SEBI/WTM/SR/CFD–DCR/ 53/10/2016

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

UNDER REGULATION 11(5) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.

IN THE MATTER OF PROPOSED ACQUISITION OF SHARES AND VOTING RIGHTS IN UNITED BANK OF INDIA.

Background –

1.1 United Bank of India ("**Target Company**") is a Public Sector Bank having its Registered Office at United Tower, 11, Hemanta Basu Sarani, Kolkata–700001. The shares of the Target Company are listed on BSE and the National Stock Exchange of India Limited ("**NSE**").

1.2 The Target Company filed an application dated August 10, 2016 ("**Application**"), on behalf of its Promoter i.e. the Government of India ("**Proposed Acquirer**") seeking exemption from the applicability of Regulation 3(2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**Takeover Regulations**").

1.3 Regulation 3(2) of the Takeover Regulations, states –

"***3. Substantial acquisition of shares or voting rights.***
(2). No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:
Provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding."

1.4 From the aforesaid Application, the following is noted –

A. Vide a letter dated July 19, 2016, the Government of India proposed an infusion of capital in the Target Company, amounting to ₹810 Crores.

B. 75% or ₹608 Crores of the aforesaid amount of ₹810 Crores will be infused immediately through a proposed preferential allotment of 26,74,87,901 equity shares in favour of the Proposed Acquirer/Promoter i.e. the Government of India ("**Proposed Acquisition**").

C. At the Board Meeting of the Target Company held on August 9, 2016, the Board of Directors approved raising of additional equity capital to the extent of ₹608 Crores by way of issue of equity shares on a preferential basis to the Proposed Acquirer/Promoter.

D. An Extra–Ordinary General Meeting ("**EGM**") of shareholders in the Target Company was held on September 7, 2016, wherein necessary special resolution for issue and allotment of shares to the Proposed Acquirer/Promoter on preferential basis. The issue price per equity share has been arrived at ₹22.73, in accordance with Regulation 76(1) of (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("**ICDR Regulations**"). Based on the issue size of ₹608 Crores and issue price of ₹22.73, the total number of equity shares to be allotted to the Proposed Acquirer/Promoter is 26,74,87,901 of face value ₹10 each.

E. The shareholding pattern in the Target Company (i) (i) April 1, 2016; (ii) prior to the proposed acquisition and (iii) subsequent to the proposed acquisition, is provided as under –

TABLE I – SHAREHOLDING IN THE TARGET COMPANY (SOURCE: APPLICATION)			
CATEGORY	AS ON 1.04.2016	PRIOR TO PROPOSED ALLOTMENT (AS ON 10.08.2016)	SUBSEQUENT TO PROPOSED ALLOTMENT
	NO. OF SHARES AND %	NO. OF SHARES AND %	NO. OF SHARES AND %
A. PROMOTER AND PROMOTER GROUP	68,84,30,610 [82.003%]	92,08,76,130 [85.906%]	118,83,64,031 [88.720%]
B. FINANCIAL INSTITUTIONS/BANKS/ FOREIGN PORTFOLIO INVESTORS/ NON RESIDENT INDIANS/OVERSEAS CORPORATE BODIES/ OTHER PUBLIC SHAREHOLDERS	15,10,85,341 [17.997%]	15,10,85,341 [14.094%]	15,10,85,34 [11.280%]
C. GRAND TOTAL (A + B)	**83,95,15,951 [100%]**	**107,19,61,471 [100%]**	**133,94,49,372 [100%]**

i. From Table I, it is observed that as on April 1, 2016, the Proposed Acquirer/Promoter i.e. the Government of India, held 68,84,30,610 equity shares (82.003%) in the Target Company.

ii. During the Financial Year 2016–17 i.e. May 2016, the Proposed Acquirer/Promoter i.e. the Government of India, held 92,08,76,130 equity shares (85.906%) in the Target Company.

iii. Subsequent to the proposed acquisition i.e. preferential allotment of 26,74,87,901 equity shares, the Proposed Acquirer/Promoter will hold 118,83,64,031 equity shares (88.720%) in the Target Company.

F. The resultant change in shareholding on account of the allotment indicated at paragraph E(ii)–(iii) above, is likely to increase the concentration of the Proposed Acquirer/Promoter/Government shareholding in the Target Company by 6.717% during the Financial Year 2016–17 i.e. more than 5%, thereby attracting the provisions of Regulation 3(2) of the Takeover Regulations.

G. The details pertaining to the Board of Directors of the Target Company as on the date of the Application, is provided as under –

TABLE II – BOARD OF DIRECTORS OF THE TARGET COMPANY (SOURCE: APPLICATION)		
SR. NO.	NAME	STATUS
1.	MR. PAWAN KUMAR BAJAJ	MANAGING DIRECTOR & CEO
2.	MR. SANJAY ARYA	EXECUTIVE DIRECTOR
3.	MR. K. VENKATA RAMA MOORTHY	EXECUTIVE DIRECTOR
4.	MR. A. K. DOGRA	GOVERNMENT NOMINEE DIRECTOR
5.	MR. ARNAB ROY	RESERVE BANK OF INDIA NOMINEE DIRECTOR
6.	MR. S. SURYANARAYANA	SHAREHOLDER DIRECTOR
7.	MR. PRATUYSH SINHA	SHAREHOLDER DIRECTOR
8.	SMT RENUKA MUTTOO	NON–OFFICIAL DIRECTOR

H. **Submissions made by the Target Company on behalf of the Proposed Acquirer/Promoter for exemption from the provisions of Regulation 3(2) of the Takeover Regulations.**

In its Application on behalf of the Proposed Acquirer/Promoter, the Target Company submitted as under –

a. *"We file herewith an application … seeking exemption from the applicability of Regulation 3(2) of the Takeover Regulations, with respect to the proposed acquisition of 26,74,87,901 equity shares of the Bank by the Government of India.*

b. *Bank's authorised capital is ₹3000 Crore and the paid-up capital is ₹1071.96 Crore. The Government of India is holding 92,08,76,130 equity shares i.e. 85.906% equity share capital in the Bank.*

c. *At the beginning of the Financial Year, Government of India was holding 68,84,30,610 shares i.e. 82.003%, in the Bank's equity capital.*

d. *In May 2016, the Bank allotted 23,24,45,520 equity shares resulting in a Government of India holding of 85.906%, pursuant to capital infusion of ₹480 Crores by the Central Government.*

e. *Government of India desires that all public sector banks should be adequately capitalized. As on March 31, 2016, Bank's Tier I capital under BASEL III norms was 7.93% of its Risk Weighted Assets (RWA) in which Common Equity Tier – I Ratio (CET1) was 7.74% and the total capital to RWA (CRAR) was 10.08%.*

f. *As per RBI Guidelines on BASEL III Capital Regulations, the Bank is required to maintain the following capital ratios by March 2017.*

SR. NO.	RATIO	MINIMUM REQUIREMENT
1.	COMMON EQUITY TIER 1 (CET1)	5.50%
2.	CAPITAL CONSERVATION BUFFER (CCB)	1.25%
3.	CET1 + CCB	6.75%
4.	TIER 1 RATIO	7.00%
5.	TIER RATIO + CCB	8.25%
6.	TOTAL CRAR	9.00%
7.	TOTAL CRAR + CCB	10.25%

g. *As per the Bank's projected business plan for FY 2016–17, submitted to the Ministry of Finance, the risk weighted assets are expected to go up to the range of ₹79000 Crores by March 2017, which would entail an additional capital requirement of about ₹1000 Crores.*

h. *Ministry of Finance after assessment and review of the Bank's capital adequacy in the light of the projections for credit growth by the Bank and CAGR of credit growth of the Bank for last 5 years and based on overall projections and consequential growth of RWA and other financials, vide its letter F.No.7/38/2014-BOA dated July 19, 2016 allocated ₹810 Crores to the Bank by way of preferential allotment of equity in favour of the Government of India. Further, 75% of the amount i.e. ₹ 608 Crores has been marked for immediate infusion while the balance 25% will be infused based on Bank's performance on prescribed benchmark activities by the end of December 2016 or earlier.*

i. *Ministry of Finance, vide letter F.No.7/38/2014-BOA dated July 19, 2016, has advised the Bank to take all necessary steps/approvals in connection with the proposed capital infusion which inter-alia includes seeking exemption from SEBI from the applicability of the Takeover Regulations from the obligation of making an open offer considering the fact that the difference of Government of India shareholding at the beginning of this financial year and post the proposed allotment may be over 5%.*

j. *Board of Directors of the Bank in their meeting held on August 9, 2016, has approved raising of additional equity capital to the extent of ₹810 Crores by way of issue of equity shares in favour of the Government of India on preferential basis subject to the approval of SEBI, RBI, Stock Exchanges and the shareholders. The meeting of the shareholders has been convened on September 7, 2016.*

k. *The Bank incurred a net loss of ₹282 Crores in Financial Year 2015–16 and a meager profit of ₹38.24 Crores in the first quarter of Financial Year 2016–17. In order to improve CRAR and remain compliant to all regulatory norms on capital adequacy as on September 30, 2016, the Bank needs to complete the preferential issue by September 30, 2016.*

l. *The relevant date has been taken as August 8, 2016, for ascertaining the issue price to arrive at the quantity of shares to be issued. The issue price is arrived at ₹22.73 per equity share calculated in accordance with Regulation 76 of the ICDR Regulations. Based on the issue price and the issue size of ₹608 Crores, the total number of equity shares to be allotted to the Government of India is 26,74,87,901. Thus, the post issue shareholding of Government of India will be 118,83,64,031 equity shares (i.e. 88.720%).*

m. *The shares to be allotted shall be ranking pari-passu with the existing share capital of the Bank.*

n. *The entire infusion of capital by Government of India is being made to comply with the Basel-III requirements and there would be no change of control in the management of the Bank.*

o. *As the proposed acquisition of shares would increase the shareholding of Government of India by 6.717% i.e. more than 5% during the Financial Year 2016–17; hence, exemption is sought from the applicability of Regulation 3(2) of the Takeover Regulations."*

1.5 Vide a letter dated August 24, 2016 alongwith an e–mail dated September 28, 2016, SEBI sought clarification from the Target Company regarding compliance of Public Sector Banks with minimum public shareholding requirements in terms of Securities Contracts (Second Amendment) Rules, 2014.

1.6 In reply to the abovementioned e–mail, the Government of India, vide a letter dated September 30, 2016, informed as under:

"*As per the request of SEBI, Department of Financial Services, Ministry of Finance, Govt. of India, being the promoter of the company declares that Indian Overseas Bank will comply with Minimum Public Shareholding (MPS) requirements in terms of Securities Contracts (Second Amendment) Rules, 2014."*

Findings –

2.1 I have considered the Application made by the Target Company on behalf of the Proposed Acquirer/Promoter alongwith other relevant material available on record. In this regard, I note –

i. The shareholding of the Proposed Acquirer/Promoter in the Target Company as on April 1, 2016, was 82.003% (68,84,30,610 equity shares).

ii. The Target Company has taken into account the preferential allotment of 23,24,45,520 equity shares to the Proposed Acquirer/Promoter during the Financial Year 2016–17 (increasing Promoter's holding from 82.003% to 85.906%) and also the preferential allotment under the proposed acquisition (increasing Promoter's holding from 85.906% to 88.720%) while calculating the quantum of proposed acquisition in the instant matter.

iii. The change in shareholding on account of the aforementioned allotment of equity shares by way of the proposed preferential allotment, will result in an increase in the Proposed Acquirer/Promoter's shareholding in the Target Company by 6.717% during the Financial Year 2016–17 i.e. more than 5%, thereby attracting the provisions of Regulation 3(2) of the Takeover Regulations.

iv. The proposed acquisition is necessitated on account of the Government of India's objective that all Public Sector Banks are adequately capitalized for ensuring compliance with BASEL III norms.

v. There will be no change in control of the Target Company pursuant to the proposed acquisition as the change will only be in the manner of holding the shares by the Proposed Acquirer/Promoter. Further, there will be no change in the number of equity shares held in the Target Company, by the public shareholders, pursuant to the proposed transactions.

2.2 The infusion of additional capital by the Proposed Acquirer/Promoter will enable the Target Company to maintain a capital over and above the minimum requirement mandated under BASEL III norms and will also provide the Target Company with additional leverage for raising further equity capital at a later date, as and when the need arises. Accordingly, I am of the considered view that exemption as sought for in the Application made by the Target Company, be granted to the Proposed Acquirer/Promoter, subject to certain conditions as ordered herein below.

Order –

3.1 I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") read with Regulation 11(5) of the Takeover Regulations, hereby grant exemption to the Proposed Acquirer, viz. **the Government of India**, from complying with the requirements of Regulation 3(2) of the Takeover Regulations with respect to the proposed acquisition of **6.717%** equity shares during the Financial Year 2016–17, in the Target Company viz. **United Bank of India**, by way of the proposed preferential allotment as mentioned in the Application.

3.2 The exemption so granted is subject to the following conditions:

i. The proposed acquisition shall be in accordance with the relevant provisions of the Companies Act, 2013 and any other applicable law.
ii. The Government of India/Target Company shall ensure compliance with the statements and disclosures made in the Application.
iii. The statements/averments made or facts and figures mentioned in the Application by the Proposed Acquirer/Promoter are true and correct.
iv. The public shareholding in the Bank shall be increased to 25% within a maximum period of 12 months from the date of the proposed preferential allotment, in the manner specified by SEBI.

3.3 The exemption granted above is limited to the requirements of making open offer under the Takeover Regulations and shall not be construed as exemption from the disclosure requirements under Chapter V of the Takeover Regulations; compliance with the SEBI (Prohibition of Insider Trading) Regulations, 2015; Listing Agreement/SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 or any other applicable Acts, Rules and Regulations.

3.4 The Application dated August 10, 2016, filed by Target Company on behalf of the Proposed Acquirer/Promoter, is accordingly disposed of.

Place: Mumbai
Date: October 3, 2016

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA