
Consultation Paper 19

Draft Rules on Minimum Public Float as a Continuous Listing Requirement

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*Securities and Exchange Commission of Sri Lanka
Level 28 & 29, East Tower, World Trade Center
Echelon Square
Colombo 01.*

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DRAFT RULES ON MINIMUM PUBLIC FLOAT AS A CONTINUOUS LISTING REQUIREMENT – Third Public Consultation

Introduction:

Further to the public comments that were solicited by the Consultation Papers on “Proposal to implement a minimum public float as a continuous listing requirement” (Consultation Paper No.6 dated 24th September 2010) and “Draft Rules on Minimum Public Float as a Continuous Listing Requirement” (Consultation Paper No.8 dated 08th July 2011), the Securities and Exchange Commission of Sri Lanka (SEC) has further revised for the third time and developed the set of draft rules on a minimum public float as a continuous listing requirement to be maintained by companies listed on the Colombo Stock Exchange which is annexed hereto. These Draft Rules have incorporated the suggestions from the public, the stakeholders and the legal framework in other jurisdictions as appropriate.

This third consultation paper is presented with the view of soliciting comments from the public on this revised set of draft rules on a minimum public float as a continuous listing requirement to be maintained by companies listed on the Colombo Stock Exchange.

Disclaimer:

The contents of this paper do not constitute legal advice. The finalized rules relating to a minimum public float may change from what is proposed herein consequent to the comments we receive, further deliberations or due to any other reason, as determined by the SEC to be appropriate.

Comments Received:

The comments received would be subject to consideration by the SEC and may be made publicly available and will not be treated as confidential unless a special request is made in this respect.

The SEC may consider convening consultative meetings as a further step depending on necessity.

Please send in your comments under the title “**Draft Rules on Minimum Public Float as a Continuous Listing Requirement**” on or before 04th October 2013 by registered post, email or fax to:

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*Annexure***Draft Rules on Minimum Public Float as a Continuous Listing Requirement****General Rules applicable to all Public Listed Companies**

These general rules are applicable to all public companies listed on the Colombo Stock Exchange (CSE) subject to the transitional rules specified under Rule 8 and will come to effect on a date determined by the Colombo Stock Exchange in consultation with the Securities and Exchange Commission of Sri Lanka (SEC).

A sizeable public float is a necessity for a transparent and liquid market. It is perceived that greater the public float less is the potential for market abuse. Therefore, a minimum public float as a continuous listing requirement is introduced with the aim of promoting a liquid, transparent market with a better price discovery mechanism. Further, the maintenance of a minimum public float is expected to provide a greater opportunity for the citizens of Sri Lanka to share the wealth produced by the public listed companies in Sri Lanka.

Minimum Public Float as a Continuous Listing Requirement

1. a) A listed entity on the Main Board shall maintain a minimum public holding of 20% of its total listed ordinary voting shares in the hands of 1000 public shareholders;
- b) Where the shares are listed on the Diri Savi Board, a listed entity shall maintain a minimum public holding of 10% of its total listed shares in the hands of 200 public shareholders;
- c) The Exchange may accept on the application of a listed Company, a lower percentage of public shareholding to be maintained by a Company in the hands of the prescribed number of shareholders in terms of Rule 1 (a) or (b) above for a limited specified time period with the prior approval of the SEC, that may be subject to conditions;
- d) (A) An application for a lower percentage of shares should include the following information:
 - i. the Company's total issued share capital;
 - ii. the number of public shareholders and the percentage of public shareholding;
 - iii. the percentage of total public shareholding for every month during the preceding 2 years;
 - iv. the average market capitalization based on the daily closing price/ value weighted average price of the Company's shares during the preceding 12 months;
 - v. The names and the number of shares held by the 20 largest holders of voting shares and the percentage of such shares held.
- (B) When granting approval for such a deviation, the SEC may take into consideration whether, such a lower percentage is sufficient for a liquid market, including whether there are reasonable grounds to expect the public holding to reach the threshold within the next 6 months.
- (C) The listed entity permitted to maintain a lower percentage shall be expected to conform to the prescribed percentage at the expiry of such limited time period as determined by the SEC as mentioned in Rule (1) (a) or (1) (b) above, subject to one more extension of time for a limited period determined by the SEC, upon the application of the Company.

(D) An application for such further extension of time would include the information required in 1(d) (A) above and the reasons as to why the Company could not reach the required threshold within the limited/ specified period granted under 1(c) or 1(d) (C) above.

The SEC when granting further time may take into consideration whether, such a lower percentage is sufficient for a liquid market, including whether there are reasonable grounds to expect the public holding to reach the threshold required under Rules 1 (a) and 1 (b) above within the next 6 months.

Consequences when a Listed Entity Fails to Maintain the Minimum Public Float as a Continuous Listing Requirement

2. A listed entity not falling within the category of Rule 1(a) or 1(b) must make an immediate market disclosure ('a non compliance announcement') and thereafter, a second market announcement within a period of 14 days from the time the aforesaid public shareholding falls below the prescribed percentage. This second market announcement shall include the following information:-
 - a) the existing percentage and number of shares in the hands of the public;
 - b) the proposed rectification plan and the means to achieve the prescribed percentage and the time plan; and
 - c) if the listed entity has chosen to adopt a method prescribed in Rule 6 the details and justification for the adopted method.
3.
 - a) It shall be the responsibility of such Company referred to in Rule 2 above to bring the public holding to the level prescribed in Rule 1 (a) or 1(b) within 12 months from the date of the second market announcement, in a manner satisfactory to the SEC and the Company shall make monthly market announcements through the Exchange enumerating the progress of the rectification plan and the means adopted to increase the public holding which shall be called the 'status announcement'.
 - b) The 'status announcement' shall include the following information:
 - i. the existing percentage and number of shares in the hands of the public;
 - ii. the proposed rectification plan and the means to achieve the prescribed percentage and the time plan;
 - iii. if the listed entity has chosen to adopt a method prescribed in Rule 6, the details and justification for the adopted method; and
 - iv. whether an extension of time has been granted previously and if so the duration of time and the date of its expiry.
4. (a) If such listed entity fails to come up with the required level of public holding within 6 months after due and reasonable effort it may request for a further extension of time not exceeding another three months to rectify the situation in a manner as may be prescribed by the SEC. The Exchange may at its discretion grant or reject such request.
 - (b) an application requesting further time under (a) above shall include,
 - i. the stated capital;
 - ii. the existing public shareholding and the number of shares held by the public;
 - iii. the reasons for non-compliance with the required public float requirement under these Rules;
 - iv. the average daily market capitalization during the preceding 12 months;
 - v. the rectification plan and its status;

- vi. if there is no progress in the rectification plan the reasons for the same;
- vii. the reasons for the failure to rectify the public holding despite any extensions of time given for the same; and
- viii. justification for the extension of time sought.

(c) Where the SEC grants an extension of time to rectify the public holding of the listed entity the Company is obliged to make an immediate market announcement to that effect informing the market of the period of extension granted and shall include the information that is required to be given in a status announcement under Rule (3).

(d) No more extension of time shall be granted to a listed Company at the expiry of such limited time period and upon the non compliance at the end of the said extension period, the Company shall be transferred to the Default Board within two weeks thereof and will thereafter be subject to the Rules applicable to a Company in the Default Board in terms of the Listing Rules.

(e) In the event an extension of time is not granted by the SEC under (d) above, then the Company shall be informed of the reasons for such refusal and the sanctions imposed and such a Company is obliged to make an immediate market announcement to that effect informing the market that the extension of time requested has not been granted and such market announcement shall include the following:

- i. the existing percentage and number of shares in the hands of the public;
- ii. whether an extension of time has been granted previously and if so the duration of time and the date of its expiry; and
- iii. the reasons for the Company's non-compliance;
- iv. the reasons for the refusal of the application for extension of time and the sanctions imposed.

5. Where the public shareholding of a listed entity falls below the minimum level of public shareholding on account of supervening extraordinary events, including, but not limited to -
- i. issuance or transfer of shares in compliance with directions of a regulatory or statutory authority or court or tribunal;
 - ii. any acquisition in accordance with the Takeovers and Mergers Code;
 - iii. re-organization of capital by way of a scheme of arrangement; and
 - iv. issuance or transfer of shares under a restructuring plan approved by a regulatory authority;

such listed entity shall immediately inform the Exchange and the SEC about such supervening extraordinary events and make a request to the SEC in writing to grant a time period not exceeding 12 months to increase the public holding to the prescribed level.

The SEC may, after examining and satisfying itself about the circumstances of the case, grant time for compliance with the requirement of a minimum level of public shareholding within a period not exceeding 12 months.

Without prejudice to the aforesaid provisions of this Rule, a listed entity shall at all times ensure that its public float is maintained at or above the level prescribed by Rules (1) (a) and (b) above.

6. A listed entity which falls below the required level of a minimum public float, shall forthwith adopt methods to raise the public shareholding to the minimum level subject to the Listing Rules of the CSE including any of the following methods:
- a) issuance of new shares to public through prospectus; and

- b) offer for sale of shares held by the non public shareholders to public through prospectus and any other method subject to the prior approval of the Exchange and the SEC where relevant.
7. An entity that fails to comply with the aforesaid Rules within the prescribed/ permitted time period shall be liable to be transferred to the Default Board of the CSE.

Transitional rules for the public listed companies having a public holding below the prescribed levels prior to the Effective Date of these Rules

8. (a)
- i. All Listed entities shall submit a report on the distribution of shares within one month of the Effective Date of these Rules to the Exchange and the SEC.
- ii. An existing listed entity having a public holding below the prescribed level specified in Rule 1(a) or 1(b) as at the Effective Date of these rules, shall bring the public shareholding to the level prescribed in Rule 1(a) or 1(b) within a period of two years by increasing its public shareholding to the extent of at least 5% per annum beginning from the Effective Date.

A Company may increase its public shareholding by less than 5% in a year if such increase brings its public shareholding to the level prescribed in Rule 1(a) or 1(b).

(b) An existing listed entity which falls below the prescribed percentage of public holding in Rule 1(a) or 1(b) as at the Effective Date of these Rules, shall within one month make a market announcement stating the methodology by which the Company proposes to abide by the Rules. The said announcement shall consist of the following:

- i. the existing percentage and number of shares in the hands of the public;
- ii. the proposed means to achieve the prescribed percentage;
- iii. expected time duration as per Rule 8 (a); and
- iv. if the listed entity has chosen to adopt a method prescribed in Rule 6, the details and justification for the adopted method; Where the said method require approval of either the SEC or the Exchange then this announcement shall be made once the listed entity gets the relevant approvals.

(c) The Exchange may accept to continue a percentage lower than the percentage prescribed in Rule 1(a) or 1(b) for a limited time period if upon the application to the SEC, the SEC is satisfied that such lower percentage is sufficient for a liquid market in such shares. The listed entity which obtained such waiver from the SEC shall be expected to conform to the prescribed percentage at the expiry of such limited time period.

(d) The SEC may allow an increase in the public shareholding in a percentage less than 5% per annum as prescribed in Rule 8 (a) if the public holding further falls under any supervening extraordinary circumstance, including but not limited to the circumstances mentioned under Rule 5.

(e) The existing listed entity which follows any of the methods prescribed under Rule 6 in order to raise the public shareholding to the minimum prescribed level shall do so subject to the Listing Rules of the Exchange.

(f) Rule 8 shall apply *mutatis mutandis* to all listed companies captured under the above transitional rules.

9. Any person or Listed Public Company aggrieved by any decision made by the Exchange under these Rules may appeal to the SEC.

10. The SEC shall have the discretion to waive the application of any or all of the Rules mentioned above in respect of a listed Company or any class or category of listed companies under exceptional circumstances.

Definitions

11. In these Rules unless the context otherwise requires-

Close family member shall mean and include:

- (a) spouse;
- (b) parents;
- (c) grandparents;
- (d) children
- (e) brothers;
- (f) sisters;
- (g) grandchildren; and
- (h) spouse of the person referred to (d), (e), (f) and (g) above

provided that all of the above persons are financially dependent and/or acting in concert.

Effective date is such date on which these Rules shall come into operation as determined by the CSE in consultation with the SEC.

Key management personnel means the persons having authority and responsibility for planning, directing and controlling the activities of the Entity, directly or indirectly, including any director (whether executive or otherwise) of that Entity.

Non compliance announcement is the market announcement made through the Exchange that a Company's public holding has dropped below the required public holding under Rule (1) (a) and 1 (b) above.

Parties acting in concert comprise persons who, pursuant to an agreement or understanding (whether formal or informal), co-operate, through the acquisition by any of them of any interests in shares in a Company, to obtain or consolidate control of that Company, or of any other Company, or to frustrate the successful outcome of a takeover or merger offer for a Company. Without prejudice to the general application of this definition, the following individuals and companies will be presumed to be persons acting in concert with each other unless the contrary is established for the satisfaction of the Commission, unless the contrary is established to the satisfaction of the Commission:-

- (a) a company, its parent, subsidiaries and fellow subsidiaries, and their associated companies, and companies of which such companies are associated companies, all with each other;
- (b) a company with any of its directors (together with their close relatives, related trusts as well as companies controlled by any of the directors, their close relatives and related trusts);
- (c) a company with any of its pension funds and employee share schemes;

(d) any person who has otherwise provided financial assistance to any of the aforesaid persons for the purchase of any shares or interests in shares of a company, other than any registered margin provider or any other financial institution regulated by the Central Bank of Sri Lanka who provides such assistance in the ordinary course of business.

Public holding shall be defined as shares of a listed entity held by any person other than those directly or indirectly held by;

- a) its parent, subsidiary or associate companies or any subsidiaries or associates of its parent company;
- b) its directors who are holding office as directors of the entity and their close family members;
- c) chief Executive Officer, his/her close family members;
- d) Key Management Personnel and their Close Family Members; and,
- e) any party acting in concert with the parties set out in (a), (b), (c) and (d) above;
- f) shares that are in a locked account with the Central Depository Systems (CDS); and
- g) shares that have been allotted to employees under an 'Employee Share Option Scheme' or an 'Employee Share Purchase Scheme' or any other scheme, plan or arrangement whereby the shares of a Listed Entity are, directly or indirectly offered to or benefited by the Employees of such entity or a related entity;
- h) any single individual or a Company holding 5% or more of the shares of the listed entity except where such shareholder is;
 - i. a statutory institution who is managing funds belonging to contributors or investors who are members of the public;
 - ii. an entity established as a unit trust or any other investment fund approved by the SEC or
 - iii. not a party related to the Company in terms of LKAS 24.

With regard to (h) iii above, the onus is on the listed entity to prove by affidavit submitted to the Exchange that the said shareholder is not a related party in terms of LKAS 24.

Status announcement shall mean the monthly announcement a listed entity is obliged to make on the first working day of each month during a period that has been granted to the same to rectify its public holding to the prescribed public holding under these Rules and includes a rectification plan.