an acquirer who is an individual, or rejection of any statutory approval required for the offer (as provided for currently); and (b) non-attainment of any condition stipulated in the agreement that attracted the open offer obligation for reasons beyond the control of the acquirer, resulting in the agreement itself not being acted upon.

6.3 There was extensive debate within the Committee about whether non-attainment of conditions other than regulatory approvals should be permitted as a reason for withdrawal of the offer. The Committee examined regulations in other jurisdictions and found that in certain jurisdictions such as Australia, Singapore, Germany, US and UK, the acquirers are allowed to clearly specify conditions to the offer, and to withdraw the offer if these conditions are not met, and if the triggering agreement was not acted upon.

6.4 The Committee believes that it is important to permit withdrawal of the open offer in such circumstances. To build safeguards, the Committee recommends that the conditions subject to which the triggering agreement was executed, the failure of which would result in such agreement not being acted upon, ought to be fully and fairly disclosed upfront when the detailed public statement is made. Besides, the non-attainment of such a condition ought to be for reasons outside the control of the acquirer. Moreover, the acquisition triggering the open offer ought not to be effected in order to be eligible for withdrawal.

Committee Recommendation:

6.5 The Committee recommends that, in addition to the grounds currently existing, an open offer may be withdrawn where any condition stipulated in the agreement for acquisition attracting the obligation to make the open offer is not met for reasons outside the reasonable control of the acquirer, and such agreement is rescinded,

subject to such conditions having been disclosed in the detailed public statement and the letter of offer.

(*See Regulation 23 of the Proposed Takeover Regulations)*

7.0 Competing Offers

Current Provisions:

7.1 The Takeover Regulations currently provide the opportunity to any person other than the acquirer to make a competing offer within 21 days of the public announcement of the first offer. The Takeover Regulations also provide that any competitive offer by an acquirer shall be for such number of shares which, when taken together with shares held by him shall be at least equal to the holding of the first bidder including the number of shares for which the present offer by the first bidder has been made.

Committee Deliberations:

7.2 The concept of competing offers, (current Takeover Regulations term these as "competitive bids"), was deliberated at length by the Committee. The discussions focused on a number of areas relevant to competing offers like timelines, offer size, reasonable obligations and restrictions on the competing acquirers and on the target company, parameters of the open offers that may be revised, a cut-off time for such revisions, withdrawal of competing offers, and *inter se* transfer of shares among the bidders after completion of the competing offers.

7.3 The Committee recognized that the intent behind such provisions is to achieve orderly competition between acquirers vying for the same target company. The Committee was clear that competing offers if undertaken in a fair, transparent and equitable manner would be in the interests of the shareholders at large and therefore need be facilitated. However, it was also felt that certain reasonable restrictions should be placed on the target company as well as on the bidders so as to make the process more robust.

7.4 The Committee is of the view that the present period of 21 days for making a competitive bid is short. One should also ensure that the permitted time period is not so long as to result in prolonged uncertainty. Further, after the expiry of the period within which a competing offer may be made, no person should be permitted to either

make an open offer or enter into a transaction that would trigger an open offer until expiry of the offer period.

7.5 The Committee recommends that the general rule on offer size should be applicable to competing offers as well. The Committee however considered whether any deviation is warranted where the first offer were a voluntary offer with restrictions on the offer size, i.e. a maximum of such number of shares as would keep the acquirer within the maximum permissible non-public shareholding. If there were a competing offer after a voluntary offer is made, the acquirer who has made a voluntary offer ought to be given a chance to enhance the size of his open offer to a full offer and stand released from the restrictions on market purchases so that he could effectively compete with the competing acquirer.

7.6 The question of whether intermediate offer sizes need be permitted for defensive counter offers was considered by the Committee. However, the Committee felt that such a position would lead to differential treatment of competing offers with no rationale therefor. It was also considered important to ensure that an open offer made in response to an existing open offer ought not to be considered as a voluntary offer. Therefore, once an open offer is made for a target company, an acquirer making a competing offer ought not to be able to make a smaller-sized open offer, and should be required to compete on even terms.

7.7 The Committee discussed the possibility of allowing an acquirer to withdraw an open offer made to shareholders of the target company, upon a competing offer being made. The Committee felt that it is in best interests of the shareholders of the target company that they get to decide the controlling acquirer from amongst the competing acquirers and therefore the Committee decided that existing open offers should continue to be valid. At the same time, the Committee also observed that in case of a split decision by shareholders of the target company, for efficient and smooth future running of business operations, it is in best interests of the target company that competing acquirers be given an opportunity to exit in favour of any one competing acquirer within certain time limitations. Shares held by one of the competing acquirers can be tendered in the offer made by the other competing acquirer. However, shares acquired by such competing acquirer in the open offer can not be tendered during the offer period and hence the Committee felt that a mechanism should be provided to enable the competing acquirer to sell such shares to the other competing acquirer within certain specified time without triggering further open offer obligations.

Committee Recommendation:

7.8 Therefore, with a view to rationalize the time lines for making a competing offer, the Committee recommends that a competing offer may be made within 15 business days from the date of the original detailed public statement instead of 21 calendar days from the date of the original public announcement. No further offer should be allowed to be made after the expiry of the said period of 15 business days until the completion of all the competing offers.

7.9 An open offer made by a competing acquirer shall not be regarded as a voluntary open offer and therefore all provisions of Takeover Regulations, including relating to offer size, shall apply accordingly.

7.10 The Committee also recommends that an acquirer, who has made a competing offer, shall be entitled to acquire the shares acquired by the other competing acquirers in their respective competing open offers within 21 business days of the expiry of the offer period without attracting an obligation to make another open offer. However, such an acquisition shall not be made at a price exceeding the offer price in the competing offer made by the acquirer who buys shares in such transaction. Moreover, such an acquisition ought not to take the shareholding of the acquirer beyond the maximum permissible non-public shareholding limit.

7.11 The Committee also considered certain other conditions specific to competing offers and recommended the following:

a. During the pendency of competing offers, no appointment of additional directors ought to be made on the board of directors of the target company.

b. The ability of an acquirer to proportionately reduce his acquisitions such that the holding does not exceed the maximum permissible non-public shareholding ought not to be available where competing offers are underway. This is critical to ensure that competing acquirers compete on an identical end-objective and shareholders are truly able to compare them on the offer price.

c. Unless the open offer first made is an open offer conditional as to the minimum level of acceptances, no open offer made by a competing acquirer may be conditional as to the minimum level of acceptances.

d. The schedule of activities and the tendering period for all competing offers shall be carried out with identical timelines and the dates for tendering shares shall be

revised to the dates for tendering shares in acceptance of the competing offer last made.

(See Regulation 20 of the Proposed Takeover Regulations)

8.0 Obligations of the Target Company

Material Actions

Current Provisions:

8.1 The Takeover Regulations currently provide that the target company shall not, during the offer period sell, transfer, encumber or otherwise dispose of assets of the company or its subsidiaries or enter into any material contracts.

Committee Deliberations:

8.2 The Committee desired to achieve a balance between the conflicting requirements of curbing a target company from carrying out material transaction without the consent of shareholders to make the company unattractive for an acquirer even while ensuring that the target company's freedom to carry out its day-to-day affairs is not curtailed.

8.3 It was observed that as per extant provisions of the Takeover Regulations, it is mandated that the shareholders' approval through postal ballot be obtained by the target company before entering into any material contract during the pendency of an open offer.

Committee Recommendation:

8.4 The Committee, therefore, recommends retaining restrictions on the target company during the offer period from carrying out material transactions outside the ordinary course of business except with the consent of the shareholders through a special resolution. The Committee recommends that such restrictions would also cover the subsidiaries of the target company, and such actions in respect of subsidiaries would also require approval of the shareholders of the target company.

(See Regulation 26 of the Proposed Takeover Regulations)

9.0 Composition of the Board

Current Provisions:

9.1 The Takeover Regulations currently provide that till the offer formalities are completed, the target company shall be precluded from inducting any person or person nominated by the acquirer or belonging to his group into the board of the target company other than in cases, where acquirer deposits full consideration in an escrow account.

Committee Deliberation:

9.2 The Committee debated the right of an acquirer to appoint his representatives on the board of the target company. In this regard, the Committee observed that the extant Takeover Regulations specify that an acquirer may appoint his nominees on the Target Company's Board after 15 business days from the date of the detailed public statement by making cash deposit of 100 % of the consideration payable under the offer in the escrow account.

9.3 The Committee recommends that ideally there ought to be no change in the board of directors of a target company during the pendency of the open offer, since the target company is in "play", and the fiduciary duty of directors towards all shareholders is at its greatest in such circumstances. However, there could be commercial circumstances that necessitate board representation for the acquirer. Therefore, in order to ensure that the obligations under the Takeover Regulations are in fact met, the acquirer or persons acting in concert with him may be represented on the board provided the entire consideration payable under the open offer is deposited in cash in the escrow account required under the Takeover Regulations, provided no competing offer has been made.

9.4 However, such appointment, even if cash is escrowed, ought not to be allowed for 15 business days from the date of the detailed public statement since during such period any other person may make a competing offer. In any event, the Committee has recommended that if a competing offer is made, there should be no appointments of directors representing any acquirer during the offer period. Similarly, where the acquirer has imposed a condition as to the minimum level of acceptances or other conditions precedent to the agreement triggering the offer remain unfulfilled, he

should be restricted from appointing any new director representing him to the board of the target company during the offer period.

9.5 The Committee observed that there ought to be no change to the board of a target company during the pendency of competing offers other than the vacation of office owing to death, incapacitation or resignation of a director. Any appointment of additional directors in such circumstances to fill the vacancy would not be permitted. The directors can be appointed only to fill vacancies arising out of death or incapacitation with the prior approval of the shareholders of the target company. Needless to add, an appointment of a director to the board of directors of the target company may take place only in compliance with the requirements specified thereof under the Companies Act, and the Takeover Regulations do not confer any special right to make such appointment – in fact, the Takeover Regulations only prescribe additional requirements and restrictions to be met for such appointment. Any appointment, therefore, would also have to be in compliance with the requirements of the Companies Act.

Committee Recommendation:

9.6 The Committee recommends that the acquirer or persons acting in concert with him may be represented on the board only after the expiry of a period of 15 business days from the date of the detailed public statement and provided the entire consideration payable under the open offer is deposited in cash in the escrow account required under the Takeover Regulations and the offer is not subject to any conditions other than regulatory approvals.

9.7 The Committee also recommends that if a competing offer is made, there ought to be no appointments of directors during the offer period, and only casual vacancies arising out of death or incapacitation may be filled with prior approval of shareholders. ***(See Regulation 24 of the Proposed Takeover Regulations)***

10.0 Timelines for the Open Offer process

Current Provisions:

10.1 The Committee discussed the current timelines for an open offer under the existing Takeover Regulations and reviewed the same with a view to shorten the timelines.

Committee Deliberations:

10.2 Currently, the Takeover Regulations require a public announcement regarding the open offer to be made within four working days of acquiring or agreeing to acquire shares in the target company. The Committee is of the view that given the number of parties involved in the deal by that point of time, the time period was short, and yet, permitting a longer period of time to make a public announcement may lead to selective leakage of such price-sensitive news regarding the impending deal with the possibility of price distortions in respect of the scrip.

10.3 Therefore, the Committee recommends that a short public announcement shall be made on the same day as the date of the transaction which triggered the open offer. A detailed public statement should be made within a period of five business days thereafter so as to accord the acquirer sufficient time to actually work out the logistics of the offer obligations.

10.4 The Committee recommends that in order to ensure maximum and speedy dissemination of information to the public, copy of the public announcement should be submitted to the stock exchanges. Also, verification of information presented in the public announcement by a merchant banker registered with SEBI should be mandated so that only accurate information is given to the public. Thereafter, the detailed public statement should be published in the newspapers and should contain all essential information about the offer.

10.5 The other activities in the offer process have been retained with an overall contraction in the timelines. The Committee is of the view that current timelines are mostly based on calendar days and there may be situations where due to holidays and weekends, it may be difficult to operate within the constraints of the regulatory timelines. The Committee deliberated and in line with global practices agreed to prescribe timelines in business days format in the best interest of all parties involved in the offer process.

Committee Recommendation:

10.6 The Committee recommends the following:

a. A short public announcement should be made on the same date as the date of transaction which triggered the open offer through a notice to the Stock

Exchange, followed by a detailed public statement within 5 business days of the public announcement.

b. Post submission of draft letter of offer, all timelines are dependent on issue of comments by SEBI, thus the Committee recommends to link timelines (post submission of draft letter of offer) to the date of receipt of SEBI comments on the draft letter of offer.

c. The letter of offer should be sent to the most recent set of shareholders. Therefore, the Committee recommends that date for reckoning the shareholders to whom the letter of offer shall be sent should be ten business days prior to commencement of the tendering period.

d. Most shareholders tender their shares on the last few days of the offer period, after the date of final revision in price has been carried out, and hence the initial part of the offer period is virtually redundant. Hence, the overall time frame of the tendering period has been reduced to ten business days, and the last date for upward revision of offer price has been moved up to three business days prior to commencement of the tendering period.

e. Since the last date of upward revision is prior to the opening of the open offer, shareholders are expected to be in receipt of all information to enable them to decide on the open offer. Therefore, there is no requirement to permit withdrawal of shares tendered in response to the open offer. This would also make the process more efficient.

f. The acquirer shall issue an advertisement 1 business day prior to the opening of the tendering period announcing the schedule and procedure for tendering acceptances.

g. The entire open offer process from the public announcement to the payment of consideration can now be done within fifty seven business days.

h. A summary of the revised timelines and activity chart for an open offer pursuant to a direct acquisition is set out below:-

Activity	Current Timeline	Committee Recommendation
Public Announcement (PA) to SE	X (within 4 business days of the trigger event)	X (on the date of agreeing to acquire voting rights or control)
PA to target company	X	X+1
Detailed public statement (DPS), in newspapers, sending to SEs, SEBI,	-	Not later than 5 business days from PA*

Target company		
Draft letter of offer to be submitted to SEBI and sent to target company	Not later than 14 days from the PA	Not later than 5 business days from detailed public statement
SEBI provides its comments on the letter of offer (LoF)	Not later than 21 days from filing the draft LoF with SEBI	Not later than 15 business days from filing the draft LoF with SEBI
Specified/Identified date for determination of names of shareholders to whom letter of offer is to be sent	No later than 30 days from the PA	10th business days prior to start of the tendering period
Dispatch of letter of offer to shareholders	-	Not later than 7 business days from the date of receipt of comments from SEBI
Letter of offer to reach shareholders	No later than 45 days from the date of PA	-
Upward revision in offer	Up to 7 business days prior to closure of the offer	Up to 3 business days prior to commencement of tendering period
Comments on the offer by independent directors of target company	-	2 business days prior to commencement of the tendering period
Issue of advertisement announcing the schedule of activities for open offer	-	1 business day prior to commencement of the tendering period
Date of opening of Offer	No later than 55 days from the date of PA	Not later than 12 business days from the date of receipt of comments from SEBI
Last date for withdrawal of tendered shares by shareholders	Up to 3 business days prior to closure of the offer	Withdrawal not permitted
Date of closure of offer	20 days from opening of the offer period	10 business days from the opening of the tendering period
Acquirer to fund special account for payment to shareholders	Within 7 days from closure of the offer	-
Payment to shareholders	Within 15 days from closure of the offer	Not later than 10 business days from the close of the tendering period
Overall time for completion of offer formalities	95 calendar days	57 business days
Report to be sent by merchant banker to SEBI	Within 45 days from closure of the offer	Within 15 business days from the close of the tendering period

* In the case of certain indirect acquisitions, the detailed public statement should be issued within 5 business days of the consummation of the primary transaction.

11.0 Mode of Payment

Current Provisions:

11.1 The Takeover Regulations currently provide that offer consideration shall be payable either (a) by way of cash; (b) by issue, exchange and, or transfer of shares (other than preference shares) of acquirer company, if the person seeking to acquire the shares is a listed body corporate; or (c) by issue, exchange and, or transfer of secured instruments of acquirer company with a minimum 'A' grade rating from a credit rating agency registered with the Board; or (d) a combination of clause (a), (b) or (c).

Committee Deliberations:

11.2 The Committee considered the various alternate modes of making payment of the offer price to the target company's shareholders. The Committee felt the need to permit and facilitate non-cash takeovers, where other securities can be used as a currency for M&A transactions. The Committee is also mindful of the fact that the objective of an open offer is to provide an exit to the shareholders and therefore adequate care should be taken to ensure that the shareholders are not stuck holding illiquid paper.

11.3 In order to ensure that interests of the shareholders of the target company are duly protected, the Committee is of the view that only frequently traded equity shares that conform to specified criteria, secured and listed debt instruments with investment grade credit rating or above, and convertible instruments, which are converted into frequently traded shares, should be allowed as the modes of paying the offer price under the open offer.

11.4 Further, in order to ensure that issuance of shares as consideration does not lead to undue delay in completion of offer formalities by the acquirer, the disclosures and other procedural requirements to be followed for such issue of shares are required to be appropriately spelt out. The Committee observed that such an issue being an issue to a select group of persons, *viz*. shareholders of the target company, would in the normal course get classified as preferential allotment, subject to the related requirements such as lock-in period, floor price computation, ineligibility due to sale

in the proximate past etc. In order to enable allotment of equity to tendering shareholders in an open offer, SEBI should amend the ICDR Regulations to facilitate a smooth issuance of equity shares in such cases in a clear and transparent manner.

11.5 As regards pricing of such shares issued towards payment of offer price, the Committee felt that a clear and predictable price computation methodology should be provided to ascertain the number of shares to be given to a tendering shareholder in *lieu* of the shares tendered in acceptance of the open offer. The Committee recommends that the volume-weighted average price of such shares in the 60 trading days preceding the public announcement for the target company shall be the basis at which the acquirer can value the shares he is offering by way of the offer price.

11.6 The Committee observed that SEBI has been making efforts to encourage issue of Indian Depository Receipts by foreign companies in India and to this effect, has laid down provisions in the ICDR Regulations. The Committee felt that permitting issuance of these instruments as a means of payment of consideration would on the one hand popularize this product and on the other would increase the options available to the acquirer to fulfill his financial obligations under the offer. The Committee suggests that SEBI may take up restrictions under exchange controls that impede the usage of these instruments in this regard.

Committee Recommendation:

The Committee recommends the following:

(a) The offer price may be paid (i) in cash; (ii) by issue, exchange or transfer of frequently traded shares of the acquirer or of the persons acting in concert with the acquirer ; (iii) by issue, exchange or transfer of listed secured debt instruments issued by acquirer or the persons acting in concert with him with minimum rating of investment grade; (iv) by issue, exchange or transfer of convertible debt securities entitling the holder to acquire listed shares of the acquirer or of the person acting in concert with him; or (v) a combination of (i), (ii), (iii) and (iv)

(b) In cases where the acquirer or persons acting in concert with him, proposes to pay the offer consideration by way of issue of its listed shares, the acquirer or PAC as the case may be, may take its shareholder approval for the purpose of allotment of shares up to a specified percentage of the equity capital of the issuer and any allotment of shares pursuant to such resolution may be made within a period of one year from the date of passing of the resolution or till the date next AGM, whichever is earlier.

(c) ICDR Regulations may be appropriately amended to facilitate such open offers.

(d) Where the acquirer has acquired more than 10 % of the voting rights in the target company in cash during the fifty two weeks prior to the public announcement, the shareholders of the target company should be provided an option to receive the payment of offer consideration in cash.

(e) The Committee also recommends due certification from an independent merchant banker or by a chartered accountant with a minimum of 10 years standing on valuation of shares of the issuer and the basis for arriving at the relevant exchange ratio.

(See Regulation 9 of the Proposed Takeover Regulations)

12.0 Exemptions from open offer obligations

Current Provisions:

12.1 The Takeover Regulations currently provide for fourteen categories of transactions which are exempted from the requirement to make an open offer subject to satisfying the conditions specified therein, if any, without the need to seek SEBI's approval for the same. Further, for the transactions that are not covered in the aforesaid fourteen categories, an application can be made for seeking exemption from SEBI. Such applications are referred to a takeover panel for its recommendations. SEBI considers the recommendations received and passes an appropriate order.

Committee Deliberations:

12.2 The Committee discussed each of the aforesaid fourteen categories as to its relevance for exemptions without seeking SEBI's approval. It was noted that open offer obligations can arise either on account of acquisition of shares or voting rights beyond the thresholds specified for initial trigger or creeping acquisition trigger or a change in control. The Committee was of the view that the regulatory obligations from which an acquisition should be exempted without seeking SEBI's approval (referred as "such exemptions" hereinafter) should depend on the nature of the acquisition as well as its significance. The Committee felt that such exemptions in general should be minimal and the exemption conditions should be clearly and unambiguously spelt out so that acquirers in particular do not face any uncertainties in this respect. Consequently, a number of such exemptions, which have not been used very frequently, have been

eliminated; e.g. allotment of shares pursuant to an application made under a Public Issue, acquisition of shares in the ordinary course of business by a market maker, acquisition of shares in the ordinary course of business by Public Financial Institutions on their own account, etc.

Committee Recommendation:

12.3 The Committee has classified the exemptions on the basis of the specific charging provisions which deal with the obligation to make an open offer, and has sought to distinguish between acquisitions involving change in control and those involving only consolidation of shareholding. The deliberations in brief and the recommendations of the Committee on the same are discussed below under separate heads.

Exemption from open offer obligations in case of acquisition of shares and / or control

12.4 Acquisitions arising out of *inter-se* transfer of shares among "qualifying parties" as specified under the Regulations would be exempt from making an open offer. The nature and type of such qualifying parties has been spelt out with the underlying principle being that such transfers do not represent a typical acquisition carrying an economic value, which ought to result in providing an exit opportunity to all shareholders. The only circumstance where this principle has been deviated from is to permit transfer between co-promoters, or persons acting in concert, who have been disclosed as such for at least three years, and that too only if the premium being paid to the exiting party is less than 25 % of the volume weighted average price over the 12 weeks period and subject to the parties having complied with all their disclosure obligations.

12.5 The Committee felt that acquisition of shares in the ordinary course of business by stock brokers, under-writers, merchant bankers, and specific persons performing specific routine commercial roles should be out of the purview of an open offer obligation.

12.6 In respect of inter-se transfers amongst certain "qualifying parties" as listed and defined under the Takeover Regulations, the Committee recommends that, in order to curb the abuse of introduction of new entities as qualifying parties, in most cases a requirement of pre-existing relationship of at least three years has been prescribed. In particular, the current exemption on Group Companies which does not have this three

year requirement has been restricted to transfers between co-subsidiaries and their parents where there is no change in control.

12.7 In respect of schemes of re-arrangement approved by a court or other competent authority, the Committee felt that where the schemes entail a transformation of the target company, it would be desirable to continue to provide for an exemption from the obligation to make an open offer. However, if the schemes do not really involve or deal with the target company per se, and an acquisition of shares or voting rights in, or control over the target company were to take place beyond the thresholds specified for the open offer obligations, as a consequence of the main scheme, the treatment should be different. The Committee considered the possibility of removing the exemptions from all Schemes of Arrangement or Mergers / Demergers where the target company was not a party. However, the Committee concluded that such an elimination of the exemption may not be equitable in the case of transactions that are genuine mergers (which several other laws including the Income Tax Act also recognize as deserving special treatment). After deliberations, the Committee arrived at the consensus that in cases of reorganization not involving the target company, where 25 % or more of the consideration under the scheme were offered by way of cash or cash equivalents (and hence the transaction was not just a merger) or where the existing body of shareholders of the parent retain less than 33 % of the combined entity, the shareholders of the target company ought to get an exit opportunity too.

12.8 The Committee also thought it fit to clarify that voting rights that accrue on preference shares in proportion to the paid up preference share capital, when dividend remains unpaid beyond the periods set out in Section 87(2) of the Companies Act, 1956, would not attract an obligation to make an open offer. Such voting rights are temporary in nature and upon dividend being paid, cease to exist. Moreover, even the voting rights on equity shares would vary when voting rights accrue on the preference shares and abate when dividend is paid.

Exemption from open offer obligations in case of acquisition of shares only and not control

12.9 Corporate Debt Restructuring under the scheme prescribed by the RBI provides a means by which funds can be infused into a financially weak company. Presently there is no specific provision under the Takeover Regulations that explicitly exempts

such schemes. Consequently, the Board receives a number of applications seeking exemptions.

12.10 The Committee recommends that acquisitions pursuant to such schemes may be exempted from triggering the open offer obligation under the Takeover Regulations only if the scheme has been authorized by the shareholders by way of a special resolution passed by postal ballot, and no change in control over the target company takes place through such acquisition.

Exemption from open offer obligations in case of acquisition of substantial stake

12.11 The Committee observed that companies routinely avail of loans from the banks and financial institutions for their working capital requirements and other funding needs. Often, such acquisitions involve the pledging of shares of a target company, and these pledges do get invoked in the event of loan default or otherwise. Normally the shares so pledged with an individual bank would be well within the enhanced threshold specified under Regulation 3(1). In view of this, the Committee considered it appropriate to exempt acquisition of shares by a consortium of banks pursuant to invocation of a pledge.

12.12 The Committee was cognizant of the fact that share buy-backs may be undertaken by a company as a way of returning value to the shareholders. The Committee feels that such passive increase in shareholding resulting in a stake exceeding the trigger in Regulation 3(1) is possible, but given that that this trigger is to be considered sacrosanct, the Committee believes that no one should be entitled to retain a stake above such threshold. Therefore, the Committee recommends that such shareholders be given ninety days to reduce their stake to a level below the threshold set out in Regulation 3(1).

Exemption from open offer obligations in case of acquisition of shares beyond the creeping threshold

12.13 The Committee believes that certain acquisitions may be exempted from making an open offer under Regulation 3(2) considering the level of creeping acquisition permitted. However, the same type of acquisition ought not to be exempted under Regulation 3(1), where the threshold of the trigger is enhanced and is sacrosanct.

Special Exemptions

12.14 The Committee was also mindful that SEBI currently has the powers to grant exemption from the obligation to make an open offer and recommends retention of the same. It would be open to SEBI to seek advice of an expert Panel before granting an exemption from an open offer obligation.

12.15 The Committee has recommended that the Board may also grant an exemption or relaxation from strict compliance from specific requirements only under special circumstances. Any exemption or relaxation may be made only in exceptional cases and that too in the broader interests of the investors in securities and the securities markets. In all such cases, an order with justification should be published by SEBI.

Whitewash Provisions

12.16 The Takeover Regulations currently provide for whitewash in case of change in control of the target company i.e. an open offer would not be required if the shareholders of the target company were to pass a special resolution waiving the open offer in case of change in control.

12.17 The Committee observed that providing for whitewash only for change in control and not for substantial acquisition of shares or voting rights (without change in control) apparently is an unintended anomaly. The Committee examined the possibility of introducing a whitewash provision in the Takeover Regulations on the lines of international practice i.e. an open offer would not be required if a material majority of the shareholders of the target company were to pass a resolution waiving the open offer. The rationale for such a framework is that an open offer is ultimately made for the benefit of the shareholders and it is well within the shareholders' rights to renounce such a benefit if they so desire.

12.18 Whitewash provisions may be required in situations where (i) the transaction is triggered by an asset or share acquisition by the target company, where consideration was paid by issuing shares of the target company; (ii) the transaction is a preferential allotment or other primary infusion which breaches the relevant thresholds; (iii) the transaction is a bail-out takeover; (iv) acquirer's acquisition of voting rights is due to receipt of shares/ voting rights as gift; or (v) acquisition is made in an environment where the liquidity is scarce. In such circumstances, it is possible that a transaction that a majority of shareholders desire and support may be rendered infeasible due to the need to make an open offer. In such cases, whitewash provisions may provide the

acquirer an opportunity to take control of the target company or to cross the relevant substantial acquisition or creeping acquisition limits, with the approval of shareholders of the target company who repose their faith and confidence in the acquirer.

12.19 The Committee considered imposing strict conditions such as a high positive waiver vote requirement (say, 90 %) and a minimum voter participation threshold. Some members felt that the absence of such a framework would make the Takeover Regulations onerous with no room to exempt from an open offer even where the shareholders themselves do not desire it. It was however observed that in the absence of robust regulations on proxy solicitation, and given the realities of the Indian market, any provision for shareholder waiver for an open offer may not be in the best interests of investors at large. Moreover, some members of the Committee felt strongly against a majority of the shareholders exercising the power to waive an open offer imposing their will on an out-voted minority.

12.20 The Committee observed that SEBI is taking certain steps to promote institutional voting, and that it is also pursuing means to operationalise electronic-voting. It was therefore felt that the market is not yet ready for a whitewash mechanism for automatic exemptions from open offers. In any case, as observed, the shareholders always have option not to tender their shares if they so desire. While SEBI does have discretionary powers to grant exemptions from open offers, it would be open to SEBI to take into account whether a significant majority has waived the right to an open offer, when considering an application for exemption.

12.21 The Committee is of the view that although whitewash provisions are, in principle, not undesirable, the time is not yet ripe to introduce the same in India. Therefore, the current whitewash provision in case of change in control of the target company has not been retained.

(See Regulations 10 & 11 of the Proposed Takeover Regulations)

13.0 Recommendation by the independent directors of the Target Company

Current Provisions:

13.1 The Takeover Regulations currently provide that the board of directors of the target company may, if they so desire, send their unbiased comments and recommendations

on the offer(s) to the shareholders, keeping in mind the fiduciary responsibility of the directors to the shareholders.

Committee Deliberations:

13.2 Most jurisdictions the world over including U.K, Canada, Singapore and Hong Kong mandate that the board of directors of the target company issues its considered recommendation on the open offer to the target's shareholders. The Takeover Regulations entirely leave it to the discretion of directors of the target company to issue their recommendations, if any, on an open offer. It has been noticed that this provision has seldom been used.

13.3 The Committee feels that the board of directors of the target company ought not to play a passive role but take a more conscious position when an open offer is made for its shares,. The boards of directors and in particular, the independent directors have a fiduciary responsibility towards the shareholders.

13.4 The Committee feels that in order to achieve the regulatory objective and also to further the objectives of good corporate governance, the independent directors ought to give their recommendation on the open offer to the shareholders.

Committee Recommendation:

13.5 The Committee recommends that the independent directors on the board of directors of the target company ought to make a reasoned recommendation on the open offer. For the making of such a recommendation, the board of the target company ought to appoint a committee of independent directors with freedom to consult and engage external advisors such as merchant bankers, chartered accountants and lawyers at the expense of the target company. Such committee of independent directors ought to make a reasoned recommendation and such recommendation ought to be sent to all the stock exchanges where the shares of the target company are listed and be published in the same newspapers where the relevant detailed public statement of the open offer was published.

(See Regulation 26 (6) of the Proposed Takeover Regulations)

14.0 Obligations of the Acquirer

Disposal of assets of the Target Company

Current Provisions:

14.1 The Takeover Regulations currently provide that where the acquirer has not stated his intention to dispose of or otherwise encumber any assets of the target company except in the ordinary course of business of the target company, the acquirer shall be debarred from disposing of or otherwise encumbering the assets of the target company for a period of 2 years from the date of closure of the public offer.

Committee Deliberations:

14.2 The Committee believes that the acquirer needs to give as clear a picture as possible about his strategic intent and future plans with the target company upon making the acquisition. The very fact that the acquirer has acquired or agreed to acquire a stake large enough to trigger an open offer would indicate that the acquirer would be reasonably expected to have a view on the future strategies of the target company. While the Committee believes that disclosures about such future plans ought to be improved to make the letter of offer more relevant. There is also a need to minimize reproduction of known information about the target company, particularly since the target company is a listed company with full exposure in the public domain. On the specific issue of disposal of assets outside the ordinary course after taking over control over the target company, there is a need for the acquirer to clearly state his intentions upfront.

14.3 The Committee also observed that such intentions should be stated upfront not only for the target company but also for its subsidiaries. However, the Committee recognized that there could be circumstances which may change occasioning the need for restructuring and / or disposal of assets of the target company after the acquisition has been completed. Hence the committee has proposed suitable provisions in this regard as well.

14.4 If no intention to dispose of assets of the target company once in control over the target company (including its subsidiaries) has been expressed upfront, the acquirer ought to be precluded from causing the target company to dispose of the assets for a period of two years after the offer period unless shareholders authorize such disposal

by way of a special resolution passed by postal ballot. It is likely that an acquirer indeed had no intention of causing a disposal of assets by the target company at the time of making a public announcement but subsequently new developments necessitate such a disposal. Also, once in control, an acquirer may decide to take such action following a detailed review of the target company. For taking such action, the target company would have to take shareholders into confidence and get a special resolution passed, with the explanatory statement for the resolution setting out reasons for why such disposal is necessary.

Committee Recommendation:

14.5 The Committee recommends that unless acquirer has declared an intention in the detailed public statement and the letter of offer, the acquirer shall be debarred from alienating any material assets of the target company (including its subsidiaries) for a period of two years after the offer period. However, where such alienation is necessary despite no such intention having been expressed by the acquirer, the target company shall require a special resolution passed by the shareholders by way of a postal ballot.

(See Regulation 25 of the Proposed Takeover Regulations)

15.0 Obligations of the Merchant Banker

Current Provisions:

15.1 The Takeover Regulations currently provide that the merchant banker shall ensure compliance of the Takeover Regulations and any other laws or rules as may be applicable in this regard and provide other specific obligations under Regulations 24 of the current Takeover Regulations.

Committee Deliberations:

15.2 The role of a merchant banker is central to the effective operation of the Takeover Regulations. The merchant banker is expected to play an objective professional role in advising the acquirer of all his obligations under the Takeover Regulations and in ensuring that the compliance requirements prescribed under the regulations are effectively met in the process of the open offer. The Committee believes that against the backdrop of this principle, it is important to ensure that there is complete clarity

for the merchant banker in respect of his own role as well as the responsibility of the clients to enable him to comply with the regulatory requirements.

Committee Recommendation:

15.3 The Committee recommends that the merchant banker would be expected to demonstrate the application of due skill, care and diligence in the discharge of professional duties cast on him and the obligations of the merchant banker ought to be construed accordingly. It is perhaps likely that despite following best practices and full application of diligence, skill and care, an acquirer could end up defaulting under the Takeover Regulations. In such circumstances, the Committee believes that, in the least, the expectation from a merchant banker would be a demonstration of the *bona fide* efforts undertaken by him in professionally and diligently discharging the role envisaged for the merchant banker under the regulations.

(See Regulation 27 of the Proposed Takeover Regulations)

16.0 Disclosure Obligations

Current Provisions:

16.1 The current Takeover Regulations obligate any acquirer who crosses the specified thresholds to disclose at every stage his aggregate shareholding or voting right to the company concerned and to the stock exchanges where shares of the company are listed. It also obligates a promoter / majority shareholder to annually disclose to the company and the concerned stock exchange regarding the number and percentage of shares or voting rights held by him along with PACs.

Committee Deliberations:

16.2 The disclosure obligations under the Takeover Regulations are fairly critical and an important component of the legal regime governing substantial acquisition of shares and takeovers. The Committee noted that disclosure requirements specified in Regulations 6, 7 and 8 of the Takeover Regulations have served well since inception. Certain aspects, such as whether disclosures should be by individual shareholders or collectively by all persons acting in concert, have been addressed in the proposed regulations.

16.3 The intent behind the disclosure regime is not only to ensure that the target company is not taken by surprise but also to ensure that price discovery in the market for shares of the target company takes place in an informed manner, where the very fact of an interested acquirer increasing his holding would contribute to the emergence of price at which sellers would be willing to sell their shares in the market. Also, such price discovery has implications for the computation of the minimum offer price in the look-back period. While it is very clear what percentage of the equity shares of a company are held by parties exceeding the thresholds, it is not clear what that party's effective economic interest in the company actually is, since it includes instruments which while presently not entitling the holder to voting rights, may, in the future, lead to accrual of shares/voting rights.

16.4 The Committee noted that although at present, the derivative Futures and Options (F&O) segment is cash settled, the Board has taken a decision to permit delivery based acquisitions in this segment in the near future. Such acquisitions shall have a far-reaching effect on multiple regulations and their implications would have to be examined by the Board at the appropriate time. For example, in such event, there would be a need to review not only whether one would need to prescribe disclosures about such economic interests in securities of a target company, but also how such derivatives would influence the minimum offer price, if executed within the look-back period.

16.5 The Committee believes that the Board ought to set up an electronic platform, or alternatively mandate every nationwide stock exchange to provide a platform on their websites, to which merchant bankers and compliance offers of listed companies are to be given password-protected access rights to upload information required to be disclosed under the Takeover Regulations – be it disclosure obligations required from the target company or those required of acquirers. This would enable dissemination of the information on a real-time basis as and when the relevant parties comply with the various requirements under the Takeover Regulations.

Committee Recommendation:

16.6 The Committee recommends that the acquirer promoter / shareholders shall be asked to disclose their acquisition on periodic as well as transaction specific basis upon crossing the limits specified therein to the Stock Exchange. Further, such disclosures shall be of the aggregated shareholding and voting rights of the acquirer and every

person acting in concert with him. Moreover, the acquisition and holding of any security or instrument that would entitle the acquirer to receive shares in the target company, including warrants and convertible debentures, shall also be required to be disclosed.

(*See Regulation 28 of the Proposed Takeover Regulations)*

17.0 Present Tax regime

17.1 The Committee discussed about the tax treatment provided to the shareholders in an open offer vis-à-vis a transaction through the stock exchanges. It was noted that the present tax regime in India is more favorable towards the open market transactions as against open offer transactions. For taxation purposes, an open offer transaction is considered akin to an off-market deal, which in the view of the Committee is not desirable.

17.2 Off-market deals, by their very nature, are entered into between private individuals in a non-transparent and largely unregulated manner. On the other hand, open offer, as an activity, is highly regulated and all the parties involved in the process are required to follow the provisions laid down in the Takeover Regulations, including various disclosures requirements. Also, the basic objective of an open offer is to benefit investors at large by granting them a just and fair exit opportunity. It would perhaps not be correct to club a regulated and investor friendly activity like open offers in the same bracket as an off-market deal.

17.3 Therefore, the Committee is of the view that there is a need to bring parity in the tax treatment given to the shareholders who tender their shares in an open offer and those who are selling the same in the open market. The Committee recommends that SEBI may like to suitably take up this issue with the concerned authorities in the Government.

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PART III: DRAFT TEXT OF THE PROPOSED TAKEOVER REGULATIONS

SECURITIES AND EXCHANGE BOARD OF INDIA

(SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2010

In exercise of the powers conferred under section 30 of The Securities and Exchange Board of India Act, 1992 (15 of 1992) the Board hereby, makes the following regulations, namely: —

Chapter I

PRELIMINARY

Short title and commencement.

1. (1) These regulations shall be called the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2010.

(2) These regulations shall come into force on [1][▪].

(3) These regulations shall apply to direct and indirect acquisition of shares or voting rights in, or control over any target company.

Definitions.

2. (1) In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions and variations shall be construed accordingly,—

(a) "Act" means the Securities and Exchange Board of India Act, 1992 (15 of 1992);

[1] It is recommended that these regulations be given effect from a prospective date to avoid any inadvertent breaches and to ensure clarity on the date of effect.

(b) "acquirer" means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company;

(c) "acquisition" means, directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over, a target company;

(d) "Board" means the Securities and Exchange Board of India established under section 3 of the Act;

(e) "business day" means any day excluding Saturday and Sunday and any other day declared by the Board as a holiday.

(f) "company" includes a body corporate;

(g) "control" includes the right or the ability to appoint majority of the directors or to control the management or policy decisions of the target company, 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:

Provided that a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position;

(h) "delisting threshold" means a shareholding entitling exercise of ninety per cent of the voting rights in a target company, excluding voting rights on shares held by a custodian and against which depository receipts have been issued overseas, with reference to the share capital of the target company as of the last day of the tendering period;

(i) "disinvestment" means the direct or indirect sale by the central government, any state government or by a government company, as the case may be, of shares or voting rights in, or control over, a target company, which is a public sector undertaking;

(j) "financial year" means the period of twelve months commencing on the first day of April;

(k) "frequently traded shares" means shares of a target company in which the traded turnover on any stock exchange during the twelve calendar months preceding the calendar month in which the public announcement is made, is at least ten per cent of the total number of shares of such class of such target company:

Provided that where the total share capital of the target company is not identical throughout such period, the weighted average number of total shares of the target company shall represent the total number of shares.

(l) "identified date" means the date falling on the tenth business day prior to the commencement of the tendering period, for the purposes of determining the shareholders to whom the letter of offer shall be sent;

(m) "immediate relative" means any spouse of a person, and includes parent, sibling or child of such person or of the spouse;

(n) "listing agreement" means the agreement with the stock exchange governing the conditions of listing of shares of the target company;

(o) "maximum permissible non-public shareholding" means such percentage shareholding in the target company excluding the minimum public shareholding required under the listing agreement;

(p) "manager to the open offer" means the merchant banker referred to in regulation 12;

(q) "offer period" means the period between the date of entering into an agreement to acquire shares, voting rights in, or control over a target company requiring a public announcement, or the date of the public announcement, whichever is earlier, and the date on which the payment of consideration to shareholders who have accepted the open offer is made;

(r) "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;

(ii) a company, its directors, and any person entrusted with the management of the company;

(iii) directors of companies referred to in sub-clause (i) of clause (2) 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 asset management company;

(vii) a collective investment scheme and its collective investment management company, trustees and trustee company;

(viii) a venture capital fund and its sponsor, trustees, trustee company and asset management company;

(ix) a foreign institutional investor and its sub-accounts;

(x) a merchant banker and its client, who is an acquirer;

(xi) a portfolio manager and its client, who is an acquirer;

(xii) banks 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;

(xiii) an investment company or fund and any person who has an interest in such investment company or fund as a shareholder or unitholder 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,—

(a) any immediate relative of such person;

(b) trusts of which such person or his immediate relative is a trustee;

(c) partnership firm in which such person or his immediate relative is a partner; and

(d) members of Hindu undivided families of which such person is a coparcener;

(s) "postal ballot" means a postal ballot as provided for under the Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 made under the Companies Act, 1956 (1 of 1956);

(t) "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;

(u) "promoter group" has the same meaning as in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

(v) "public sector undertaking" means a target company in which, directly or indirectly, majority of shares or voting rights or control is held by the central government or any state government or governments, or partly by the central government and partly by one or more state governments;

(w) "shares" means shares in the equity share capital of a target company carrying voting rights, and includes any security which entitles the holder thereof to exercise voting rights;

Provided that all depository receipts entitling the holder thereof to exercise voting rights in the target company shall be regarded as shares.

(x) "specified" means specified by the Board under these regulations;

(y) "state-level financial institution" means a Financial Corporation established under section 3 or section 3A and institutions notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951), and includes a development corporation established as a company by a state government with the object of development of industries or agricultural activities in the state;

(z) "stock exchange" means a stock exchange which has been granted recognition under section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(aa) "target company" means a company incorporated in India whose shares are listed on a stock exchange;

(ab) "tendering period" means the period within which shareholders may tender their shares in acceptance of an open offer to acquire shares made under these regulations.

(2) All other expressions unless defined herein shall have the same meaning as have been assigned to them under the Act or the Securities Contracts (Regulation) Act, 1956, (42 of 1956) or the Companies Act, 1956 (1 of 1956), or any statutory modification or re-enactment thereto, as the case may be.

Chapter II

SUBSTANTIAL ACQUISITION OF SHARES, VOTING RIGHTS OR CONTROL

Acquisition of shares.

3. (1) No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

[2](2) No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, subject to their aggregate post-acquisition shareholding not exceeding the maximum permissible non-public shareholding, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:

Provided that such acquirer shall not be entitled to enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition under the agreement to above the maximum permissible non-public shareholding.

Explanation.— For purposes of determining the quantum of acquisition of additional voting rights under this sub-regulation,—

[2] This provision deals with a trigger of creeping acquisition limit for every financial year.

(i) gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.

(ii) in the case of acquisition of shares by way of issue of new shares by the target company, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition .

(3) For purposes of sub-regulation (1) and sub-regulation (2), acquisition of shares by any person from other persons acting in concert with him such that the individual shareholding of the person acquiring shares exceeds the stipulated thresholds shall also be regarded as attracting the obligation to make an open offer for acquiring shares of the target company although the aggregate shareholding along with persons acting in concert may remain unchanged.

Acquisition of control.

4. Irrespective of acquisition or holding of shares or voting rights in a target company, no acquirer shall acquire, directly or indirectly, control over such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

Indirect acquisition of shares or control.

5. (1) For the purposes of regulation 3 and regulation 4, acquisition of shares or voting rights in, or control over, any company or other entity, that would enable any person and persons acting in concert with him to exercise or direct the exercise of such percentage of voting rights in, or control over, a target company, the acquisition of which would otherwise attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations, shall be considered as an indirect acquisition of shares or voting rights in, or control over the target company.

(2) Notwithstanding anything contained in these regulations, in the case of an indirect acquisition attracting the provisions of sub-regulation (1) where,—

(a) the proportionate net asset value of the target company as a percentage of the consolidated net asset value of the entity or business being acquired; or

(b) the proportionate sales turnover of the target company as a percentage of the consolidated sales turnover of the entity or business being acquired; or

(c) the proportionate market capitalisation of the target company as a percentage of the enterprise value for the entity or business being acquired;

is in excess of eighty per cent, on the basis of the most recent audited annual financial statements, such indirect acquisition shall be regarded as a direct acquisition of the target company for all purposes of these regulations including without limitation, the obligations relating to timing, pricing and other compliance requirements for the open offer.

Explanation. — For the purposes of computing the percentage referred to in clause (c) of this sub-regulation, the market capitalisation of the target company shall be taken into account on the basis of the volume-weighted average market price of such shares on the stock exchange for a period of sixty trading days preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period:

Voluntary Offer.

6. (1) An acquirer, who together with persons acting in concert with him, holds shares or voting rights in a target company entitling them to exercise twenty-five per cent or more but less than the maximum permissible non-public shareholding, shall be entitled to voluntarily make a public announcement of an open offer for acquiring shares in accordance with these regulations, subject to their aggregate shareholding after completion of the open offer not exceeding the maximum permissible non-public shareholding:

Provided that where an acquirer or any person acting in concert with him has acquired shares of the target company in the preceding fifty-two weeks without attracting the obligation to make a public announcement of an open offer, he shall not be eligible to voluntarily make a public announcement of an open offer for acquiring shares under this regulation.

Provided further that during the offer period such acquirer shall not be entitled to acquire any shares otherwise than under the open offer.

(2) An acquirer and persons acting in concert with him, who have made a public announcement under this regulation to acquire shares of a target company shall not be entitled to acquire any shares of the target company for a period of six months after completion of the open offer except pursuant to another voluntary open offer:

Provided that such restriction shall not prohibit the acquirer from making a competing offer upon any other person making an open offer for acquiring shares of the target company.

Offer Size.

7. (1) The open offer for acquiring shares to be made by the acquirer and persons acting in concert with him under regulation 3 and regulation 4 shall be for acquisition of all the shares held by all the other shareholders of the target company as of the last day of the tendering period.

Provided that where the target company has issued depository receipts entitling the holder thereof to exercise voting rights in the target company, the open offer shall be for acquisition of the underlying shares against which the depository receipts have been issued.

(2) The open offer made under regulation 6 shall be for acquisition of at least such number of shares as would entitle the holder thereof to exercise ten per cent of the voting rights in the target company, and shall not exceed such number of shares as would result in the post-acquisition holding of the acquirer and persons acting in concert with him not exceeding the maximum permissible non-public shareholding applicable to such target company:

Provided that in the event of a competing offer being made, the acquirer who has voluntarily made a public announcement of an open offer under regulation 6 shall be entitled to increase the number of shares for which the open offer has been made to such number of shares as determined under sub-regulation (1).

Provided further that such increase in offer size shall have to be made within a period of fifteen business days from the public announcement of a competing offer, failing which the acquirer shall not be entitled to increase the offer size.

(3) Upon an acquirer opting to increase the offer size under sub-regulation (2), such open offer shall be deemed to have been made under sub-regulation (2) of regulation 3 and the provisions of these regulations shall apply accordingly.

(4) Notwithstanding anything contained in the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations 2009, in the event the holding of the acquirer, not being an acquirer who has made an open offer under sub-regulation (2) of regulation 3 taken together with persons acting in concert with him pursuant to completion of the open offer would entitle them to exercise voting rights in the target company in excess of the delisting threshold, the target company shall stand delisted:

Provided that the acquirer shall have declared upfront his intention to so delist at the time of making the detailed public statement, and every shareholder who has not tendered an acceptance of the open offer shall be entitled to require the acquirer to acquire his shares at the offer price at any time within a period of twelve months from the fifteenth business day from the date on which the shares are delisted from the stock exchanges.

Provided further that upon delisting of the shares of the target company, the holder of any instrument convertible into shares of the target company shall be entitled to require the target company to convert his instruments into shares on an accelerated basis with all other terms remaining the same and shall have the right to require the acquirer to acquire his shares at the offer price at any time within a period of twelve months from the fifteenth business day from the date on which the shares are delisted from the stock exchanges.

(5) In the event the acquirer has not disclosed his intention to delist the shares of the target company at the time of the detailed public statement, or in the event the acceptances tendered in response to the open offer were such that the shareholding of the acquirer taken together with persons acting in concert with him pursuant to completion of the open offer would entitle them to exercise more than the maximum permissible non-public shareholding applicable to but less than the delisting threshold, the acquirer shall be required to either,—

(a) bring down the non-public shareholding to the level specified and within the time permitted under the listing agreement; or

(b) proportionately reduce the number of shares acquired under the open offer and under any agreement that attracted the obligation to make such open offer, other than shares acquired by way of allotment by the target company, such that the holding of the acquirer and persons acting in concert does not exceed the maximum permissible non-public shareholding:

Provided that the option to proportionately reduce the number of shares to be acquired under this clause shall not be available where the open offer is a competing offer.

(6) Where the open offer has been made under sub-regulation (2) of regulation 3 the acquirer shall be required to select the option available under clause (a) or clause (b) of sub-regulation (5) and state his selection upfront at the time of making the detailed public statement.

Provided that, should the acquirer have opted for bringing down the non-public shareholding within the time permitted under the listing agreement, the acquirer shall be ineligible to make a delisting offer under the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, unless the public shareholding in the target company is compliant with the listing agreement.

(7) Where the acquirer has opted to limit his acquisition to the maximum permissible non-public shareholding in terms of sub-regulation (5), he shall proportionately reduce,—

(a) the acquisition of shares tendered in acceptance of the open offer; and

(b) the acquisitions, if any, after the public announcement of the open offer was made including those under the agreement that attracted the obligation to make the open offer.

Offer Price.

8. (1) The open offer for acquiring shares under regulation 3, regulation 4 or regulation 6 shall be made at a price not lower than the price determined in accordance with sub-regulation (2) or, as the case may be, sub-regulation (3).

(2) In the case of direct acquisition of shares or voting rights in, or control over the target company, the offer price shall be the highest of,—

(a) the highest negotiated price per share of the target company for any acquisition under the agreement attracting the obligation to make a public announcement of an open offer;

(b) the volume-weighted average price paid or payable for acquisitions, whether by the acquirer or by any person acting in concert with him during the fifty-two weeks immediately preceding the date of the public announcement;

(c) the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him during the twenty-six weeks immediately preceding the date of the public announcement; and

(d) the volume-weighted average market price of such shares for a period of sixty trading days immediately preceding the date of the public announcement as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, provided such shares are frequently traded;

(3) In the case of an indirect acquisition of shares or voting rights, or control over the target company, the offer price shall be the highest of,—

(a) the highest negotiated price per share, if any, of the target company for any acquisition under the agreement attracting the obligation to make a public announcement of an open offer;

(b) the volume-weighted average price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him during the fifty-two weeks immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;

(c) the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him during the twenty-six weeks immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain; and

(d) the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him between the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, and the date of the public announcement of the open offer for shares of the target company made under these regulations;

(e) the volume-weighted average market price of the shares for a period of sixty trading days immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, provided such shares are frequently traded:

Provided that in the event the offer price is incapable of being determined under any of such parameters, without prejudice to the requirements of sub-regulation (4), the offer price shall be the fair price of shares of the target company to be determined by the acquirer and the manager to the open offer taking into account valuation parameters

including, book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies, and the Board may require valuation of such shares by an independent merchant banker other than the manager to the open offer or an independent chartered accountant of minimum ten years' standing.

(4) In the case of an indirect acquisition, including open offers under sub-regulation (2) of regulation 5 where,—

(a) the proportionate net asset value of the target company as a percentage of the consolidated net asset value of the entity or business being acquired;

(b) the proportionate sales turnover of the target company as a percentage of the consolidated sales turnover of the entity or business being acquired; or

(c) the proportionate market capitalisation of the target company as a percentage of the enterprise value for the entity or business being acquired;

is in excess of fifteen per cent, on the basis of the most recent audited annual financial statements, the acquirer shall notwithstanding anything contained in sub-regulation (3) be required to compute and disclose the per share value of the target company taken into account for the acquisition, along with a detailed description of the methodology adopted for such computation.

Explanation. — For the purposes of computing the percentages referred to in clause (c) of this sub-regulation, the market capitalisation of the target company shall be taken into account on the basis of the volume-weighted average market price of such shares on the stock exchange for a period of sixty trading days preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period.

(5) For the purposes of sub-regulation (2) and sub-regulation (3), the price paid for shares of the target company shall include any price paid or agreed to be paid for the shares or

voting rights in, or control over the target company, in any form whatsoever, whether stated in the agreement for acquisition of shares or in any incidental, contemporaneous or collateral agreement, whether termed as control premium or as non-compete fees or otherwise.

(6) Where the acquirer has acquired or agreed to acquire whether by himself or through or with persons acting in concert with him any shares or voting rights in the target company during the offer period, whether by subscription or purchase, at a price higher than the offer price, the offer price shall stand revised to the highest price paid or payable for any such acquisition:

Provided that no such acquisition shall be made after the third business day prior to the commencement of the tendering period and until the expiry of the tendering period.

(7) The price parameters under sub-regulation (2) and sub-regulation (3) shall be adjusted for corporate actions such as issuances pursuant to rights issue, bonus issue, stock consolidations, stock splits, payment of dividend, de-mergers and reduction of capital, where the record date for effecting such corporate actions falls prior to three business days prior to the commencement of the tendering period:

Provided that no adjustment shall be made for dividend declared with a record date falling during such period except where the dividend per share is more than fifty per cent higher than the average of the dividend per share paid during the three financial years preceding the date of the public announcement.

(8) Where the open offer is subject to a minimum level of acceptances, the acquirer may, subject to the other provisions of this regulation, indicate a lower price for acquiring all the acceptances despite the acceptance falling short of the indicated threshold, in the event the open offer does not receive the minimum acceptance.

(9) In the case of any indirect acquisition, the offer price shall stand enhanced by an amount equal to a sum determined at the rate of ten per cent per annum for the period between the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the

public domain, and the date of the detailed public statement, provided such period is more than five business days.

(10) The acquirer and persons acting in concert with him shall not acquire any shares of the target company for a period of twenty-six weeks after the tendering period at a price higher than the offer price paid under these regulations:

Provided that such restriction shall not affect acquisitions under another open offer under these regulations, or pursuant to the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, or open market purchases made in the ordinary course on the stock exchanges, not being negotiated acquisition of shares of the target company whether by way of bulk deals, block deals or in any other form.

(11) The offer price for partly paid up shares shall be computed as the difference between the offer price and the amount due towards calls-in-arrears with interest, if any, thereon.

(12) The offer price for equity shares carrying differential voting rights shall be determined by the acquirer and the manager to the open offer with full disclosure of justification for the price so determined, being set out in the detailed public statement and the letter of offer:

Provided that such price shall not be lower than the amount determined by applying the percentage rate of premium, if any, that the offer price for the equity shares carrying full voting rights represents to the price parameter computed under clause (d) of sub-regulation 2, or as the case may be, clause (e) of sub-regulation 3, to the volume-weighted average market price of the shares carrying differential voting rights for a period of sixty trading days computed on the same terms as specified in the aforesaid provisions subject to shares carrying full voting rights and the shares carrying differential voting rights, both being frequently traded shares.

(13) In the event of any of the price parameters contained in this regulation not being available or denominated in Indian rupees, the conversion of such amount into Indian rupees shall be effected at the exchange rate as prevailing on the date of the public announcement and the acquirer shall set out the source of such exchange rate in the public announcement, the detailed public statement and the letter of offer.

Mode of payment.

9. (1) The offer price may be paid, —

(a) in cash;

(b) by issue, exchange or transfer of shares in the equity share capital of the acquirer or of any person acting in concert; or

(c) by issue, exchange or transfer of listed secured debt instruments issued by the acquirer or any person acting in concert with a rating not inferior to investment grade as rated by a credit rating agency registered with the Board;

(d) by issue, exchange or transfer of convertible debt securities entitling the holder thereof to acquire listed shares in the equity share capital of the acquirer or of any person acting in concert; or

(e) a combination of the mode of payment of consideration stated in clause (a), clause (b), clause (c) and clause (d):

Provided that where any shares have been acquired or agreed to be acquired by the acquirer and persons acting in concert with him during the fifty-two weeks immediately preceding the date of public announcement constitute more than ten per cent of the voting rights in the target company and has been paid for in cash, the open offer shall entail an option to the shareholders to require payment of the offer price in cash, and a shareholder who has not exercised an option in his acceptance shall be deemed to have opted for receiving the offer price in cash.

Provided further that the mode of payment of consideration may be altered in case of revision in offer price subject to the condition that the component of the offer price to be paid in cash prior to such revision is not reduced.

(2) For the purposes of clause (b) and clause (d) of sub-regulation 1 the shares sought to be issued or transferred or the shares to be issued upon conversion of other securities, towards payment of the offer price shall be required to conform to the following requirements, —

(a) such shares are listed on a stock exchange and frequently traded at the time of the public announcement;

(b) such shares have been listed for a period of at least two years preceding the date of the public announcement;

(c) the issuer of such shares has redressed at least ninety five per cent. of the complaints received from investors by the end of the calendar quarter immediately preceding the calendar month in which the public announcement is made;

(d) the issuer of such shares has been in compliance with the listing agreement for a period of at least two years immediately preceding the date of the public announcement:

Provided that in the event such issuer has not been in compliance with the provisions of the listing agreement relating to composition of board of directors for any quarter during such period but has become compliant by the date of the public announcement, the issuer shall be deemed to have been in compliance;

(e) the impact of auditors' qualifications, if any, on the audited accounts of the issuer of such shares for three immediately preceding financial years does not exceed five per cent. of the net profit or loss after tax of such issuer for the respective years; and

(f) the Board has not issued any direction against the issuer of such shares not to access the capital market or to issue fresh shares;

(3) Where the shareholders have been provided with options to accept payment in cash or by way of securities, or a combination thereof, the pricing for the open offer may be different

for each option subject to compliance with minimum offer price requirements under regulation 8:

Provided that the detailed public statement and the letter of offer shall contain justification for such differential pricing.

[3](4) In the event the offer price consists of consideration to be paid by issuance of securities, which requires compliance with any applicable law including the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, the acquirer shall ensure that such compliance is completed not later than the commencement of the tendering period.

Provided that in case the requisite approval is not obtained by such date, the acquirer shall pay the entire consideration in cash.

(5) Where listed securities are offered as consideration, the value of such securities shall, subject to any other applicable law or regulation governing minimum price requirements, be assumed to be the volume-weighted average market price for a period of sixty trading days preceding the date of the public announcement, as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period and the ratio of exchange of shares shall be duly certified by an independent merchant banker (other than the manager to the open offer) or an independent chartered accountant of a minimum ten years' standing.

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,—

(a) acquisition pursuant to inter se transfer of shares amongst qualifying parties, being,—

[3] Draft amendments to ICDR Regulations are in the report. This is primarily to deal with provisions in relation to: (a) identity of allottee in the shareholder resolution; (b) extended time period for completion of allotment; (c) lock-in provisions; and (d) eligibility in the event of sale by a proposed allottee in the period preceding to the allotment.

(i) immediate relatives;

(ii) persons named as promoters in the shareholding pattern filed by the target company in terms of the listing agreement or these regulations for not less than three years prior to the proposed acquisition;

(iii) a company, its subsidiaries, its holding company, other subsidiaries of such holding company, persons holding not less than fifty per cent of the equity shares of such holding company, other holding companies in which such persons hold not less than fifty per cent of the equity shares, and their subsidiaries subject to control over such qualifying parties being exclusively held by the same persons;

(iv) persons acting in concert for not less than three years prior to the proposed acquisition, and disclosed as such pursuant to filings under the listing agreement.

(v) shareholders of a target company who have been persons acting in concert for a period of not less than three years prior to the proposed acquisition and are disclosed as such pursuant to filings under the listing agreement, and any company in which the entire equity share capital is owned by such shareholders in the same proportion as their holdings in the target company without any differential entitlement to exercise voting rights in such company:

Provided that for purposes of availing of the exemption under this clause,—

(i) The acquisition price per share shall not be higher by more than twenty-five per cent of the volume-weighted average market price for a period of sixty trading days preceding the date of issuance of notice for the proposed *inter se* transfer under sub-regulation (5), as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period.

(ii) the transferor and the transferee shall have complied with applicable disclosure requirements set out in Chapter V;

(b) acquisition in the ordinary course of business by,—

(i) an underwriter registered with the Board by way of allotment pursuant to an underwriting arrangement in terms of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

(ii) a stock broker registered with the Board on behalf of his client in exercise of lien over the shares purchased on behalf of the client under the bye-laws of the stock exchange where such stock broker is a member;

(iii) a merchant banker registered with the Board or a nominated investor in the process of market making or subscription to the unsubscribed portion of issue in terms of Chapter XA of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

(iv) any person acquiring shares pursuant to a scheme of safety net in terms of regulation 44 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009; and

(v) a merchant banker registered with the Board acting as a stabilisation agent or by the promoter or pre-issue shareholder in terms of regulation 45 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

(c) acquisitions by an acquirer who has made a public announcement of an open offer for acquiring shares pursuant to an agreement of disinvestment, at a subsequent stage as contemplated in such agreement:

Provided that,—

(i) both the acquirer and the seller are the same at all the stages of acquisition; and

(ii) full disclosures of all the subsequent stages of acquisition, if any, have been made in the public announcement of the open offer and in the letter of offer.

(d) acquisition pursuant to a scheme,—

(i) made under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) or any statutory modification or re-enactment thereto;

(ii) of arrangement involving the target company as a transferor company or as a transferee company, or reconstruction of the target company, including amalgamation, merger or demerger, pursuant to an order of a court or a competent authority under any law or regulation, Indian or foreign; or

(iii) of arrangement not directly involving the target company as a transferor company or as a transferee company, or reconstruction not involving the target company's undertaking, including amalgamation, merger or demerger, pursuant to an order of a court or a competent authority under any law or regulation, Indian or foreign, subject to,—

(a) the component of cash and cash equivalents in the consideration paid being less than twenty-five per cent of the consideration paid under the scheme; and

(b) where after implementation of the scheme of arrangement, persons directly or indirectly holding at least thirty-three per cent of the voting rights in the target company are the same as the persons who held the entire voting rights before the implementation of the scheme.

(e) acquisition pursuant to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

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

(g) acquisition by way of transmission, succession or inheritance;

(h) acquisition of voting rights or of preference shares carrying voting rights arising out of the operation of sub-section (2) of section 87 of the Companies Act, 1956 (1 of 1956).

(2) The following acquisitions shall be exempt from the obligation to make an open offer under regulation 3 subject to fulfillment of the conditions stipulated therefor,—

(a) acquisition of shares of a target company not involving a change of control over such target company pursuant to a scheme of corporate debt restructuring in terms of the Corporate Debt Restructuring Scheme notified by the Reserve Bank of India vide circular no. B.P.BC 15/21.04, 114/2001 dated August 23, 2001, or any modification or re-notification thereto provided such scheme has been authorised by shareholders by way of a special resolution passed by postal ballot.

(b) acquisition of shares in a target company in the ordinary course of business by a consortium of scheduled commercial banks or public financial institutions, pursuant to invocation of pledge or other security interests, provided no member of the consortium acquires shares in excess of the threshold of voting rights contained in sub-regulation (1) of regulation 3;

(c) acquisition of shares in a target company in excess of the threshold of voting rights contained in regulation 3 pursuant to re-transfer of pledged shares to the pledgor.

(3) An increase in voting rights in a target company of any shareholder beyond the limit attracting an obligation to make an open offer under sub-regulation (1) of regulation 3 pursuant to buy-back of shares shall be exempt from the obligation to make an open offer provided such shareholder reduces his shareholding such that his voting rights fall to below the threshold referred to in sub-regulation (1) of regulation 3 within ninety days from the date on which the voting rights so increase.

(4) The following acquisitions shall be exempt from the obligation to make an open offer under sub-regulation (2) of regulation 3 subject to fulfillment of the conditions stipulated therefor,—

(a) acquisition of shares by any shareholder of a target company pursuant to a rights issue :

Provided that,—

(i) the acquirer has not renounced any of his entitlements in such rights issue; and

(ii) the price at which the rights issue is made is not higher than the ex-rights price of the shares of the target company, being the sum of,—

(a) the volume weighted average market price of the shares of the target company during a period of sixty trading days ending on the day prior to the date of determination of the rights issue price, multiplied by the number of shares outstanding prior to the rights issue, divided by the total number of shares outstanding after allotment under the rights issue; and

(b) the price at which the shares are offered in the rights issue, multiplied by the number of shares so offered in the rights issue divided by the total number of shares outstanding after allotment under the rights issue:

Provided that such volume weighted average market price shall be determined on the basis of trading on the stock exchange where the maximum volume of trading in the shares of such target company is recorded during such period.

(b) increase in voting rights in a target company of any shareholder pursuant to buy-back of shares:

Provided that,—

(i) such shareholder has not voted in favour of the resolution authorising the buy-back of securities under section 77A of the Companies Act, 1956 (1 of 1956);

(ii) in the case of a shareholder resolution, voting shall be by way of postal ballot; and

(iii) where a resolution of shareholders is not required for the buy-back, such shareholder, in his capacity as a director, or any other interested director has not voted

in favour of the resolution of the board of directors of the target company authorising the buy-back of securities under section 77A of the Companies Act, 1956 (1 of 1956);

(iv) the increase in voting rights does not result in an acquisition of control by such shareholder over the target company.

Provided further that where the aforesaid conditions are not met, in the event such shareholder reduces his shareholding such that his voting rights fall below the level at which the obligation to make an open offer would be attracted under sub-regulation (2) of regulation 3 within ninety days from the date on which the voting rights so increase, the shareholder shall be exempt from the obligation to make an open offer.

(c) acquisition of shares in a target company by any person in exchange for shares of another target company tendered pursuant to an open offer for acquiring shares under these regulations;

(d) acquisition of shares in a target company from state-level financial institutions or their subsidiaries or companies promoted by them, by promoters of the target company pursuant to an agreement between such transferors and such promoter;

(e) acquisition of shares in a target company from a venture capital fund or a foreign venture capital investor registered with the Board by promoters of the target company pursuant to an agreement between such venture capital fund or foreign venture capital investor with such promoters;

(5) In respect of acquisitions under clause [4](a) of sub-regulation (1), clause [5](d) of sub-regulation (4) and clause [6](e) of sub-regulation (4), the acquirer shall intimate the stock exchanges where the shares of the target company are listed, the details of the proposed acquisition in such form as may be specified, at least four business days prior to the proposed acquisition, and the stock exchange shall forthwith disseminate such information to the public.

[4] Transfers between "qualifying parties".
[5] Purchases from state-level financial institutions by promoters.
[6] Purchases from venture capital funds and foreign venture capital investors by promoters.

(6) In respect of any acquisition made in reliance upon exemption provided for in this regulation, the acquirer shall file a report with the stock exchanges where the shares of the target company are listed, in such form as may be specified not later than four business days from the acquisition, and the stock exchange shall forthwith disseminate such information to the public.

(7) In respect of any acquisition or increase in voting rights in reliance upon exemption provided for in clause [7](a) of sub-regulation (1), sub-clause (iii) of clause [8](d) of sub-regulation (1), clause [9](h) of sub-regulation (1), clause [10](a) of sub-regulation (2), sub-regulation [11](3) and clause [12](a) of sub-regulation (4), [13](b) of sub-regulation (4) and [14](e) of sub-regulation (4), the acquirer shall, within twenty-one business days of the date of acquisition, submit a report in such form as may be specified along with supporting documents to the Board giving all details in respect of acquisitions, along with a non-refundable fee of [15][▪] rupees by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board.

Explanation.— For the purposes of sub-regulation (5), sub-regulation (6) and sub-regulation (7) in the case of convertible securities, the date of the acquisition shall be the date of conversion of such securities.

Exemptions by the Board.

11. (1) The Board may for reasons recorded in writing, grant exemption from the obligation to make an open offer for acquiring shares under these regulations subject to such conditions as the Board deems fit to impose in the interests of investors in securities and the securities market.

[7] Inter-se transfers.
[8] Scheme of Arrangement involving indirect acquisition.
[9] Voting rights on preference shares under the Companies Act, 1956.
[10] Corporate Debt Restructuring.
[11] Increase of voting rights through buy-back in excess of threshold under Regulation 3(1).
[12] Rights issue
[13] Increase of voting rights through buy-back in excess of threshold under Regulation 3(2).
[14] Purchase by promoters from venture capital funds and foreign venture capital investors.
[15] The TRAC is not making any recommendation on the quantum of fees to be charged under these Regulations since it is a matter for SEBI to determine in terms of its policy.

(2) The Board may for reasons recorded in writing, grant a relaxation from strict compliance with any procedural requirement under Chapter II subject to such conditions as the Board deems fit to impose in the interests of investors in securities and the securities market on being satisfied that,—

(a) the target company is a company in respect of which the central government or state government or any other regulatory authority has superseded the board of directors of the target company and has appointed new directors under any law for the time being in force, and,—

(i) such board of directors has formulated a plan which provides for transparent, open, and competitive process for acquisition of shares or voting rights in, or control over the target company to secure the smooth and continued operation of the target company in the interests of all stakeholders of the target company and such plan does not further the interests of any particular acquirer;

(ii) the conditions and requirements of the competitive process are reasonable and fair;

(iii) the process adopted by the board of directors of the target company provides for details including the time when the open offer for acquiring shares would be made, completed and the manner in which the change in control would be effected; and

(b) the provisions of Chapter II are likely to act as impediment to implementation of the plan of the target company and exemption from strict compliance with one or more of such provisions is in public interest, the interests of investors in securities and the securities market.

(3) For seeking exemption under sub-regulation (1), the acquirer shall, and for seeking relaxation under sub-regulation (2) the target company shall file an application with the Board, supported by a duly sworn affidavit, giving details of the proposed acquisition and the grounds on which the exemption has been sought.

(4) The acquirer shall, along with the application referred to under sub-regulation (3), pay a non-refundable fee of [16][▪]rupees, by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board.

(5) The Board may after affording reasonable opportunity of being heard to the applicant and after considering all the relevant facts and circumstances, pass a reasoned order either granting or rejecting the exemption or relaxation sought as expeditiously as possible:

Provided that the Board may constitute a panel of experts to which an application for an exemption under sub-regulation (1) may, if considered necessary, be referred to make recommendations on the application to the Board.

(6) The order passed by the Board under sub-regulation (5) shall be published.

[16] The TRAC is not making any recommendation on the quantum of fees to be charged under these Regulations since it is a matter for SEBI to determine in terms of its policy.

Chapter III

OPEN OFFER PROCESS

Manager to the Open Offer.

12. (1) Prior to making a public announcement, the acquirer shall appoint a merchant banker registered with the Board, who is not an associate of the acquirer, as the manager to the open offer.

Explanation. — For the purposes of this regulation the term "associate" has the same meaning as in the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992.

(2) The public announcement of the open offer for acquiring shares required under these regulations shall be made by the acquirer though such manager to the open offer.

Timing.

13. (1) The public announcement referred to in regulation 3 and regulation 4 shall be made in accordance with regulation 14 and regulation 15, on the date of agreeing to acquire shares or voting rights in, or control over the target company.

(2) Such public announcement,—

(a) in the case of market purchases shall be made prior to placement of the purchase order with the stock broker to acquire the shares that would take the entitlement to voting rights beyond the stipulated thresholds;

(b) pursuant to an acquirer acquiring shares or voting rights in, or control over the target company upon converting convertible securities without a fixed date of conversion or upon conversion of depository receipts for the underlying shares of the target company shall be made on the same day as the date of exercise of the option to convert such securities into shares of the target company.

(c) pursuant to an acquirer acquiring shares or voting rights in, or control over the target company upon conversion of convertible securities with a fixed date of conversion shall be made on the second business day preceding the scheduled date of conversion of such securities into shares of the target company.

(d) pursuant to a disinvestment shall be made on the same day as the date of executing the agreement for acquisition of shares or voting rights in or control over the target company.

(e) in the case of indirect acquisition of shares or voting rights in, or control over the target company where none of the parameters referred to in sub-regulation (2) of regulation 5 are met, may be made at any time within four business days from the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain:

Explanation.— It is clarified that in the event the acquirer does not succeed in acquiring the ability to exercise or direct the exercise of voting rights in, or control over the target company, the acquirer shall not be required to make a detailed public statement of an open offer for acquiring shares under these regulations.

(f) in the case of indirect acquisition of shares or voting rights in, or control over the target company where any of the parameters referred to in sub-regulation (2) of regulation 5 are met shall be made on the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;

(g) The public announcement pursuant to an increase in voting rights consequential to a buy-back not qualifying for exemption under regulation 10, shall be made not later than the ninetieth day from the date of such increase in the voting rights beyond the relevant threshold stipulated in regulation 3.

(h) The public announcement pursuant to any acquisition of shares or voting rights in or control over the target company where the specific date on which title to such shares, voting rights or control is acquired is beyond the control of the acquirer, shall be made not later than two business days from the date of receipt of intimation of having acquired such title.

(3) The public announcement made under regulation 6 shall be made on the same day as the date on which the acquirer takes the decision to voluntarily make a public announcement of an open offer for acquiring shares of the target company.

(4) Pursuant to the public announcement made under sub-regulation (1) and sub-regulation (3), a detailed public statement shall be published by the acquirer through the manager to the open offer in accordance with regulation 14 and regulation 15, not later than five business days of the public announcement:

Provided that the detailed public statement pursuant to a public announcement made under clause (v) of sub-regulation (2) shall be made not later than five business days of the completion of the primary acquisition of shares or voting rights in, or control over the company or entity holding shares or voting rights in, or control over the target company:

Publication.

14. (1) The public announcement shall be sent to all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public.

(2) A copy of the public announcement shall be sent to the Board and to the target company at its registered office within one business day of the date of the public announcement.

(3) The detailed public statement pursuant to the public announcement referred to in sub-regulation (4) of regulation 13 shall be published in all editions of any one English national daily with wide circulation, any one Hindi national daily with wide circulation, and any one regional language daily with wide circulation at the place where the registered office of the target company is situated and one regional language daily at the place of the stock exchange

where the maximum volume of trading in the shares of the target company are recorded during the sixty trading days preceding the date of the public announcement.

(4) Simultaneously with publication of such detailed public statement in the newspapers, a copy of the same shall be sent to,—

(i) the Board through the manager to the open offer,

(ii) all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public,

(iii) the target company at its registered office, and the target company shall forthwith place the same before the board of directors of the target company.

Content.

15. (1) The public announcement shall contain such information as may be specified, including the following,—

(a) name and identity of the acquirer and persons acting in concert with him;

(b) name and identity of the sellers, if any;

(c) nature of the proposed acquisition such as purchase of shares or allotment of shares, or any other means of acquisition of shares or voting rights in, or control over the target company;

(d) the consideration for the proposed acquisition that attracted the obligation to make an open offer for acquiring shares, and the price per share, if any;

(e) the offer price, and mode of payment of consideration; and

(f) offer size, and conditions as to minimum level of acceptances, if any.

(2) The detailed public statement pursuant to the public announcement shall contain such information as may be specified in order to enable shareholders to make an informed decision with reference to the open offer.

(3) The public announcement of the open offer, the detailed public statement, and any other statement, advertisement, circular, brochure, publicity material or letter of offer issued in relation to the acquisition of shares under these regulations shall not omit any relevant information, or contain any misleading information.

Filing of letter of offer with the Board.

16. (1) Within five business days from the date of the detailed public statement made under sub-regulation (4) of regulation 13, the acquirer shall, through the manager to the open offer, file with the Board, a draft of the letter of offer containing such information as may be specified along with a non-refundable fee as per the following scale by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board,—

[17]**Consideration payable under the Open Offer**	**Fee**
[▪]	[▪]

(2) The consideration payable under the open offer shall be calculated at the offer price, assuming full acceptance of the open offer, and in the event the open offer is subject to differential pricing, shall be computed at the highest offer price, irrespective of manner of payment of the consideration.

Provided that in the event of consideration payable under the open offer being enhanced owing to a revision to the offer price or offer size the fees payable shall stand revised accordingly, and shall be paid within five business days from the date of such revision.

[17] The TRAC is not making any recommendation on the quantum of fees to be charged under these Regulations since it is a matter for SEBI to determine in terms of its policy.

(3) The manager to the open offer shall provide soft copies of the public announcement, the detailed public statement and the draft letter of offer in accordance with such specifications as may be specified by the Board, and the Board shall upload the same on its official website.

(4) The Board shall give its comments on the draft letter of offer as expeditiously as possible but not later than fifteen business days of the receipt of the draft letter of offer and in the event of no comments being issued by the Board within such period, it shall be deemed that the Board does not have comments to offer.

Provided that in the event the Board has sought clarifications or additional information from the manager to the open offer, the period for issuance of comments shall be extended to the fifth business day from the date of receipt of satisfactory reply to the clarification or additional information sought.

Provided that in the event the Board specifies any changes, the manager to the open offer and the acquirer shall carry out such changes in the letter of offer before it is dispatched to the shareholders.

(5) In the case of competing offers, the Board shall provide its comments on the draft letter of offer in respect of each competing offer on the same day.

(6) In the event the disclosures in the draft letter of offer are inadequate the Board may call for a revised letter of offer and shall deal with the revised letter of offer in accordance with sub-regulation (4).

Provision of escrow.

17. (1) Not later than two business days prior to the date of the detailed public statement of the open offer for acquiring shares, the acquirer shall create an escrow account towards security for performance of his obligations under these regulations, and deposit in escrow such aggregate amount as per the following scale:

Consideration payable under the Open Offer	**Escrow Amount**
On the first five hundred crore rupees	an amount equal to twenty-five per cent of the consideration
On the balance consideration	an additional amount equal to ten per cent of the balance consideration

(2) The consideration payable under the open offer shall be computed as provided for in sub-regulation (2) of regulation 16 and in the event of an upward revision of the offer price or of the offer size, the value of the escrow amount shall be computed on the revised consideration calculated at such revised offer price, and the additional amount shall be brought into the escrow account prior to effecting such revision.

(3) The escrow account referred to in sub-regulation (1) may be in the form of,—

(a) cash deposited with any scheduled commercial bank;

(b) bank guarantee issued in favour of the manager to the open offer by any scheduled commercial bank; or

(c) deposit of frequently traded and freely transferable equity shares or other freely transferable securities with appropriate margin;

Provided that where an open offer is made conditional upon minimum level of acceptance, the cash component of the escrow account shall not be lower than one hundred per cent of the consideration payable in respect of the minimum level of acceptance of the open offer.

Provided further that securities sought to be provided towards escrow under clause (c) shall be required to conform to the requirements set out in sub-regulation (2) of regulation 9.

(4) In the event of the escrow account being created by way of a bank guarantee or by deposit of securities, the acquirer shall also ensure that at least one per cent of the total

consideration payable is deposited in cash with a scheduled commercial bank as a part of the escrow account.

(5) For such part of the escrow account as is in the form of a cash deposit with a scheduled commercial bank, the acquirer shall while opening the account, empower the manager to the open offer to instruct the bank to issue a banker's cheque or demand draft or to make payment of the amounts lying to the credit of the escrow account, in accordance with requirements under these regulations.

(6) For such part of the escrow account as is in the form of a bank guarantee, such bank guarantee shall be in favour of the manager to the open offer and shall be kept valid throughout the offer period and for an additional period of thirty days after completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer.

(7) For such part of the escrow account as is in the form of securities, the acquirer shall empower the manager to the open offer to realise the value of such escrow account by sale or otherwise, and in the event there is any shortfall in the amount required to be maintained in the escrow account, the manager to the open offer shall be liable to make good such shortfall.

(8) The manager to the open offer shall not release the escrow account until the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, save and except for transfer of funds to the special account as required under regulation 21.

(9) In the event of non-fulfillment of obligations under these regulations by the acquirer the Board may direct the manager to the open offer to forfeit the escrow account or any amounts lying in the special account, either in full or in part.

(10) The escrow account deposited with the bank in cash shall be released only in the following manner,—

(a) the entire amount to the acquirer upon withdrawal of offer in terms of regulation 23 as certified by the manager to the open offer:

Provided that in the event the withdrawal is pursuant to clause (c) of sub-regulation (1) of regulation 23, the manager to the open offer shall release the escrow account upon receipt of confirmation of such release from the Board;

(b) for transfer of an amount not exceeding ninety per cent of the escrow account, to the special account in accordance with regulation 21:

(c) to the acquirer, the balance of the escrow account after transfer of cash to the special account, on the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, as certified by the manager to the open offer;

(d) the entire amount to the acquirer upon the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, upon certification by the manager to the open offer, where the open offer is for exchange of shares or other secured instruments;

(e) the entire amount to the manager to the open offer, in the event of forfeiture for non-fulfillment of any of the obligations under these regulations, for distribution in the following manner, after deduction of expenses, if any, of registered market intermediaries associated with the open offer,—

(i) one third of the escrow account to the target company;

(ii) one third of the escrow account to the Investor Protection and Education Fund established under the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009;

(iii) one third of the escrow account to be distributed pro-rata among the shareholders who have accepted the open offer.

Other Procedures.

18. (1) Simultaneously with the filing of the draft letter of offer with the Board under sub-regulation (1) of regulation 16, the acquirer shall send a copy of the draft letter of offer to the target company at its registered office address and to all stock exchanges where the shares of the target company are listed.

(2) The letter of offer shall be dispatched to the shareholders whose names appear on the register of members of the target company as of the identified date, not later than seven business days from the receipt of communication of comments from the Board or where no comments are offered by the Board, within seven business days from the expiry of the period stipulated in sub-regulation (4) of regulation 16:

Provided that every person holding shares regardless of whether he held shares on the identified date shall be entitled to tender such shares in acceptance of the open offer.

(3) Simultaneously with the dispatch of the letter of offer sub-regulation (2), the acquirer shall send the letter of offer to the custodian of shares underlying depository receipts, if any, of the target company:

Provided that where local laws or regulations of any jurisdiction outside India may expose the acquirer or the target company to material risk of civil, regulatory or criminal liabilities in the event the letter of offer in its final form were to be sent without material amendments or modifications into such jurisdiction, and the shareholders resident in such jurisdiction hold shares entitling them to less than five per cent of the voting rights of the target company, the acquirer may refrain from dispatch of the letter of offer into such jurisdiction.

Provided further that nothing contained in this sub-regulation shall disentitle a shareholder to whom the letter of offer has not been sent from tendering his shares in acceptance of the open offer.

(4) Irrespective of whether a competing offer has been made, an acquirer may make upward revisions to the offer price, and subject to the other provisions of these regulations, to

the number of shares sought to be acquired under the open offer, at any time prior to the commencement of the last three business days prior to the commencement of the tendering period:

(5) In the event of any revision of the open offer, whether by way of an upward revision in offer price, or of the offer size, the acquirer shall,—

(a) make corresponding increases to the amount kept in escrow under regulation 17 prior to such revision.

(b) make an announcement in respect of such revisions in all the newspapers in which the detailed public statement pursuant to the public announcement was made;

(c) simultaneously with the issue of such an announcement, inform the Board, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office;

(6) The acquirer shall disclose during the offer period every acquisition or disposal by the acquirer or persons acting in concert with him of any shares of the target company in such form as may be specified, to each of the stock exchanges on which the shares of the target company are listed and to the target company at its registered office within twenty-four hours of such acquisition or disposal, and the stock exchanges shall forthwith disseminate such information to the public:

Provided that the acquirer and persons acting in concert with him shall not acquire or sell any shares of the target company during the period between three business days prior to the commencement of the tendering period and until the expiry of the tendering period.

(7) The acquirer shall issue an advertisement in such form as may be specified, one business day before the commencement of the tendering period, announcing the schedule of activities for the open offer, the status of statutory and other approvals, if any, whether for the acquisition attracting the obligation to make an open offer under these regulations or for the

open offer, unfulfilled conditions, if any, and their status, the procedure for tendering acceptances and such other material detail as may be specified:

Provided that such advertisement shall be,—

(a) published in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and

(b) simultaneously sent to the Board, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office;

(8) The tendering period shall start not later than twelve business days from date of receipt of comments from the Board under sub-regulation (4) of regulation 16 and shall remain open for ten business days.

(9) Shareholders who have tendered shares in acceptance of the open offer shall not be entitled to withdraw such acceptance during the tendering period.

(10) The acquirer shall, within ten business days from the last date of the tendering period, complete all requirements under these regulations and other applicable law relating to the open offer including payment of consideration to the shareholders who have accepted the open offer.

(11) The acquirer shall be responsible to pursue all statutory approvals required by the acquirer in order to complete the open offer without any default, neglect or delay:

Provided that where the acquirer is unable to make the payment to the shareholders who have accepted the open offer within such period owing to non-receipt of statutory approvals required by the acquirer, the Board may, where it is satisfied that such non-receipt was not attributable to any willful default, failure or neglect on the part of the acquirer to diligently pursue such approvals, grant extension of time for making payments, subject to the acquirer agreeing to pay interest to the shareholders for the delay at such rate as may be specified by the Board.

Conditional Offer.

19. (1) An acquirer may make an open offer conditional as to the minimum level of acceptance:

Provided that where the open offer is pursuant to an agreement, such agreement shall contain a condition to the effect that in the event the desired level of acceptance of the open offer is not received the acquirer shall not acquire any shares under the open offer and the agreement attracting the obligation to make the open offer shall stand rescinded.

(2) Where an open offer is made conditional upon minimum level of acceptances, the acquirer and persons acting in concert with him shall not acquire, during the offer period, any shares in the target company except under the open offer.

Competing offers.

20. (1) Upon a public announcement of an open offer for acquiring shares of a target company being made, any person, other than the acquirer who has made such public announcement, shall be entitled to make a public announcement of an open offer within fifteen business days of the date of the detailed public statement made by such acquirer who has made the first public announcement for such target company.

(2) Notwithstanding anything contained in these regulations, an open offer made within the period referred to in sub-regulation (1) shall not be regarded as a voluntary open offer under regulation 6, and the provisions of these regulations shall apply accordingly.

(3) Every open offer made under sub-regulation (1) and the open offer first made shall be regarded as competing offers for purposes of these regulations.

(4) No person shall be entitled to make a public announcement of an open offer for acquiring shares, or enter into any transaction that would attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations, after the period of fifteen business days referred to in sub-regulation (1) and until the expiry of the offer period for such open offer.

(5) Unless the open offer first made is an open offer conditional as to the minimum level of acceptances, no acquirer making a competing offer may be made conditional as to the minimum level of acceptances.

(6) No person shall be entitled to make a public announcement of an open offer for acquiring shares, or enter into any transaction that would attract the obligation to make a public announcement of an open offer under these regulations until the expiry of the offer period where,—

(a) the open offer is for acquisition of shares pursuant to disinvestment, in terms of clause (d) of sub-regulation (2) of regulation 13; or

(b) the open offer is pursuant to a relaxation from strict compliance with the provisions of Chapter III or Chapter IV granted by the Board under sub-regulation (2) of regulation 11.

(7) The schedule of activities and the tendering period for all competing offers shall be carried out with identical timelines and the last date for tendering shares in acceptance of the every competing offer shall stand revised to the last date for tendering shares in acceptance of the competing offer last made.

(8) Upon the public announcement of a competing offer, an acquirer who had made a preceding competing offer shall be entitled to revise the terms of his open offer provided the revised terms are more favourable to the shareholders of the target company:

Provided that the acquirers making the competing offers shall be entitled to make upward revisions of the offer price at any time up to three business days prior to the commencement of the tendering period.

(9) Notwithstanding anything contained in regulation 3 and regulation 4, any of the acquirers who had made a competing offer shall be entitled, whether by himself, or through, or with persons acting in concert with him, to acquire the shares held by any other competing acquirer and persons acting in concert with such competing acquirer within twenty-one

business days of the expiry of the offer period for such competing offers without attracting an obligation to make a public announcement under these regulations:

Provided that the shares that may acquired under this sub-regulation shall not exceed the number of shares acquired by such seller under his competing offer, and the price for such acquisition shall not exceed the offer price governing the competing offer made by the acquirer purchasing shares under this sub-regulation.

Provided further that such acquisition shall not exceed such number of shares as would take the shareholding of the acquirer and persons acting in concert with him to more than the maximum permissible non-public shareholding.

(10) Except for variations made under this regulation, all the provisions of these regulations shall apply to every competing offer.

Payment of consideration.

21. (1) For the amount of consideration payable in cash, the acquirer shall open a special account with a banker to an issue registered with the Board and deposit therein, such sum as would, together with cash transferred under clause (b) of sub-regulation (10) of regulation 17, make up the entire sum due and payable to the shareholders as consideration payable under the open offer, and for such purpose, transfer such amount of cash from the escrow account.

(2) The acquirer shall complete payment of consideration whether in the form of cash, or as the case may be, by issue, exchange or transfer of securities, to all shareholders who have tendered shares in acceptance of the open offer within ten business days of the expiry of the tendering period.

(3) Unclaimed balances, if any, lying to the credit of the special account referred to in sub-regulation (1) at the end of seven years from the date of deposit thereof shall be transferred to the Investor Protection and Education Fund established under the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009.

Completion of acquisition.

22. (1) The acquirer shall not complete the acquisition of shares or voting rights in, or control over, the target company under any agreement attracting the obligation to make an open offer for acquiring shares until the expiry of the offer period.

(2) Notwithstanding anything contained in sub-regulation (1), subject to the acquirer depositing in the escrow account under regulation 17, cash of an amount equal to one hundred per cent of the consideration payable under the open offer assuming full acceptance of the open offer, the parties to such agreement may after the expiry of twenty-one business days from the date of the public announcement, act upon the agreement and complete the acquisition of shares or voting rights in, or control over the target company as contemplated in such agreement:

Provided that nothing contained in this sub-regulation shall apply to a competing offer not being an open offer attracted by a preferential allotment of shares of the target company.

(3) The acquirer shall complete the acquisitions contracted under any agreement attracting the obligation to make an open offer not later than twenty-six weeks from the expiry of the offer period:

Provided that in the event of any extraordinary and supervening circumstances rendering it impossible to complete such acquisition within such period, the Board may for reasons to be published, may grant an extension of time by such period as it may deem fit in the interests of investors in securities and the securities market.

Withdrawal of open offer.

23. (1) An open offer for acquiring shares once made shall not be withdrawn except under any of the following circumstances,—

(a) statutory approvals required for the open offer or for effecting the acquisitions attracting the obligation to make an open offer under these regulations having been finally refused, subject to such requirements for approval having been specifically disclosed in the detailed public statement and the letter of offer;

(b) the acquirer, being a natural person, has died;

(c) any condition stipulated in the agreement for acquisition attracting the obligation to make the open offer is not met for reasons outside the reasonable control of the acquirer, and such agreement is rescinded, subject to such conditions having been specifically disclosed in the detailed public statement and the letter of offer; or

(d) such circumstances as in the opinion of the Board, merit withdrawal.

Explanation.— For the purposes of clause (d) of sub-regulation (1), the Board shall pass a reasoned order permitting withdrawal, and such order shall be published.

(2) In the event of withdrawal of the open offer, the acquirer shall through the manager to the open offer, within two business days,—

(a) make an announcement in the same newspapers in which the public announcement of the open offer was published, providing the grounds and reasons for withdrawal of the open offer ;

(b) simultaneously with the announcement, inform in writing,—

(i) the Board;

(ii) all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public; and

(iii) the target company at its registered office.

Chapter IV

OTHER OBLIGATIONS

Directors of the target company.

24. (1) During the offer period, no person representing the acquirer or any person acting in concert with him shall be appointed as director on the board of directors of the target company, whether as an additional director or in a casual vacancy:

Provided that after an initial period of fifteen business days from the date of detailed public statement, appointment of persons representing the acquirer or persons acting in concert with him on the board of directors may be effected in the event the acquirer deposits in cash in the escrow account referred to in regulation 17, one hundred per cent of the consideration payable under the open offer.

Provided further that where the acquirer has specified conditions to which the open offer is subject in terms of clause (c) of sub-regulation (1) of regulation 23, no director representing the acquirer may be appointed to the board of directors of the target company during the offer period unless the acquirer has waived or attained such conditions and complies with the requirement of depositing cash in the escrow account.

(2) Where an open offer is made conditional upon minimum level of acceptances, the acquirer and persons acting in concert shall notwithstanding anything contained in these regulations, and regardless of the size of the cash deposited in the escrow account referred to regulation 17, not be entitled to appoint any director representing the acquirer or any person acting in concert with him on the board of directors of the target company during the offer period

(3) During the pendency of competing offers, notwithstanding anything contained in these regulations, and regardless of the size of the cash deposited in the escrow account referred to in regulation 17 by any acquirer or person acting in concert with him, there shall be no induction of any new director to the board of directors of the target company:

Provided that in the event of death or incapacitation of any director, the vacancy arising therefrom may be filled by any person subject to approval of such appointment by shareholders of the target company by way of a postal ballot.

(4) In the event the acquirer or any person acting in concert is already represented by a director on the board of the target company, such director shall not participate in any deliberations of the board of directors of the target company or vote on any matter in relation to the open offer:

Obligations of the acquirer.

25. (1) Prior to making the public announcement of an open offer for acquiring shares under these regulations, the acquirer shall ensure that firm financial arrangements have been made for fulfilling the payment obligations under the open offer and that the acquirer is able to implement the open offer, subject to any statutory approvals for the open offer that may be necessary.

(2) In the event the acquirer has not declared an intention in the detailed public statement and the letter of offer to alienate any material assets of the target company or of any of its subsidiaries whether by way of sale, lease, encumbrance or otherwise outside the ordinary course of business, the acquirer, where he has acquired control over the target company, shall be debarred from causing such alienation for a period of two years after the offer period:

Provided that in the event the target company or any of its subsidiaries is required to so alienate assets despite the intention to alienate not having been expressed by the acquirer, such alienation shall require a special resolution passed by shareholders of the target company, by way of a postal ballot and the notice for such postal ballot shall *inter alia* contain reasons as to why such alienation is necessary.

(3) The acquirer shall ensure that the contents of the public announcement, the detailed public statement and the letter of offer are true, fair and adequate in all material aspects and not misleading in any material particular, and are based on reliable sources, and state the source wherever necessary.

(4) In the event the shares of a target company stand delisted under sub-regulation (4) of regulation 7, the acquirer shall within a period of fifteen business days from the date on which the shares are delisted from the stock exchange, send out a written offer in such form as may be specified to all the other shareholders of the target company, intimating the shareholders of their entitlement to require the acquirer to acquire their shares at the same offer price.

(5) The acquirer and persons acting in concert with him shall be jointly and severally responsible for fulfillment of applicable obligations under these regulations.

Obligations of the target company.

26. (1) Upon a public announcement of an open offer for acquiring shares of a target company being made, the board of directors of such target company shall ensure that throughout the offer period, the business of the target company is conducted in the ordinary course consistent with past practice.

(2) During the offer period, unless the approval of shareholders of the target company by way of a special resolution by postal ballot is obtained, the board of directors of either the target company or any of its subsidiaries shall not,—

(a) alienate any material assets whether by way of sale, lease, encumbrance or otherwise or enter into any agreement therefor outside the ordinary course of business;

(b) effect any material borrowings outside the ordinary course of business;

(c) issue or allot any authorised but unissued securities entitling the holder to voting rights:

Provided that the target company or its subsidiaries may,—

(i) issue or allot shares upon conversion of convertible securities issued prior to the public announcement of the open offer, in accordance with pre-determined terms of such conversion; and

(ii) issue or allot shares pursuant to any public issue in respect of which the red herring prospectus has been filed with the Registrar of Companies prior to the public announcement of the open offer; or

(iii) issue or allot shares pursuant to any rights issue in respect of which the record date has been announced prior to the public announcement of the open offer;

(d) implement any buy-back of shares or effect any other change to the capital structure of the target company; or

(e) enter into, amend or terminate any material contracts to which the target company or any of its subsidiaries is a party, outside the ordinary course of business, whether such contract is with a related party, within the meaning of the term under applicable accounting principles, or with any other person; and

(f) accelerate any contingent vesting of a right of any person to whom the target company or any of its subsidiaries may have an obligation, whether such obligation is to acquire shares of the target company by way of employee stock options or otherwise.

(3) In any general meeting of a subsidiary of the target company in respect of the matters referred to in sub-regulation (2), the target company and its subsidiaries, if any, shall vote in a manner consistent with the special resolution passed by the shareholders of the target company.

(4) The target company shall be prohibited from fixing any record date for a corporate action after the third business day prior to the commencement of the tendering period and until the expiry of the tendering period.

(5) The target company shall furnish to the acquirer within two business days from the identified date, a list of shareholders as per the register of members of the target company containing names, addresses, shareholding and folio number, in electronic form, wherever

available, and a list of persons whose applications, if any, for registration of transfer of shares are pending with the company:

Provided that the acquirer shall reimburse reasonable costs payable by the target company to external agencies in order to furnish such information.

(6) Upon receipt of the detailed public statement, the board of directors of the target company shall constitute a committee of independent directors to provide reasoned recommendations on such open offer, and the target company shall publish such recommendations:

Provided that such committee shall be entitled to seek external professional advice at the expense of the target company.

(7) The committee of independent directors shall provide its written reasoned recommendations on the open offer to the shareholders of the target company and such recommendations shall be published at least two business days before the commencement of the tendering period, in the same newspapers where the public announcement of the open offer was published, and simultaneously, a copy of the same shall be sent to,—

(i) the Board;

(ii) all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public;

(iii) to the manager to the open offer, and where there are competing offers, to the manager to the open offer for every competing offer.

(8) The board of directors of the target company shall facilitate the acquirer in verification of shares tendered in acceptance of the open offer.

(9) The board of directors of the target company shall make available to all acquirers making competing offers, any information and co-operation provided to any acquirer who has made a competing offer.

(10) Upon fulfillment by the acquirer, of the conditions required under these regulations, the board of directors of the target company shall without any delay register the transfer of shares acquired by the acquirer in physical form, whether under the agreement or from open market purchases, or pursuant to the open offer.

Obligations of the manager to the open offer.

27. (1) Prior to public announcement being made, the manager to the open offer shall ensure that,—

(a) the acquirer is able to implement the open offer; and

(b) firm arrangements for funds through verifiable means have been made by the acquirer to meet the payment obligations under the open offer;

(2) The manager to the open offer shall ensure that the contents of the public announcement, the detailed public statement and the letter of offer are true, fair and adequate in all material aspects, not misleading in any material particular, are based on reliable sources, state the source wherever necessary, and are in compliance with the requirements under these regulations.

(3) The manager to the open offer shall furnish to the Board a due diligence certificate along with the draft letter of offer filed under regulation 16.

(4) The manager to the open offer shall ensure that market intermediaries engaged for the purposes of the open offer are registered with the Board;

(5) The manager to the open offer shall exercise diligence, care and professional judgement to ensure compliance with these regulations.

(6) The manager to the open offer shall not deal on his own account in the shares of the target company during the offer period.

(7) The manager to the open offer shall file a report with the Board within fifteen business days from the expiry of the tendering period, in such form as may be specified, confirming status of completion of various open offer requirements.

(8) In the event of an *inter se* transfer between competing acquirers being effected under sub-regulation (9) of regulation 20, the manager to the open offer of each such competing acquirer shall file a report with the Board within seven business days of such transfer, in such form as may specified giving particulars of such transfer.

Chapter V

DISCLOSURES OF SHAREHOLDING AND CONTROL

Disclosure of acquisition and disposal.

28. (1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise five per cent or more of the voting rights in such target company shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

(2) Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to exercise five per cent or more of the voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the voting rights in such target company along with their aggregate shareholding and voting rights in such form as may be specified.

(4) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two business days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

(5) (6) For the purposes of this regulation, shares taken on pledge shall be treated as an acquisition, shares given on pledge shall be treated as a disposal, the pledgee shall be treated as an acquirer, and disclosures shall be made accordingly in such form as may be specified:

Provided that such requirement shall not apply to a scheduled commercial bank or public financial institution in connection with a pledge of shares for securing indebtedness in the ordinary course of business.

Continual disclosures.

29. (1) Every person, who together with persons acting in concert with him, holds shares or voting rights entitling them to exercise twenty-five per cent or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

(2) The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within fifteen business days from the end of each financial year to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

Disclosure of encumbered shares.

30. (1) The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.

(2) The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven business days from the creation or invocation of encumbrance, as the case may be to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

Disclosure-related provisions.

31. (1) The disclosures under this Chapter shall be of the aggregated shareholding and voting rights of the acquirer and every person acting in concert with him.

(2) For the purposes of this Chapter, the acquisition and holding of any security or instrument that would entitle the acquirer to receive shares in the target company, including warrants and convertible debentures, shall also be regarded as shares, and disclosures of such acquisitions and holdings shall be made accordingly in such form as may be specified.

(3) Upon receipt of the disclosures required under this Chapter, the stock exchange shall forthwith disseminate the information so received.

Chapter VI

MISCELLANEOUS

Power to issue directions.

32. (1) Without prejudice to its powers under Chapter VIA and section 24 of the Act, the Board may, in the interests of investors in securities and the securities market, issue such directions as it deems fit under section 11 or section 11B or section 11D of the Act, including,—

(a) directing to divest of shares acquired in violation of these regulations, whether through public auction or in the open market, or through an offer for sale under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, and directing the appointment of a merchant banker for such divestiture;

(b) directing transfer of the shares, or any proceeds of a directed sale of shares acquired in violation of these regulations to the Investor Protection and Education Fund established under the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009;

(c) directing the target company or any depository not to give effect to any transfer of shares acquired in violation of these regulations;

(d) directing the acquirer or any person acting in concert, or any nominee or proxy not to exercise any voting or other rights attached to shares acquired in violation of these regulations;

(e) debarring any person who has violated these regulations from accessing the capital market or dealing in securities for such period as may be directed, having regard to the nature and gravity of the violation;

(f) directing the acquirer to make an open offer for acquiring shares of the target company at such offer price as determined by the Board in accordance with these regulations;

(g) directing the acquirer not to cause, and the target company not to effect, any disposal of assets of the target company or any of its subsidiaries contrary to the contents of the letter of offer;

(h) directing the acquirer who has failed to make an open offer or has delayed the making of an open offer, to make the open offer and to pay interest at such rate as considered appropriate by the Board, along with the offer price.

(i) directing the acquirer who has failed to make payment of the open offer consideration to shareholders, not to make any open offer or enter into any transaction that would attract the obligation to make an open offer in respect of shares of any target company for such period as the Board may deem fit;

(j) directing any person to cease and desist from exercising control acquired over any target company without complying with the requirements under these regulations;

(k) directing divestiture of such number of shares as would result in the shareholding of an acquirer and persons acting in concert with him being limited to the maximum permissible non-public shareholding or below;

(2) In any proceedings initiated by the Board, the Board shall comply with principles of natural justice before issuing directions to any person.

(3) The Board may, for failure to carry out the requirements of these regulations by any intermediary registered with the Board, initiate enquiry proceedings in accordance with applicable regulations.

Power to remove difficulties.

33. In order to remove any difficulties in the interpretation or application of the provisions of these regulations, the Board shall have the power to issue directions through guidance notes or circulars:

Provided that where any direction is issued by the Board in a specific case relating to interpretation or application of any provision of these regulations, it shall be done only after affording a reasonable opportunity of being heard to the concerned parties and after recording reasons for the direction.

Repeal and Savings.

34. (1) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, hereby stand repealed.

(2) Notwithstanding such repeal,—

(a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurrent under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed.

(c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.

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Mr. C. Achuthan
(Chairman)

Mr. Kumar Desai **Mr. Somasekhar Sundaresan** **Mr. Y. M. Deosthalee**

Mr. Koushik Chatterjee **Mr. Raj Balakrishnan** **Mr. Sourav Mallik**

Mr. A K Narayan **Prof N. Venkiteswaran** **Ms. Usha Narayanan**

Mr. J. Ranganayakulu **Ms. Neelam Bhardwaj**
(Member Secretary)

Mumbai

July 19, 2010

Annexure 1 - Offer Size Analysis

FY	Total	Offer Size (% of total equity capital of Target Company)	
		< = 20%	> 20%
2006-07	89	77	12
2007-08	118	100	18
2008-09	113	95	18
2009-10	75	65	10
Total	**395**	**337**	**58**
% of cases	**100%**	**85.32%**	**14.68%**

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Annexure 2 – Promoter Holding in Listed Companies

Market Cap Range (Rs mn)	No of Companies	Total Promoter Holding (%)		Companies With Promoter Holding Between			
		Mean	Median	0-15%	15-20%	20-25%	25-30%
0-500	2,477 (61.1%)	45.50%	46.40%	274 (11.1%)	87 (3.5%)	97 (3.9%)	138 (5.6%)
500 - 2,000	649 (16.0%)	52.60%	54.90%	34 (5.2%)	19 (2.90%)	12 (1.8%)	19 (2.9%)
2,000 -5,000	312 (7.7%)	54.30%	55.00%	10 (3.2%)	8 (2.6%)	1 (0.3%)	10 (3.2%)
5,000 -10,000	157 (3.9%)	52.20%	54.50%	5 (3.2%)	1 (0.6%)	3 (1.9%)	8 (5.1%)
10,000 and above	459 (11.3%)	55.20%	54.30%	15 (3.3%)	5 (1.1%)	11 (2.4%)	16 (3.5%)
Overall	**4,054 (100.0%)**	**48.90%**	**50.50%**	**340 (8.4%)**	**120 (3.0%)**	**124 (3.1%)**	**191 (4.7%)**

Source: Capitaline,

Data as on February 26, 2010

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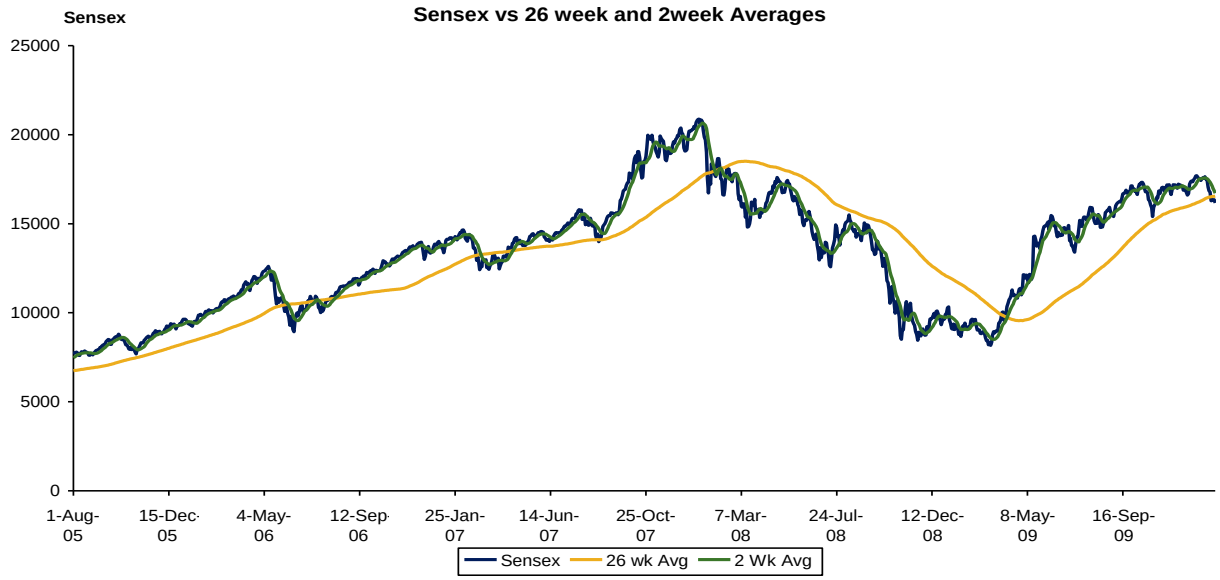
Annexure 3 - Spot Price Movements vs. 2 Weeks / 26 Weeks Average



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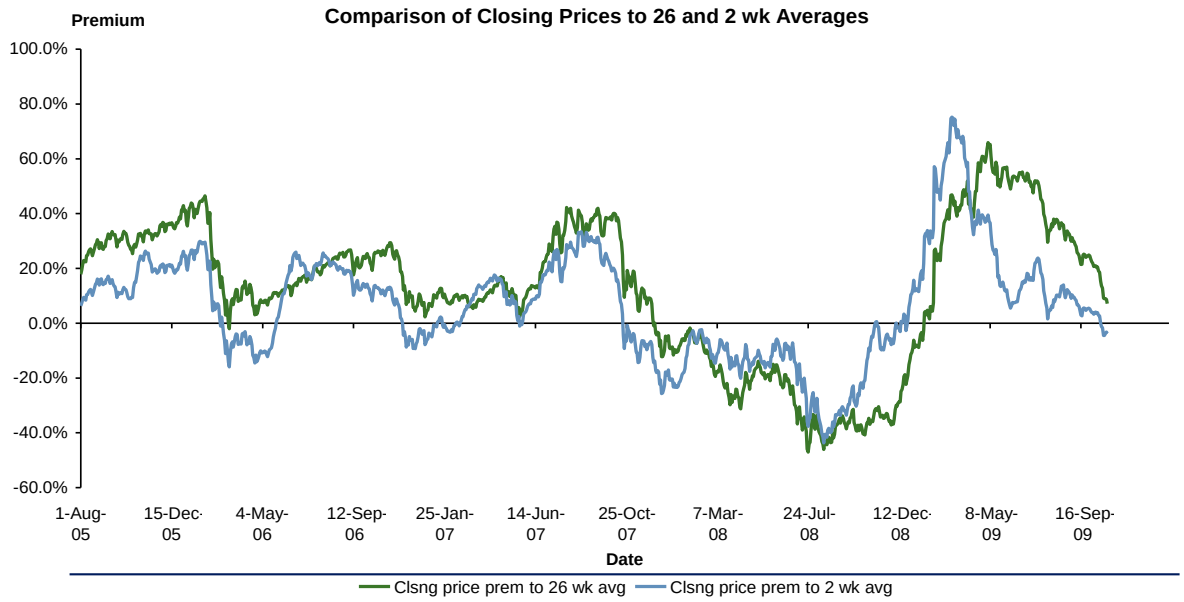
Annexure 4 - Closing Prices vs. 2 Weeks / 26 Weeks Average



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Annexure 5 - Offer Price Analysis

Sno	Particulars	Offers opening date during the Financial Years				
		2006-07	2007-08	2008-09	2009-10	Total
1	Total Number of offers.	89	118	113	75	395
2	Out of the above (point 1), number of offers where shares were frequently traded.	51	74	72	35	232
3	Out of the above (point 2), the number of offers where there was an SPA/SSA/preferential allotment.	29	51	59	21	160
4	Out of the above (point 3), the offer price was determined based upon the market price formula {u/r 20(4)(c)}. *	11	12	19	6	48
		37.93%	**23.53%**	**32.20%**	**28.57%**	**30.00%**
5	Out of the above (point 3), the offer price was determined based upon parameters other than market price formula	18	39	40	15	112
		62.07%	**76.47%**	**67.80%**	**71.43%**	**70.00%**
6	Out of the above (point 2), the number of offers where there was no **SPA/SSA/preferential allotment.**	22	23	13	14	72
7	Out of the above (point 6), the offer price was equal to the price determined as per the market price formula {u/r 20(4)(c)}.	13	9	7	5	34
		59.09%	**39.13%**	**53.85%**	**35.71%**	**47.22%**
8	Out of the above (point 6), the offer price was higher than the price determined as per the market price formula {u/r 20(4)(c)}.	9	14	6	9	38
		40.91%	**60.87%**	**46.15%**	**64.29%**	**52.78%**
9	Out of the above **(point 2)**, the number of offers where the offer price was determined by the market price formula {u/r 20(4)(c)}.	24	21	26	11	82
		47.06%	**28.38%**	**36.11%**	**31.43%**	**35.34%**
10	Out of the above **(point 2)**, the number of offers where the **offer price was determined by parameters other than the market price formula**, e.g. SPA price or the price paid by the acquirer / PAC for any acquisition 26 weeks prior to the PA.	27	53	46	24	150
		52.94%	**71.62%**	**63.89%**	**68.57%**	**64.66%**

* *If the offer price falls within the range of 98% to 102% of the highest of the 26/2 week average market price or if the difference between the offer price and the highest of the 26/2 week average market price is less than one, then the offer is grouped as offer determined as per the market formula u/r 20(4)(c). However, in such cases, where the offer price is equal to the SPA/SSA/Preferential Allotment price, then those open offers are grouped under offers whose offer price is based upon parameters other than market price formula.*

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Annexure 6: Variance of Spot Price vis-à-vis 4/12/26 week average prices

Based on 46 randomly selected companies from a sample of the 1000 top companies by market capitalization
(50 companies were selected with ranks 1, 21, 41,… and 4 companies removed, 2 for which there was no data and the 2 extreme variance companies) Based on 3 years stock price data (daily volume weighted average prices) sourced from Bloomberg

			4 week analysis*				12 week analysis*				26 week analysis*			
Rank	**Company Name**	**Market Cap (Rs mn)**	**Mean Max Positive Variance(A)**	**Mean Max Negative Variance(B)**	**Mean Variance (C)**	**Standard Deviation (D)**	**(A)**	**(B)**	**(C)**	**(D)**	**(A)**	**(B)**	**(C)**	**(D)**
	Mean		**40.2%**	**-34.4%**	**0.5%**	**10.2%**	**67.9%**	**-46.4%**	**1.6%**	**19.1%**	**88.0%**	**-52.9%**	**2.5%**	**29.0%**
	Median		**40.4%**	**-33.3%**	**0.5%**	**10.4%**	**62.7%**	**-47.5%**	**1.5%**	**19.4%**	**84.9%**	**-53.5%**	**1.8%**	**29.9%**
							Detailed analysis for sample of 50 companies							
	Max/Min Variances		**71.6%**	**-57.1%**	**2.8%**	**-2.7%**	**162.2%**	**-77.7%**	**10.5%**	**-7.9%**	**203.5%**	**-85.8%**	**34.5%**	**-15.6%**
1	Reliance Inds.	3,258,840	27.9%	-34.3%	0.4%	7.2%	53.0%	-47.7%	1.1%	14.1%	71.3%	-53.1%	-0.4%	20.2%
21	Hind. Unilever	556,293	11.7%	-16.7%	0.5%	4.0%	17.8%	-16.9%	1.1%	6.2%	20.3%	-16.3%	1.8%	7.1%
41	Oil India	305,263	12.0%	-7.0%	1.0%	3.6%	20.6%	-7.1%	1.5%	6.9%	21.5%	-5.6%	4.4%	8.2%
61	Asian Paints	214,180	16.3%	-17.0%	1.4%	5.1%	31.4%	-21.7%	4.1%	9.5%	46.1%	-27.2%	9.0%	16.8%
81	ACC	157,936	21.5%	-26.4%	0.1%	6.8%	35.1%	-32.5%	-0.4%	11.4%	57.7%	-38.1%	-1.2%	18.1%
101	Engineers India	106,894	54.5%	-28.9%	2.1%	10.8%	85.6%	-40.6%	7.4%	19.6%	91.2%	-42.3%	14.9%	30.6%
121	IRB Infra.Devl.	82,226	49.7%	-26.4%	0.9%	10.3%	46.7%	-39.8%	2.5%	18.2%	61.8%	-51.1%	8.8%	27.4%
141	S C I	68,197	31.6%	-32.7%	0.4%	8.6%	60.8%	-40.5%	1.5%	15.1%	76.6%	-47.5%	1.8%	22.0%
161	Pidilite Inds.	56,228	28.0%	-27.7%	1.0%	7.0%	42.3%	-38.2%	2.6%	12.5%	47.6%	-42.3%	4.1%	19.6%
181	CESC	46,465	36.2%	-32.4%	0.2%	8.4%	56.7%	-42.8%	-0.2%	14.1%	58.2%	-52.3%	-2.2%	20.3%
201	Opto Circuits	41,793	35.3%	-38.2%	0.9%	9.4%	62.6%	-53.2%	2.2%	17.5%	89.2%	-56.8%	2.3%	28.2%
221	J & K Bank	37,230	38.4%	-26.5%	0.4%	8.1%	62.8%	-35.9%	1.1%	15.0%	58.4%	-45.6%	1.5%	23.5%
241	Guj NRE Coke	32,113	44.3%	-48.1%	1.0%	12.4%	104.9%	-64.4%	3.7%	24.5%	125.2%	-73.8%	5.7%	38.5%
261	HSBC InvestDir	28,033	42.2%	-38.7%	1.2%	12.1%	81.0%	-47.3%	4.6%	27.0%	153.7%	-61.0%	10.0%	46.8%
301	Akzo Nobel	23,238	18.8%	-17.8%	0.5%	3.9%	26.0%	-23.6%	1.3%	7.1%	27.1%	-29.6%	2.4%	11.1%
321	Allcargo Global	21,187	27.4%	-57.1%	-0.1%	7.6%	30.0%	-64.3%	0.0%	11.9%	36.9%	-64.1%	-0.2%	14.7%
341	IBN18 Broadcast	19,110	35.0%	-37.3%	-0.6%	9.6%	61.3%	-44.6%	-2.1%	15.3%	53.4%	-46.6%	-5.6%	19.4%
361	MVL	17,749	34.3%	-46.1%	2.8%	11.5%	62.5%	-56.8%	10.5%	25.2%	122.5%	-51.1%	34.5%	42.2%
381	Omaxe	16,099	47.8%	-53.7%	-1.2%	12.5%	96.1%	-47.9%	-3.9%	24.6%	112.5%	-61.7%	-11.4%	35.1%
401	Electrost.Cast.	14,690	40.1%	-33.0%	0.5%	10.5%	80.5%	-48.2%	1.7%	21.6%	113.8%	-60.1%	1.7%	35.8%

		(Rs mn)	Max Positive Variance	Max Negative Variance	Mean Variance	Standard Deviation	Max Positive Variance	Max Negative Variance	Mean Variance	Standard Deviation	Max Positive Variance	Max Negative Variance	Mean Variance	Standard Deviation
441	Century Ply.	11,999	34.8%	-25.0%	1.0%	8.0%	51.6%	-34.8%	2.4%	14.9%	82.3%	-43.0%	3.1%	23.6%
461	Asahi India Glas	10,441	28.1%	-25.6%	-0.4%	7.5%	46.0%	-36.5%	-1.4%	12.6%	47.0%	-39.9%	-3.5%	19.4%
481	Andrew Yule & Co	9,750	71.6%	-27.9%	0.9%	15.0%	115.4%	-52.1%	3.2%	29.0%	152.2%	-57.0%	0.0%	37.5%
501	Dev.Credit Bank	9,023	40.7%	-41.8%	-0.3%	9.9%	71.8%	-60.6%	-0.8%	20.5%	101.8%	-61.2%	-6.7%	32.8%
521	Elgi Equipment	8,285	29.2%	-26.8%	1.2%	7.8%	49.9%	-33.6%	3.7%	14.8%	70.3%	-39.0%	6.8%	25.3%
541	Geojit BNP	7,548	49.7%	-37.2%	0.2%	12.1%	91.5%	-46.3%	0.5%	24.1%	131.7%	-53.9%	-0.1%	34.6%
561	TTK Prestige	7,034	42.6%	-32.7%	2.7%	9.8%	57.9%	-28.9%	8.2%	19.3%	101.5%	-31.8%	18.8%	33.3%
581	Ushdev Intl.	6,619	47.0%	-41.4%	2.2%	12.8%	84.6%	-62.9%	7.5%	26.9%	124.1%	-67.7%	14.3%	43.0%
621	Ajmera Realty	5,613	52.3%	-38.1%	-2.1%	13.1%	83.0%	-59.7%	-6.8%	21.7%	93.9%	-75.4%	-15.6%	34.0%
641	T.V. Today Netw.	5,241	39.1%	-31.7%	-0.3%	9.2%	49.9%	-42.3%	-1.3%	14.6%	66.1%	-47.6%	-3.0%	20.4%
661	KNR Construct.	4,966	42.8%	-35.7%	1.1%	13.4%	74.2%	-50.1%	4.5%	22.7%	107.9%	-63.0%	15.3%	36.6%
681	Mukand	4,675	57.6%	-42.3%	-0.1%	10.7%	73.3%	-60.6%	0.4%	20.9%	87.1%	-65.9%	0.7%	33.3%
701	Bombay Burmah	4,411	42.6%	-35.0%	0.4%	13.1%	76.7%	-52.2%	0.3%	24.1%	99.7%	-56.7%	-3.3%	33.4%
721	PVR	4,002	47.8%	-33.6%	-0.1%	10.6%	58.2%	-52.2%	-0.3%	18.7%	63.3%	-61.0%	-1.0%	26.1%
741	MIC Electronics	3,825	53.5%	-46.8%	-0.5%	12.9%	74.8%	-65.9%	-1.2%	24.8%	108.5%	-72.5%	-4.4%	37.2%
761	Tanla Solutions	3,624	68.7%	-45.7%	-1.7%	13.3%	92.7%	-57.9%	-5.7%	24.1%	60.0%	-76.4%	-15.5%	29.1%
781	Ster. Holid. Res	3,433	35.0%	-49.0%	0.8%	12.0%	61.4%	-60.2%	2.9%	21.4%	113.4%	-66.0%	7.1%	34.9%
801	SEL Mfg. Co	3,281	53.2%	-48.7%	-0.5%	15.5%	91.6%	-77.7%	1.5%	32.2%	138.5%	-85.8%	1.9%	53.2%
821	PVP Ventures	3,097	41.3%	-40.7%	-2.7%	14.1%	89.3%	-64.0%	-7.9%	29.8%	144.4%	-83.2%	-14.2%	47.8%
841	Lloyd Steel Inds	2,956	52.8%	-41.9%	2.8%	17.0%	162.2%	-63.7%	8.7%	37.0%	203.5%	-72.2%	4.2%	47.1%
861	Jagatjit Inds.	2,847	40.0%	-29.3%	0.1%	9.7%	43.6%	-42.1%	-1.3%	13.7%	49.1%	-44.7%	-3.2%	16.6%
881	Visaka Inds.	2,665	42.5%	-31.6%	1.2%	10.7%	85.1%	-38.7%	4.0%	20.7%	110.8%	-40.9%	9.9%	33.3%
901	Timex Group	2,495	67.4%	-32.2%	0.4%	11.6%	110.7%	-49.1%	0.6%	20.7%	127.4%	-55.3%	0.5%	32.1%
921	Surya Pharma.	2,367	27.6%	-36.6%	1.3%	8.8%	57.3%	-43.8%	4.0%	15.7%	70.6%	-46.5%	7.6%	24.5%
941	Omnitech Info	2,268	49.9%	-32.7%	0.7%	12.8%	84.8%	-49.9%	2.4%	23.6%	82.7%	-58.7%	4.3%	34.0%
961	Kabra Extrusion	2,159	39.1%	-24.6%	1.5%	7.9%	67.2%	-35.1%	5.1%	15.2%	64.2%	-41.8%	11.6%	24.1%

**For 26 week analysis 130 trading days have been considered*
**For 12 week analysis 60 trading days have been considered*
**For 4 week analysis 20 trading days have been considered*

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Annexure 7 - Listed Indian Companies as a proportion of their Foreign Parent

All figures in Rs. crores other than %	Indian Company			Parent Company			Indian Co. as % of Parent Co. (Adjusted for stake owned)		
Company Name	**Market Capitalisation (BSE)**	**Networth**	**Net Sales**	**Enterprise Value**	**Networth**	**Net Sales**	**Market Capitalisation**	**Networth**	**Net Sales**
Mean							**5.4%**	**1.8%**	**2.1%**
Median							**2.0%**	**0.8%**	**0.6%**
Hind. Unilever	57,203	2,137	20,445	532,475	84,749	269,222	5.6%	1.3%	4.0%
Maruti Suzuki	41,340	9,565	20,739	50,581	35,534	143,724	44.3%	14.6%	7.8%
Sesa Goa	30,270	4,716	5,265	119,196	81,285	56,351	14.6%	3.3%	5.4%
Nestle	28,760	581	5,132	900,845	221,325	415,070	2.0%	0.2%	0.8%
Siemens	24,208	2,276	9,680	445,016	161,393	453,364	3.0%	0.8%	1.2%
Ranbaxy Labs.	19,510	4,278	7,332	59,619	42,503	40,280	20.9%	6.4%	11.6%
Oracle Fin.Serv.	18,820	3,505	2,928	529,846	111,563	103,390	2.9%	2.5%	2.3%
Ambuja Cem.	16,920	5,672	6,195	180,208	90,971	87,208	4.3%	2.8%	3.2%
ACC	15,698	6,016	7,943	180,208	90,971	87,208	4.0%	3.0%	4.2%
ABB	18,266	2,105	6,837	163,097	59,727	131,212	5.8%	1.8%	2.7%
Glaxosmit Pharma	17,892	1,576	1,699	483,927	72,621	191,781	1.9%	1.1%	0.4%
MphasiS	13,063	1,436	1,907	514,270	189,483	535,717	1.5%	0.5%	0.2%
Cummins India	11,832	1,485	3,559	64,172	17,875	48,022	9.4%	4.2%	3.8%
Colgate-Palm.	11,534	215	1,699	201,505	14,482	68,152	2.9%	0.8%	1.3%
Castrol India	10,663	495	2,396	911,416	725,573	1,700,169	0.8%	0.0%	0.1%
P&G Hygiene	6,621	440	774	959,243	280,570	351,402	0.5%	0.1%	0.2%
GSK Consumer	7,448	905	1,925	483,927	72,621	191,781	0.7%	0.5%	0.4%
Alstom Projects	4,391	400	2,290	57,242	17,058	110,835	4.5%	1.4%	1.2%
Aventis Pharma	4,444	918	975	392,086	286,541	173,335	0.6%	0.2%	0.3%
Guj Gas Company	3,835	710	1,301	294,994	97,249	69,045	0.8%	0.5%	1.2%

All figures in Rs. crores other than %	Indian Company			Parent Company			Indian Co. as % of Parent Co. (Adjusted for stake owned)		
Company Name	Market Capitalisation (BSE)	Networth	Net Sales	Enterprise Value	Networth	Net Sales	Market Capitalisation	Networth	Net Sales
Kansai Nerolac	4,117	663	1,501	10,289	6,959	10,983	27.7%	6.6%	9.5%
ING Vysya Bank	4,250	1,600	2,240	1,605,939	235,788	711,982	0.1%	0.3%	0.1%
Hind.Oil Explor.	3,159	1,064	99	518,299	296,034	492,259	0.3%	0.2%	0.0%
Pfizer	3,595	901	711	695,925	402,168	222,365	0.4%	0.2%	0.2%
Bayer Crop Sci.	3,141	451	1,392	286,871	112,334	184,751	0.8%	0.3%	0.5%
3M	3,135	348	742	277,658	59,147	102,816	0.9%	0.4%	0.5%
Alfa Laval (I)	2,675	307	800	26,589	7,468	15,902	8.9%	3.7%	4.5%
Akzo Nobel	2,795	970	906	75,877	48,766	82,172	2.1%	1.1%	0.6%
Fres.Kabi Onco.	2,691	282	312	122,648	45,259	83,775	2.0%	0.6%	0.3%
UTV Software	1,654	1,387	607	359,882	157,517	160,737	0.3%	0.6%	0.3%
Novartis	2,138	515	601	564,078	237,135	182,681	0.3%	0.2%	0.3%
BASF India	1,749	363	1,318	329,625	110,066	299,831	0.4%	0.2%	0.3%
Clariant Chemica	1,751	318	924	16,549	7,824	27,295	6.7%	2.6%	2.1%
Thomas Cook (I)	1,341	118	334	18,521	11,677	62,661	5.6%	0.8%	0.4%
Abbott India	1,673	272	795	420,442	101,819	136,795	0.3%	0.2%	0.4%

Source: BSE, Capitaline and Bloomberg

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