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EXTRAORDINARY

PART – III – SECTION 4

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SECURITIES AND EXCHANGE BOARD OF INDIA

NOTIFICATION

Mumbai, the 28th October, 2014

SECURITIES AND EXCHANGE BOARD OF INDIA (SHARE BASED EMPLOYEE BENEFITS) REGULATIONS, 2014

No. LAD-NRO/GN/2014-15/16/1729. - *In exercise of the powers conferred by section 11, section 11A , section 30 of the Securities and Exchange Board of India Act, 1992 read with section 62 of Companies Act, 2013 and rule 12 of Companies (Share Capital and Debentures) Rules, 2014, the Securities and Exchange Board of India hereby makes the following regulations to provide for regulation of all schemes by companies for the benefit of their employees involving dealing in shares, directly or indirectly, with a view to facilitate smooth operation of such schemes while preventing any possible manipulation and matters connected therewith or incidental thereto.*

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CHAPTER I
PRELIMINARY

Short title, commencement and application.

1. (1) These regulations may be called the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014.

(2) They shall come into force on the date of their publication in the Official Gazette.

(3) The provisions of these regulations shall apply to following, -

(i) employee stock option schemes;
(ii) employee stock purchase schemes;
(iii)stock appreciation rights schemes;
(iv)general employee benefits schemes; and
(v) retirement benefit schemes.

(4) The provisions of these regulations shall apply to any company whose shares are listed on a recognised stock exchange in India, and has a scheme:

(i) for direct or indirect benefit of employees; and

(ii) involving dealing in or subscribing to or purchasing securities of the company, directly or indirectly; and

(iii)satisfying, directly or indirectly, any one of the following conditions:

a. the scheme is set up by the company or any other company in its group;
b. the scheme is funded or guaranteed by the company or any other company in its group;
c. the scheme is controlled or managed by the company or any other company in its group.

(5) Nothing in these regulations shall apply to shares issued to employees in compliance with the provisions pertaining to preferential allotment as specified in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.

(6) The provisions pertaining to preferential allotment as specified in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 shall not be applicable in case of a company issuing new shares in pursuance and compliance of these regulations.

Definitions.

2.(1) In these regulations, unless the context otherwise requires, the following words, expressions and derivations therefrom shall have the meanings assigned to them as under-

a. "appreciation" means the difference between the market price of the share of a company on the date of exercise of stock appreciation right (SAR) or vesting of SAR, as the case may be, and the SAR price;

b. "associate company" shall have the same meaning as defined under section 2(6) of the Companies Act, 2013;

c. "Board" means the Securities and Exchange Board of India or SEBI;

d. "control" shall have the same meaning as defined under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;

e. "emergency" means the need of funds by the trust to meet the commitment arising out of the objective of the scheme;

f. "employee" means, —

[1][(i) a permanent employee of the company who has been working in India or outside India; or

[1] Substituted by Securities and Exchange Board of India (Share based Employee Benefits) (Amendment) Regulations, 2015 (w.e.f. 18.09.2015). Prior to its substitution, clause (f) read as under:
"(i) a permanent employee of the company who has been working in India or outside India; or

(*ii*) a director of the company, whether a whole time director or not but excluding an independent director; or

(ii) a director of the company, whether a whole time director or not but excluding an independent director; or

(iii) an employee as defined in clause (i) or (ii) of a subsidiary, in India or outside India, or of a holding company of the company

but does not include—

(a) an employee who is a promoter or a person belonging to the promoter group; or

(b) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten per cent of the outstanding equity shares of the company;]

g. "employee stock option scheme or ESOS" means a scheme under which a company grants employee stock option directly or through a trust;

h. "employee stock purchase scheme or ESPS" means a scheme under which a company offers shares to employees, as part of public issue or otherwise, or through a trust where the trust may undertake secondary acquisition for the purposes of the scheme;

i. "exercise" means making of an application by an employee to the company or to the trust for issue of shares or appreciation in form of cash, as the case may be, against vested options or vested SARs in pursuance of the schemes covered under Part A or Part C of Chapter III of these regulations, as applicable;

j. "exercise period" means the time period after vesting within which an employee should exercise his right to apply for shares against the vested option or appreciation against vested SAR in pursuance of the schemes covered under Part A or Part C of Chapter III of these regulations, as applicable;

k. "exercise price" means the price, if any, payable by the employee for exercising the option or SAR granted to him in pursuance of the schemes covered under Part A or Part C of Chapter III of these regulations, as the case may be;

l. "general employee benefits scheme or GEBS" means any scheme of a company framed in accordance with these regulations, dealing in shares of the company or the shares of its listed holding company, for the purpose of employee welfare including healthcare benefits, hospital care or benefits, or benefits in the event of sickness, accident, disability, death or scholarship funds, or such other benefit as specified by such company;

(*iii*) an employee as defined in clauses (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company or of an associate company but does not include—

(*a*) an employee who is a promoter or a person belonging to the promoter group;

or

(*b*) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company;"

m. "grant" means the process by which the company issues options, SARs, shares, or any other benefits under any of the schemes;

n. "grant date" means the date on which the compensation committee approves the grant;

o. "group" means two or more companies which, directly or indirectly, are in a position to, —
(i) exercise twenty-six per cent. or more of the voting rights in the other company; or
(ii) appoint more than fifty per cent. of the members of the board of directors in the other company; or
(iii) control the management or affairs of the other company;

p. "independent director" shall have the same meaning assigned to it in Clause 49 of the equity Listing Agreement as prescribed by the Board;

q. "key managerial personnel" shall have the same meaning as defined under section 2(51) of the Companies Act, 2013;

r. "market price" means the latest available closing price on a recognised stock exchange on which the shares of the company are listed on the date immediately prior to the relevant date.

Explanation.- If such shares are listed on more than one stock exchange, then the closing price on the stock exchange having higher trading volume shall be considered as the market price;

s. "option" means the option given to an employee which gives him a right to purchase or subscribe at a future date, the shares offered by the company, directly or indirectly, at a pre-determined price;

t. "option grantee" means an employee having a right but not an obligation to exercise an option in pursuance of ESOS;

u. "promoter" shall have the same meaning assigned to it under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

v. "promoter group" shall have the same meaning assigned to it under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009:
Provided where the promoter or promoter group of a company is a body corporate, the promoters of that body corporate shall also be deemed to be promoters of such company;

w. "relative" shall have the same meaning as defined under section 2(77) of the Companies Act, 2013;

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x. “relevant date” means,-

(i). in the case of grant, the date of the meeting of the compensation committee on which the grant is made; or

(ii). in the case of exercise, the date on which the notice of exercise is given to the company or to the trust by the employee;

y. “retirement benefit scheme or RBS” means a scheme of a company, framed in accordance with these regulations, dealing in shares of the company or the shares of its listed holding company, for providing retirement benefits to the employees subject to compliance with existing rules and regulations as applicable under laws relevant to retirement benefits in India;

z."SAR grantee” means an employee to whom SAR is granted;

za. “SAR price” means the base price defined on the grant date of SAR for the purpose of computing appreciation;

zb. “scheme” means a scheme of a company proposing to provide share based benefits to its employees, which may be implemented and administered directly by such company or through a trust, in accordance with these regulations;

zc. “secondary acquisition” means acquisition of existing shares of the company by the trust on the platform of a recognised stock exchange for cash consideration;

zd. “share” means equity shares and securities convertible into equity shares and shall include American Depository Receipts (ADRs), Global Depository Receipts (GDRs) or other depository receipts representing underlying equity shares or securities convertible into equity shares;

ze. “stock appreciation right or SAR” means a right given to a SAR grantee entitling him to receive appreciation for a specified number of shares of the company where the settlement of such appreciation may be made by way of cash payment or shares of the company.

Explanation.- An SAR settled by way of shares of the company shall be referred to as equity settled SAR;

zf. “stock appreciation right scheme or SAR scheme” means a scheme under which a company grants SAR to employees;

zg. “trust” means a trust established under the provisions of Indian Trusts Act, 1882 including any statutory modification or re-enactment thereof, for implementing any of the schemes covered by these regulations;

zh. “trustee” means the trustee of the trust;

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zi. "vesting" means the process by which the employee becomes entitled to receive the benefit of a grant made to him under any of the schemes;

zj. "vesting period" means the period during which the vesting of option, SAR or a benefit granted under any of the schemes takes place;

(2) Words and expressions used and not defined in these regulations but defined in the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Companies Act, 2013 (18 of 2013) and any statutory modification or re-enactment thereto, shall have the meanings respectively assigned to them in those legislation.

CHAPTER II

SCHEMES - IMPLEMENTATION AND PROCESS

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Implementation of schemes through trust.

3. (1) A company may implement schemes either directly or by setting up an irrevocable trust(s):

Provided that if the scheme is to be implemented through a trust the same has to be decided upfront at the time of taking approval of the shareholders for setting up the schemes:

Provided further that if the scheme involves secondary acquisition or gift or both, then it is mandatory for the company to implement such scheme(s) through a trust(s).

(2) A company may implement several schemes as permitted under these regulations through a single trust:

Provided that such single trust shall keep and maintain proper books of account, records and documents, for each such scheme so as to explain its transactions and to disclose at any point of time the financial position of each scheme and in particular give a true and fair view of the state of affairs of each scheme.

(3) SEBI may specify the minimum provisions to be included in the trust deed under which the trust is formed, and such trust deed and any modifications thereto shall be mandatorily filed with the stock exchange in India where the shares of the company are listed.

(4) A person shall not be appointed as a trustee, if he-

i. is a director, key managerial personnel or promoter of the company or its holding, subsidiary or associate company or any relative of such director, key managerial personnel or promoter; or

ii. beneficially holds ten percent or more of the paid-up share capital of the company.

Provided where individuals or 'one person companies' as defined under the Companies Act, 2013 are appointed as trustees, there shall be a minimum of two such trustees, and in case a corporate entity is appointed as a trustee, then it may be the sole trustee.

(5) The trustees of a trust, which is governed under these regulations, shall not vote in respect of the shares held by such trust, so as to avoid any misuse arising out of exercising such voting rights.

(6) The trustee should ensure that appropriate approval from the shareholders has been obtained by the company in order to enable the trust to implement the scheme(s) and undertake secondary acquisition for the purposes of the scheme(s).

(7) The trust shall not deal in derivatives, and shall undertake only delivery based transactions for the purposes of secondary acquisition as permitted by these regulations.

(8) Subject to the requirements of Companies Act, 2013 read with Companies (Share Capital and Debenture) Rules, 2014, as amended from time to time, as may be applicable, the company may lend monies to the trust on appropriate terms and conditions to acquire the shares either through new issue or secondary acquisition, for the purposes of implementation of the scheme(s).

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(9) For the purposes of disclosures to the stock exchange, the shareholding of the trust shall be shown as 'non-promoter and non-public' shareholding.

Explanation: For the removal of doubts, it is clarified that shares held by the trust shall not form part of the public shareholding which needs to be maintained at a minimum of twenty five per cent as prescribed under Securities Contracts (Regulation) Rules, 1957.

(10) Secondary acquisition in a financial year by the trust shall not exceed two per cent of the paid up equity capital as at the end of the previous financial year.

(11) The total number of shares under secondary acquisition held by the trust shall at no time exceed the below mentioned prescribed limits as a percentage of the paid up equity capital as at the end of the financial year immediately prior to the year in which the shareholder approval is obtained for such secondary acquisition:

Sr. No.	**Particulars**	**Limit**
A	for the schemes enumerated in Part A, Part B or Part C of Chapter III of these regulations	5%
B	for the schemes enumerated in Part D, or Part E of Chapter III of these	2%

	regulations	
C	for all the schemes in aggregate	5%

Explanation 1.- The above limits shall automatically include within their ambit the expanded capital of the company where such expansion has taken place on account of corporate action including issue of bonus shares, split or rights issue.

Explanation 2.- If a company has multiple trusts and schemes, the aforesaid ceiling limit shall be applicable for all such trusts and schemes taken together at the company level and not at the level of individual trust or scheme.

Explanation 3.- The above ceiling limit will not be applicable where shares are allotted to the trust by way of new issue or gift from promoter or promoter group or other shareholders.

Explanation 4.- In the event that the options, shares or SAR granted under any of the schemes exceeds the number of shares that the trust may acquire through secondary acquisition, then such shortfall of shares shall be made up by the company through new issue of shares to the trust in accordance with the provisions of new issue of shares under the applicable laws.

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(12) The un-appropriated inventory of shares which are not backed by grants, acquired through secondary acquisition by the trust under Part A, Part B or Part C of Chapter III of these regulations, shall be appropriated within a reasonable period which shall not extend beyond the end of the subsequent financial year:

Provided that if such trust(s) existing as on the date of notification of these regulations are not able to appropriate the un-appropriated inventory within one year of such notification, the same shall be disclosed to the stock exchange(s) at the end of such period and then the same shall be sold on the recognized stock exchange(s) where shares of the company are listed, within a period of five years from the date of notification of these regulations.

(13) The trust shall be required to hold the shares acquired through secondary acquisition for a minimum period of six months except where they are required to be transferred in the circumstances enumerated in clause (b) of sub-regulation (14) of this regulation[2][, whether off-market or on the platform of stock exchange.]

(14) The trust shall be permitted to undertake off-market transfer of shares only under the following circumstances:

(a). transfer to the employees pursuant to scheme(s);

[2] Sub. by Securities and Exchange Board of India (Share based Employee Benefits) (Amendment) Regulations, 2015 for "." (w.e.f 18.09.2015)

(b). when participating in open offer under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or when participating in buy-back, delisting or any other exit offered by the company generally to its shareholders.

(15) The trust shall not become a mechanism for trading in shares and hence shall not sell the shares in secondary market except under the following circumstances:

(a). cashless exercise of options under the scheme covered by Part A of Chapter III of these regulations;

(b). on vesting or exercise, as the case may be, of SAR under the scheme covered by Part C of Chapter III of these regulations;

(c). in case of emergency for implementing the schemes covered under Part D and Part E of Chapter III of these regulations, and for this purpose -

(i). the trustee shall record the reasons for such sale; and

(ii). money so realised on sale of shares shall be utilised within a definite time period as stipulated under the scheme or trust deed.

(d). participation in buy-back or open offers or delisting offers or any other exit offered by the company generally to its shareholders, if required;

(e). for repaying the loan, if the un-appropriated inventory of shares held by the trust is not appropriated within the timeline as provided under sub-regulation (12) of this regulation;

(f). winding up of the scheme(s); and

(g). based on approval granted by SEBI to an applicant, for the reasons recorded in writing in respect of the schemes covered by Part A or Part B or Part C of Chapter III of these regulations, upon payment of a non-refundable fee of rupees one lakh along with the application [3][by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or] by way of a banker's cheque or demand draft payable at Mumbai in favour of the Board.

(16) The trust shall be required to make disclosures and comply with the other requirements applicable to insiders or promoters under the SEBI (Prohibition of Insider Trading) Regulations, 1992 or any modification or re-enactment thereto.

Eligibility.

[3] Inserted by the Securities and Exchange Board of India (Payment of Fees and Mode of Payment) (Amendment) Regulations, 2017 (w.e.f. 6-3-2017).

4. An employee shall be eligible to participate in the schemes of the company as determined by the compensation committee.

Explanation.- Where such employee is a director nominated by an institution as its representative on the board of directors of the company –

(i) The contract or agreement entered into between the institution nominating its employee as the director of a company, and the director so appointed shall, *inter alia*, specify the following:
    a. whether the grants by the company under its scheme(s) can be accepted by the said employee in his capacity as director of the company;
    b. that grant if made to the director, shall not be renounced in favour of the nominating institution; and
    c. the conditions subject to which fees, commissions, other incentives, etc. can be accepted by the director from the company.
(ii) the institution nominating its employee as a director of a company shall file a copy of the contract or agreement with the said company, which shall, in turn file the copy with all the stock exchanges on which its shares are listed.
(iii) the director so appointed shall furnish a copy of the contract or agreement at the first board meeting of the company attended by him after his nomination.

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Compensation committee.

5. (1) A company shall constitute a compensation committee for administration and superintendence of the schemes:

Provided that the company may designate such of its other committees as compensation committee if they fulfil the criteria as provided in sub-regulation (2) of this regulation:

Provided further that where the scheme is being implemented through a trust the compensation committee shall delegate the administration of such scheme(s) to the trust.

(2) The compensation committee shall be a committee of such members of the board of directors of the company as provided under section 178 of the Companies Act, 2013, as amended or modified from time to time.

(3) The compensation committee shall, *inter alia*, formulate the detailed terms and conditions of the schemes which shall include the provisions as specified by Board in this regard.

(4) The compensation committee shall frame suitable policies and procedures to ensure that there is no violation of securities laws, as amended from time to time, including Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 and Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003 by the trust, the company and its employees, as applicable.

Shareholders approval.

6. (1) No scheme shall be offered to employees of a company unless the shareholders of the company approve it by passing a special resolution in the general meeting.

(2) The explanatory statement to the notice and the resolution proposed to be passed by shareholders for the schemes shall include the information as specified by SEBI in this regard.

(3) Approval of shareholders by way of separate resolution in the general meeting shall be obtained by the company in case of:

(a). Secondary acquisition for implementation of the schemes. Such approval shall mention the percentage of secondary acquisition (subject to limits specified under these regulations) that could be undertaken;

(b). Secondary acquisition by the trust in case the share capital expands due to capital expansion undertaken by the company including preferential allotment of shares or qualified institutions placement, to maintain the five per cent. cap as prescribed under sub-regulation (11) of regulation 3 of such increased capital of the company;

(c). Grant of option, SAR, shares or other benefits, as the case may be, to employees of subsidiary or holding [4][***] company;

(d). Grant of option, SAR, shares or benefits, as the case may be, to identified employees, during any one year, equal to or exceeding one per cent. of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant of option, SAR, shares or incentive, as the case may be.

Variation of terms of the schemes.

7. (1) The company shall not vary the terms of the schemes in any manner, which may be detrimental to the interests of the employees:

Provided that the company shall be entitled to vary the terms of the schemes to meet any regulatory requirements.

(2) Subject to the proviso to sub-regulation (1), the company may by special resolution in a general meeting vary the terms of the schemes offered pursuant to an earlier resolution of the general body but not yet exercised by the employee provided such variation is not prejudicial to the interests of the employees.

(3) The provisions of regulation 6 shall apply to such variation of terms as they apply to the original grant of option, SAR, shares or other benefits, as the case may be.

[4] The words "or associate" omitted by Securities and Exchange Board of India (Share based Employee Benefits) (Amendment) Regulations, 2015 (w.e.f 18.09.2015)

(4) The notice for passing special resolution for variation of terms of the schemes shall disclose full details of the variation, the rationale therefore, and the details of the employees who are beneficiaries of such variation.

(5) A company may reprice the options, SAR or shares, as the case may be which are not exercised, whether or not they have been vested if the schemes were rendered unattractive due to fall in the price of the shares in the stock market:

Provided that the company ensures that such repricing shall not be detrimental to the interest of the employees and approval of the shareholders in general meeting has been obtained for such repricing.

Winding up of the schemes.

8. In case of winding up of the schemes being implemented by a company through trust, the excess monies or shares remaining with the trust after meeting all the obligations, if any, shall be utilised for repayment of loan or by way of distribution to employees as recommended by the compensation committee.

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Non-transferability.

9.(1) Option, SAR or any other benefit granted to an employee under the regulations shall not be transferable to any person.

(2) No person other than the employee to whom the option, SAR or other benefit is granted shall be entitled to the benefit arising out of such option, SAR, benefit etc. :

Provided that in case of ESOS or SAR, under cashless exercise, the company may itself fund or permit the empanelled stock brokers to fund the payment of exercise price which shall be adjusted against the sale proceeds of some or all the shares, subject to the provisions of the applicable law or regulations.

(3) The option, SAR, or any other benefit granted to the employee shall not be pledged, hypothecated, mortgaged or otherwise alienated in any other manner.

(4) In the event of death of the employee while in employment, all the options, SAR or any other benefit granted to him under a scheme till such date shall vest in the legal heirs or nominees of the deceased employee.

(5) In case the employee suffers a permanent incapacity while in employment, all the options, SAR or any other benefit granted to him under a scheme as on the date of permanent incapacitation, shall vest in him on that day.

(6) In the event of resignation or termination of the employee, all the options, SAR, or any other benefit which are granted and yet not vested as on that day shall expire:

Provided that an employee shall, subject to the terms and conditions formulated by the compensation committee under the sub-regulation (3) of regulation 5, be entitled to retain all the vested options, SAR, or any other benefit covered by these regulations.

(7) In the event that an employee who has been granted benefits under a scheme is transferred or deputed to an associate company prior to vesting or exercise, the vesting and exercise as per the terms of grant shall continue in case of such transferred or deputed employee even after the transfer or deputation.

Listing.

10. In case new issue of shares is made under any scheme, shares so issued shall be listed immediately in any recognised stock exchange where the existing shares are listed, subject to the following conditions:

(a). Scheme is in compliance with these regulations;
(b). A statement as specified by SEBI in this regard, is filed and the company has obtained an in-principle approval from the stock exchanges;
(c). As and when an exercise is made, the company notifies the concerned stock exchange as per the statement as specified by SEBI in this regard.

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Schemes implemented by unlisted companies.

11. The shares arising after the initial public offering ("IPO") of an unlisted company, out of options or SAR granted under any scheme prior to its IPO to the employees shall be listed immediately upon exercise in all the recognised stock exchanges where the shares of the company are listed subject to compliance with the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and where applicable, sub-regulation (1) of regulation 12.

Compliances and conditions.

12. (1) No company shall make any fresh grant which involves allotment or transfer of shares to its employees under any schemes formulated prior to its IPO and prior to the listing of its equity shares ('pre-IPO scheme') unless:

(i) Such pre-IPO scheme is in conformity with these regulations; and
(ii) Such pre-IPO scheme is ratified by its shareholders subsequent to the IPO.

Provided that the ratification under clause (ii) may be done any time prior to grant of new options or shares or SAR under such pre-IPO scheme.

(2) No change shall be made in the terms of options or shares or SAR issued under such pre-IPO schemes, whether by repricing, change in vesting period or maturity or otherwise unless prior approval of the shareholders is taken for such a change, except for any adjustments for corporate actions made in accordance with these regulations.

(3) For listing of shares issued pursuant to ESOS, ESPS or SAR , the company shall obtain the in-principle approval of the stock exchanges where it proposes to list the said shares.

(4) When holding company issues option, share, SAR or benefits to the employee of its subsidiary, the cost incurred by the holding company for issuing such option, share, SAR or benefits shall be disclosed in the 'notes to accounts' of the financial statements of the subsidiary company.

(5) In a case falling under sub-regulation (4), if the subsidiary reimburses the cost incurred by the holding company in granting option, share, SAR or benefits to the employees of the subsidiary, both the subsidiary as well as the holding company shall disclose the payment or receipt, as the case may be, in the 'notes to accounts' to their financial statements.

(6) The company shall appoint a registered merchant banker for the implementation of schemes covered by these regulations till the stage of obtaining in-principle approval from the stock exchanges in accordance with clause (b) of regulation 10.

Certificate from auditors.

13. In the case of every company that has passed a resolution for the schemes under these regulations, the board of directors shall at each annual general meeting place before the shareholders a certificate from the auditors of the company that the scheme(s) has been implemented in accordance with these regulations and in accordance with the resolution of the company in the general meeting.

Disclosures.

14. In addition to the information that a company is required to disclose, in relation to employee benefits under the Companies Act, 2013, the board of directors of such a company shall also disclose the details of the scheme(s) being implemented, as specified by SEBI in this regard.

Accounting policies.

15. (1) Any company implementing any of the share based schemes shall follow the requirements of the 'Guidance Note on Accounting for employee share-based Payments' (Guidance Note) or Accounting Standards as may be prescribed by the Institute of Chartered Accountants of India (ICAI) from time to time, including the disclosure requirements prescribed therein.

(2) Where the existing Guidance Note or Accounting Standard do not prescribe accounting treatment or disclosure requirements for any of the schemes covered under these regulations then the company shall comply with the relevant Accounting Standard as may be prescribed by the ICAI from time to time.

CHAPTER III

ADMINISTRATION OF SPECIFIC SCHEMES

PART A: EMPLOYEE STOCK OPTION SCHEME (ESOS)

Administration and implementation.

16. (1) Subject to the provisions of these regulations, the ESOS shall contain the details of the manner in which the scheme will be implemented and operated.

(2) No ESOS shall be offered unless the disclosures, as specified by Board in this regard, are made by the company to the prospective option grantees.

Pricing.

17. The company granting option to its employees pursuant to ESOS will have the freedom to determine the exercise price subject to conforming to the accounting policies specified in regulation 15.

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Vesting period.

18.(1) There shall be a minimum vesting period of one year in case of ESOS:

Provided that in case where options are granted by a company under an ESOS in lieu of options held by a person under an ESOS in another company which has merged or amalgamated with that company, the period during which the options granted by the transferor company were held by him shall be adjusted against the minimum vesting period required under this sub-regulation.

(2) The company may specify the lock-in period for the shares issued pursuant to exercise of option.

Rights of the option holder.

19. The employee shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to him, till shares are issued upon exercise of option.

Consequence of failure to exercise option.

20. The amount payable by the employee, if any, at the time of grant of option, -
(a). may be forfeited by the company if the option is not exercised by the employee within the exercise period; or
(b). may be refunded to the employee if the options are not vested due to non-fulfilment of conditions relating to vesting of option as per the ESOS.

PART B: EMPLOYEE STOCK PURCHASE SCHEME (ESPS)

Administration and implementation.

21. Subject to the provisions of these regulations, the ESPS scheme shall contain the details of the manner in which the scheme will be implemented and operated.

Pricing and lock-in.

22.(1) The company may determine the price of shares to be issued under an ESPS, provided they conform to the provisions of accounting policies under regulation 15.

(2) Shares issued under an ESPS shall be locked-in for a minimum period of one year from the date of allotment:

Provided that in case where shares are allotted by a company under an ESPS in lieu of shares acquired by the same person under an ESPS in another company which has merged or amalgamated with the first mentioned company, the lock-in period already undergone in respect of shares of the transferor company shall be adjusted against the lock-in period required under this sub-regulation.

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(3) If ESPS is part of a public issue and the shares are issued to employees at the same price as in the public issue, the shares issued to employees pursuant to ESPS shall not be subject to lock-in.

PART C : STOCK APPRECIATION RIGHTS SCHEME (SARS)

Administration and implementation.

23. (1) Subject to the provisions of these regulations, the SAR scheme shall contain the details of the manner in which the scheme will be implemented and operated.

(2) Subject to the provisions of these regulations, a company shall have the freedom to implement cash settled or equity settled SAR scheme:

Provided that in case of equity settled SAR scheme, if the settlement results in fractional shares, then the consideration for fractional shares should be settled in cash.

(3) No SAR shall be offered unless the disclosures, as specified by Board in this regard, are made by the company to the prospective SAR grantees.

Vesting.

24. (1) There shall be a minimum vesting period of one year in case of SAR scheme:

Provided that in a case where SAR is granted by a company under a SAR scheme in lieu of SAR held by the same person under a SAR scheme in another company which has merged or amalgamated with the first mentioned company, the period during which the SAR granted by the transferor company were held by the employee shall be adjusted against the minimum vesting period required under this sub-regulation.

Rights of the SAR holder.

25. The employee shall not have right to receive dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of SAR granted to him.

PART D : GENERAL EMPLOYEE BENEFITS SCHEME (GEBS)

Administration and implementation.

26. (1) Subject to the provisions of these regulations, GEBS shall contain the details of the scheme and the manner in which the scheme shall be implemented and operated.

(2) At no point in time, the shares of the company or shares of its listed holding company shall exceed ten per cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet for the purposes of GEBS.

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PART E: RETIREMENT BENEFIT SCHEME (RBS)

Administration and implementation.

27. (1) Retirement benefit scheme may be implemented by a company provided it is in compliance with these regulations, and provisions of any other law in force in relation to retirement benefits.

(2) The retirement benefit scheme shall contain the details of the benefits under the scheme and the manner in which the scheme shall be implemented and operated.

(3) At no point in time, the shares of the company or shares of its listed holding company shall exceed ten per cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet for the purposes of RBS.

CHAPTER IV

MISCELLANEOUS PROVISIONS

Power to remove difficulties.

28. (1) In order to remove any difficulties in the interpretation and application of the provisions of these regulations, the Board shall have the power to issue clarifications through guidance notes or circulars.

(2) The Board shall have power to specify such disclosure and process requirements through guidance notes or circulars, as may be necessary for protection of interest of investors, securities market and for regulation of all schemes, by listed companies for the benefit of their employees, involving dealing, directly or indirectly, in shares and matters connected therewith or incidental thereto.

Power to relax strict enforcement of the regulations.

29. (1) The Board may *suo motu* or on an application made by a company, for reasons recorded in writing, grant relaxation from strict compliance with any of these regulations subject to such conditions as the Board deems fit to impose in the interests of investors in securities and the securities market.

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(2) A company making an application under sub-regulation (1), shall pay a non-refundable fee of rupees one lakh [5][by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or] by way of a banker's cheque or demand draft payable at Mumbai in favour of the Board.

Directions by the Board and action in case of default.

30. The Board may issue any direction or order or undertake any measure in the interests of the investors or the securities market, and deal with any contravention of these regulations, in exercise of its powers under the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Companies Act, 2013 (18 of 2013) and any statutory modification or re-enactment thereto.

Repeals and savings.

31. (1) Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 are hereby repealed.

(2) Notwithstanding such repeal, -

[5] Inserted by the Securities and Exchange Board of India (Payment of Fees and Mode of Payment) (Amendment) Regulations, 2017 (w.e.f. 6-3-2017).

(a) prohibition on acquiring securities from the secondary market as provided in SEBI circular CIR/CFD/POLICYCELL/3/2014 dated June 27, 2014 shall continue till the existing schemes are aligned with these regulations;

(b) all listed companies having existing schemes to which these regulations apply are required to comply with these regulations in their entirety within one year of the same coming into effect, subject to the following exceptions:

(i) trusts holding shares, for the purposes of implementing employee benefits schemes of the company, beyond the permissible limits as provided under these regulations, shall have a period of five years to bring down its holding in shares to such limits;

(ii) trusts holding shares, for the purposes of implementing GEBS or RBS, which exceed ten per cent. of the total value of the total assets of the trust(s) as provided under these regulations, shall have a period of five years to bring down its holding in shares to such limits;

(iii) for the purposes of sub-regulation (9) of regulation 3 and ensuring compliance with the requirement of maintaining adequate public shareholding, those trusts holding shares of the company which are shown either as 'promoter' or 'public' shareholding, shall be permitted to continue to be shown them as such for a further period of only [6][three] years;

(iv) [7][trustees of a trust may continue to vote in respect of shares held by such trust for a period of three years, commencing from 28th of October, 2014.]

(c) the previous operation of the repealed guidelines or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed guidelines, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed guidelines, 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 guidelines had never been repealed;

(d) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed guidelines prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations; and

(e) after the repeal of Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999, any reference

[6] Subs. by Securities and Exchange Board of India (Share based Employee Benefits) (Amendment) Regulations, 2015 for "five" (w.e.f 18.09.2015)

[7] Ins. by Securities and Exchange Board of India (Share based Employee Benefits) (Amendment) Regulations, 2015, Regulation (w.e.f 18.09.2015)

thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

U. K. SINHA
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA

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