

SECURITIES AND EXCHANGE BOARD OF INDIA

GENERAL ORDER NO 1 OF 2020

SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUING OBSERVATIONS ON DRAFT OFFER DOCUMENTS PENDING REGULATORY ACTIONS) ORDER, 2020

The Board is empowered under clause (b) of sub-section (1) of section 11A of the Securities and Exchange Board of India Act 1992 ("the Act") to issue general or special orders for prohibiting any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities and to specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.

Accordingly, in exercise of the powers conferred under sub-clause (ii) of clause (b) of sub-section (1) of section 11A of the Act, the Board hereby issues the following General Order to formalize the issuance of observations on draft offer documents filed with the Board, where an investigation, enquiry, adjudication, prosecution, disgorgement, recovery or other regulatory action is pending against the issuer or its promoter(s)/director(s)/group companies ("the entities").

Short title and commencement.

- 1.** This General Order may be called the Securities and Exchange Board of India (Issuing Observations on Draft Offer Documents Pending Regulatory Actions) Order, 2020 and shall come into force with immediate effect.
- 2.** This General Order shall supersede the Securities and Exchange Board of India (Issuing Observations on Draft Offer Documents Pending Regulatory Actions) Order, 2006, as amended on March 31, 2008 by the General Order no. 1 of 2008.

Treatment where there is a probable cause for investigation or enquiry or when an investigation or enquiry is in progress against the entities.

3. (1) Where there is a probable cause for investigation, examination or enquiry against the entities, the observations on the draft offer document filed by the issuer with the Board shall be kept in abeyance for a period of thirty days after such probable cause arises or the date of filing of the draft offer document with the Board, whichever is later.

(2) Where the Board is unable to conclude such investigation, examination or enquiry against the entities due to the reasons beyond its control or due to the conduct of the parties other than the entities, the observations on the draft offer document shall be kept in abeyance for a further period of thirty days.

(3) Where the Board is unable to conclude such investigation, examination or enquiry against the entities due to the conduct of the entities, the observations on the draft offer document shall be kept in abeyance till the time such investigation, examination or enquiry is concluded.

Treatment where show cause notice has been issued.

4. (1) Where a show cause notice has been issued to the entities in an adjudication proceeding, the Board may process the draft offer document and issue observations and advise the entities to make necessary disclosures and statements in respect of such proceedings and the possible adverse impact of an order on the entities, in the offer document.

(2) Where a show cause notice has been issued in respect of proceedings under sub-section (4) of section 11 or section 11B(1), the Board shall keep in abeyance the issuance of observations for a period of ninety days from the date of filing of the draft offer document with the Board.

(3) Where the Board is unable to conclude the proceedings as referred to sub-clause (2) due to the reasons beyond its control or due to the conduct of the parties other than the entities, the observations on the draft offer document shall be kept in abeyance for a further period of forty five days.

(4) Where the Board is unable to conclude the proceedings as referred to sub-clause (2) due to the conduct of the entities, the observations on the draft offer document shall be kept in abeyance till the time such proceedings are concluded.

(5) Where no order is passed within the time period specified in clause (3), the Board may process the draft offer document and issue observations and advise the entities to make necessary disclosures and statements in respect of such proceedings and the possible adverse impact of an order on the entities, in the offer document.

Treatment where recovery proceedings have been initiated or an order for disgorgement or monetary penalty has not been complied with or in case of non-compliance with any direction issued by the Board.

5. Where the Board has initiated proceedings for recovery against the entities or when an order for disgorgement or monetary penalty passed against the entities is not complied with or in case of non-compliance with any direction issued by the Board, the observations on the draft offer document filed by the issuer with the Board shall be kept in abeyance till such proceedings are concluded or until the directions are complied with.

Reconsideration of proceedings pursuant to remand by the Securities Appellate Tribunal or court.

6. Where proceedings has been remanded by the Securities Appellate Tribunal or a court, the same shall in effect be treated as proceedings covered under this Order, and the Board may take appropriate action in respect of the draft offer document under the provisions of this general order, subject to any order passed by the Securities Appellate Tribunal or a court, as the case may be, while remanding the matter.

Issuance of observations when the issuer is restrained by a court from making a public issue or filing of offer document:

7. Where the issuer has been restrained by a court or tribunal from making an issue of securities or from issuing offer document to the public, the Board may examine the offer document and issue its observations thereof with a qualification that said observations are issued in accordance with the regulatory powers conferred on the Board and that the public issue or issuance of the offer

document to the public by the issuer shall be subject to the orders of such court or tribunal or authority.

Issuance of observations do not indicate exoneration:

8. Issuance of observations on draft offer document when an investigation or enquiry is pending or when any regulatory action is pending, does not indicate that the party has been exonerated in such proceedings or that action may not ultimately result from such proceedings.

Removal of difficulties:

9. In order to remove any difficulties, in deserving cases, the Competent Authority may grant exemption from strict enforcement of any provision of the extant General Order.

AJAY TYAGI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA

Date: February 05, 2020

Place: Mumbai