



CONSULTATIVE PAPER ON RE-CLASSIFICATION OF
PROMOTER/ PROMOTER GROUP ENTITIES AND
DISCLOSURE OF THE PROMOTER GROUP ENTITIES IN THE
SHAREHOLDING PATTERN

Background

Re-classification of promoter(s)/ promoter group entities

1. Regulation 31A of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations / LODR”) provides for conditions with respect to re-classification of any person as promoter/public.
2. A detailed review of the above regulation was undertaken in 2018, with an aim to simplify, streamline and bring greater clarity in the provisions specified therein. In this regard, certain provisions that were prone to misuse were also strengthened.
3. A brief summary of the present re-classification process is given below (relevant extract of regulation is placed at **Annexure-A**):
 - a. A listed entity makes an application to Stock Exchanges for re-classification of any person as promoter.
 - b. The application for re-classification to the stock exchanges shall be made by the listed entity consequent to the following procedures and not later than thirty days from the date of approval by shareholders in general meeting:
 - i. The promoter(s) seeking re-classification make a request for re-classification to the listed entity.
 - ii. The board of directors of the listed entity analyse the request and place the same before the shareholders in a general meeting for approval along-with the views of the board of directors on the request. There should be a time gap of at least three months but not exceeding six months between the date of board meeting and the shareholder’s meeting considering the request of the promoter(s) seeking re-classification.
 - iii. The request of the promoter(s) seeking re-classification shall be approved in the general meeting by an ordinary resolution in which the promoter(s) seeking re-classification and persons related to the promoter(s) seeking re-classification shall not vote to approve such re-classification request.
4. Certain pre-requisites in terms of shareholding, control, special rights of the person seeking reclassification are specified in regulation 31A (3) (b) of the LODR. Further, Regulation 31A (3) (c) of the LODR prescribes certain



conditions for the listed entity, aimed at ensuring that only compliant listed entities are eligible to apply for re-classification.

Disclosure of names of promoter group entities in the shareholding pattern

5. With respect to disclosure of promoter(s)/ promoter group entities, Regulation 31(4) of SEBI (LODR) Regulations, 2015 mandates a listed entity to disclose separately, all entities falling under promoter and promoter group, in the shareholding pattern appearing on the website of all stock exchanges having nationwide trading terminals where the specified securities of the entity are listed, in accordance with the formats specified by SEBI. Further, SEBI circular CIR/CFD/CMD/13/2015 dated November 30, 2015 specifies detailed format for disclosure of specified holdings of promoter and promoter group, public and Non Promoter Non public shareholders in dematerialized form.

Need for review

6. SEBI has received feedback regarding cases where promoters have desired re-classification but have found it difficult under current regulatory regime. Relaxation from existing requirement on a case to case basis was given by SEBI.
7. It is therefore desirous that the existing provisions may be revisited to minimize the number of exemptions provided on a case to case basis.

Review Process

8. The matter was discussed by Primary Market Advisory Committee ('PMAC') of SEBI in its meeting held on November 11, 2020.
9. Accordingly, the proposals with respect to review of reclassification of the promoter/promoter group entities as public shareholder are as under.

Proposals:

Condition pertaining to minimum threshold of voting rights

10. The re-classification condition on share-holding, may be amended such that the promoter(s) seeking re-classification and persons related to the promoter(s) seeking re-classification shall not together, hold 15% or more of the total voting rights in the listed entity.

Rationale

SEBI has received feedback from market participants to review the threshold of 10% so that the persons who may have been promoters but are no longer in day-to-day control having shareholding of less than 15% may "opt-out" from being classified as "promoters", without having to reduce their share-holding.



Time period between board and shareholders meeting

11. Current time gap of at least three months between the date of board meeting and the shareholder's meeting considering the request of the promoter(s) seeking re-classification may be reduced to at least one month.

Rationale

An adequate time period needs to be given to the shareholders for considering the request of the promoter(s) seeking re-classification. However, the minimum time gap of three months is felt to be long which increases the total time taken in the process. It is therefore proposed that the same may be reduced to at least one month. This would increase both cost and time efficiency of the listed entities.

Reclassification pursuant to an order/ direction of Government / regulator

12. The exemption from regulations 31A(3), 31A(4) and 31A(8)(a) & (b) of LODR, as extended in case of re-classification of promoter, pursuant to resolution plan, approved under section 31 of the Insolvency Code, may also be extended to re-classification pursuant to an order/ direction of the Government / regulator and/or as a consequence of operation of law, subject to the condition that such promoter(s) seeking re-classification shall not remain in control of the listed entity.

Rationale

In cases of reclassification pursuant to order/ direction of the Government/ regulator, the re-classification of the promoter is a natural consequence of the order/ direction of the Government / regulator. Hence the exemption granted to companies under IBC as stated in Regulation 31A(9) may be extended to companies undergoing reclassification of their promoter(s)/ promoter group entities pursuant to government's/ regulator's order.

Reclassification of existing promoter pursuant to open offer

13. Exemption from the procedure for re-classification may be granted, in cases where re-classification is pursuant to an open offer made in accordance with the provisions of SAST Regulations, subject to the following conditions:
- The intent of the existing promoter(s) to re-classify has been disclosed in the letter of offer
 - The promoter / person(s) related to the promoter being reclassified fulfil the conditions mentioned at regulation 31A(3)(b) and the listed entity fulfils the conditions stipulated at regulation 31A(3)(c) of LODR



Rationale

In cases where intent of reclassification has already been mentioned in the Letter of Offer, the requirement of promoter making an application for reclassification is a mere procedural formality since the fact of promoter reclassification as a public shareholder is disclosed in the Letter of Offer and the information is already present in the public domain

14. Exemption from the procedure for re-classification, may be granted in cases where, pursuant to an open offer, a listed entity intends to re-classify erstwhile promoter(s)/ promoter group entities but the 'promoters/ promoter group entities' are not traceable or are not co-operative, subject to the following conditions:
- a. The listed entity should be able to demonstrate that efforts have been taken to contact the promoter(s) such as through issuance of notices in newspapers, Stock Exchange websites etc.
 - b. Such promoter(s) seeking re-classification shall not remain in control of the listed entity

Rationale

SEBI has come across cases where, pursuant to an open offer, the new management of a listed entity was unable to reclassify the erstwhile promoters because they were un-traceable or non-cooperative and therefore was unable to procure reclassification request from the erstwhile promoters, thereby stalling the whole process. This resulted into old promoters continue to be classified as promoter despite losing control of the company. The requirement of promoter making an application for reclassification is a mere procedural formality. Hence, the reclassification of such persons may be permitted provided the company has taken efforts to reach out to the erstwhile promoters and such outgoing promoters/ promoter group entities not being in control.

Time period for listed companies to place the reclassification request before board

15. The Listed entity shall place the reclassification request before its board within one month of receiving the reclassification request from its promoter(s)/ promoter group entities.

Rationale

While current regulatory framework under Regulation 31A prescribes the process of reclassification, it does not prescribe a definitive timeline for the company to place such reclassification before the board. It is observed in some cases that the reclassification requests from promoter(s)/ promoter group entities have not been placed before the Board, thereby ceasing the process in its initial phase. Hence, in order to streamline the reclassification



process further, a timeline is prescribed for the request to be placed before the board of the listed entity.

Disclosure of names of promoter group entities in the shareholding pattern

16. All entities falling under promoter and promoter group shall be disclosed separately even in case of 'Nil' shareholding.
17. Listed entities to obtain a declaration on a quarterly basis, from their promoters on the entities / persons that form part of the 'promoter group'

Rationale

While Reg 31 of SEBI (LODR) Regulations, 2015 mandates that all entities falling under promoter and promoter group shall be disclosed separately in the shareholding pattern, there have been cases where listed companies have not been disclosing names of persons in promoter(s)/ promoter group who hold 'Nil' shareholding. There is therefore a need for further clarification in this regard to the listed companies.

Public comments

Considering the implications of the said matter on the market participants including listed companies, promoters/promoter group of the said companies and investors, comments on the policy framework proposed above at paragraphs 10 to 17 are solicited. Specific comments/suggestions as per the format given below would be highly appreciated

Name of entity / person / intermediary/ Organization:			
Sr. No.	Issues	Suggestions	Rationale

Comments may be sent by email to consultationcmd2@sebi.gov.in or by post to the following address, not later than **December 24, 2020**:

General Manager
Corporation Finance Department, CMD-II,
Securities and Exchange Board of India
SEBI Bhavan, Plot No. C4-A, "G" Block,
Bandra Kurla Complex, Bandra (East),
Mumbai -400 051

Issued on: November 23, 2020



ANNEXURE A - REGULATORY PROVISIONS FOR RE-CLASSIFICATION OF ANY PERSON AS PROMOTER / PUBLIC

31A. (1) For the purpose of this regulation:

(a) “promoter(s) seeking re-classification” shall mean all such promoters/persons belonging to the promoter group seeking re-classification of status as public.

(b) “persons related to the promoter(s) seeking re-classification” shall mean such persons with respect to that promoter(s) seeking re-classification who fall under sub-clauses (ii), (iii) and (iv) of clause (pp) of sub-regulation (1) of regulation 2 of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

(2) Re-classification of the status of any person as a promoter or public shall be permitted by the stock exchanges only upon receipt of an application from the listed entity along with all relevant documents subject to compliance with conditions specified in these regulations;

Provided that in case of entities listed on more than one stock exchange, the concerned stock exchanges shall jointly decide on the application.

(3) Re-classification of status of a promoter/ person belonging to promoter group to public shall be permitted by the stock exchanges only upon satisfaction of the following conditions:

(a) an application for re-classification to the stock exchanges has been made by the listed entity consequent to the following procedures and not later than thirty days from the date of approval by shareholders in general meeting:

(i) the promoter(s) seeking re-classification shall make a request for re-classification to the listed entity which shall include rationale for seeking such re-classification and how the conditions specified in clause (b) below are satisfied;

(ii) the board of directors of the listed entity shall analyze the request and place the same before the shareholders in a general meeting for approval along with the views of the board of directors on the request:

Provided that there shall be a time gap of at least three months but not exceeding six months between the date of board meeting and the shareholder’s meeting considering the request of the promoter(s) seeking re-classification.

(iii) the request of the promoter(s) seeking re-classification shall be approved in the general meeting by an ordinary resolution in which the promoter(s) seeking re-classification and persons related to the promoter(s) seeking re-classification shall not vote to approve such re-classification request.

(b) the promoter(s) seeking re-classification and persons related to the promoter(s) seeking re-classification shall not:

(i) together, hold more than ten percent of the total voting rights in the listed entity;

(ii) exercise control over the affairs of the listed entity directly or indirectly;

(iii) have any special rights with respect to the listed entity through formal or informal arrangements including through any shareholder agreements;

(iv) be represented on the board of directors (including not having a nominee director) of the listed entity;

(v) act as a key managerial person in the listed entity;

(vi) be a ‘wilful defaulter’ as per the Reserve Bank of India Guidelines;



(vii) be a fugitive economic offender.

(c) the listed entity shall:

- (i) be compliant with the requirement for minimum public shareholding as required under regulation 38 of these regulations;
- (ii) not have trading in its shares suspended by the stock exchanges;
- (iii) not have any outstanding dues to the Board, the stock exchanges or the depositories.

(4) The promoter(s) seeking re-classification, subsequent to re-classification as public, shall comply with the following conditions:

- (a) he shall continue to comply with conditions mentioned at sub-clauses (i), (ii) and (iii) of clause (b) of sub-regulation 3 as specified above at all times from the date of such re-classification failing which, he shall automatically be reclassified as promoter/ persons belonging to promoter group, as applicable;
- (b) he shall comply with conditions mentioned at sub-clauses (iv) and (v) of clause (b) of sub-regulation 3 for a period of not less than three years from the date of such re-classification failing which, he shall automatically be reclassified as promoter/ persons belonging to promoter group, as applicable.

(5) If any public shareholder seeks to re-classify itself as promoter, it shall be required to make an open offer in accordance with the provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

(6) In case of transmission, succession, inheritance and gift of shares held by a promoter/ person belonging to the promoter group:

- (a) immediately on such event, the recipient of such shares shall be classified as a promoter/ person belonging to the promoter group, as applicable.
- (b) subsequently, in case the recipient classified as a promoter/person belonging to the promoter group proposes to seek re-classification of status as public, it may do so subject to compliance with conditions specified in sub-regulation (3) above.
- (c) in case of death of a promoter/person belonging to the promoter group, such person shall automatically cease to be included as a promoter/person belonging to the promoter group.

(7) A listed entity shall be considered as 'listed entity with no promoters' if due to re-classification or otherwise, the entity does not have any promoter;

(8) The following events shall be deemed to be material events and shall be disclosed by the listed entity to the stock exchanges as soon as reasonably possible and not later than twenty four hours from the occurrence of the event:

- (a) receipt of request for re-classification by the listed entity from the promoter(s) seeking re-classification;
- (b) minutes of the board meeting considering such request which would include the views of the board on the request;
- (c) submission of application for re-classification of status as promoter/public by the listed entity to the stock exchanges;
- (d) decision of the stock exchanges on such application as communicated to the listed entity;

(9) The provisions of sub-regulations 3, 4 and clauses (a) and (b) of sub-regulation 8 of this regulation shall not apply, if re-classification of promoter(s)/ promoter group of the listed entity is as per the resolution plan approved under section 31 of the Insolvency Code, subject to the condition that such promoter(s) seeking re-classification shall not remain in control of the listed entity.]