

Note



Informal Guidance on reclassification of shareholders u/r 31A- Whether shareholder's approval is required?

Trupti Upadhyay

trupti@vinodkothari.com

Corporate Law Services Group

corplaw@vinodkothari.com

7th November, 2016

Check at:

<http://india-financing.com/staff-publications.html>
for more write ups.

Copyright:

This document is the property of Vinod Kothari & Company and no part of it can be copied, reproduced or distributed in any manner.

Disclaimer:

This document is intended to initiate academic debate on a pertinent question. It is not intended to be a professional advice and should not be relied upon for real life facts.

Background

On 17th October, 2016¹, Securities and Exchange Board of India (hereinafter referred to as "SEBI") answered the query of the Company, Alembic Pharmaceuticals Limited (hereinafter referred to as "APL") with respect to applicability of the newly introduced Regulation 31A of SEBI (Listing Obligation and Disclosure Requirement) Regulation, 2015 (hereinafter referred to as "Listing Regulations") is discussed.

Facts of the case

APL was incorporated on 16.06.2010 under the provisions of Companies Act, 1956 pursuant to demerger of the Alembic Limited. The equity shares of APL are listed on BSE Limited ("BSE") and the National Stock Exchange of India Limited ("NSE").

The issued and paid-up share capital of APL comprise of 18,85,15,914 equity shares out of which the shareholding of the promoter group is 74.13%. Out of total 25 persons in the promoter group, 5 persons have expressed their desire to reclassify their shareholding from promoter group to the public category. These five persons cumulatively hold 1.45% of the equity share capital of APL.

The reasons for reclassification are provided by APL are as follows:

- These five persons are senior citizens and they are leading their lives and occupations independently and have no connection (directly/indirectly) with the affairs of APL.
- These five persons do not exercise control (directly/indirectly) over the affairs of the Company. They have never held any position of key managerial personnel in the Company. They also do not have any special rights through formal or informal arrangements with the Company or promoters or any person in the promoter group. Any price sensitive information of the Company was never possessed by these five persons.

Accordingly, as per the Company the reclassification satisfies the conditions of Regulation 31A (7) of the Listing Regulations.

After the reclassification the shareholding of the promoter group will become 72.68%.

Guidance sought by the Company

The Company wanted to know whether the requirement of obtaining the shareholder's approval [as required under Regulation 31A (5) and (6)] be dispensed and the Company may directly approach the Stock Exchanges (NSE and BSE) for permission under Regulation 31A (2) & (3) of Listing Regulations.

¹ Source: http://www.sebi.gov.in/cms/sebi_data/commondocs/Alembic-sebiletter_p.pdf

Informal Guidance on reclassification of shareholders u/r 31A- Whether shareholder's approval is required?

The Company contented that the proposed reclassification is not under Regulation 31A (5) & (6) and therefore, as per Company's understanding shareholder's resolution is not required to be obtained.

Reply of SEBI

SEBI in a very diplomatic manner has responded that though the Company was not required to take approval of the shareholders but the proposed reclassification can take place only after the permission for the same is granted by the stock exchanges (NSE and BSE). Further, the proposed reclassification must be in compliance to the provisions of Regulation 31A of Listing Regulations.

Conclusion

The provisions of Regulation 31A of Listing Regulations should be complied in order to make reclassification of equity shares. Sub-regulation (2) of Regulation 31A specifically provides that the reclassification should be allowed by the stock exchanges having nationwide terminals only upon receipt of a request from the concerned listed entity or the concerned shareholders along with all relevant evidence and the stock exchange shall allow the reclassification/modification on being satisfied with the compliance of conditions mentioned in Regulation 31A. Sub-regulations (4), (5) and (6) of the said Regulation provide for different situations under which reclassification/modification can be sought for, ie.

- (a) In case of transmission/succession/inheritance [sub-regulation (4)];
- (b) When a new promoter replaces the previous promoter subsequent to an open offer or in any other manner [sub-regulation (5)];
- (c) Where an entity becomes professionally managed and does not have any identifiable promoter the existing promoters [sub-regulation (6)];

Sub-regulations (5) and (6) specifically provide for approval of shareholders of the company in case the reclassification is as per the reasons stated therein. However, sub-regulation (7) on the other hand provides for conditions which are necessary for reclassification of promoters and the same is without prejudice to sub-regulations (5) and (6).

Therefore, what transpires from the above provisions is that while the approval of stock exchanges is mandatory for reclassification/modification of promoter/promoter category, seeking shareholders' approval is not required in every case except that mentioned in sub-regulation (5) and (6).



Informal Guidance on reclassification of shareholders u/r 31A- Whether shareholder's approval is required?

Though SEBI has made the reply very diplomatically without citing any reasons whatsoever and making a generic reply but in view of the author the approval of the shareholders would not be required considering that the case for reclassification does not fall within the scope of either sub-regulation (5) or (6). However, approval of the stock exchanges will be required as per sub-regulation (2) and the conditions specified in sub-regulation (7) shall have to be met.

- ❖ **To read our SEBI/Security Laws click [here](#)**
- ❖ **To read our articles on Companies Act, 2013 click [here](#)**
- ❖ **To read our other resources click [here](#)**