



**CIRCULAR**

CIR/MRD/DP/56/2017

June 14, 2017

To,  
The Depositories,

Dear Sir / Madam,

**Subject: Recording of Non Disposal Undertaking (NDU) in the Depository System**

1. The depository system provides a transparent mechanism for recording pledge transactions entered between lenders and borrowers.
2. SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, requires promoters of a company to disclose details of their encumbered shares including NDUs by promoters which are covered under the scope of disclosures of 'Encumbrances'.
3. It has been observed that some shareholders, primarily promoters, enter into non-disposal agreements/ non-disposal undertaking (NDU) for borrowing funds from various lenders. NDUs are typically undertakings given by a shareholder not to transfer or otherwise alienate the securities and are in the nature of negative lien given in favour of another party, usually a lender.
4. It is observed that currently there is no framework to capture the details of NDU in the depository system as these happen outside the depository system and are not captured and reflected in the records of the depositories. Therefore, in order to enable the shareholders to record the NDUs in the depository system, it has been decided to permit the depositories to offer a system for capturing and recording the NDUs.
5. In this regard, the depositories are advised the following:
  - 5.1. Depositories shall develop a separate module/ transaction type in their system for recording NDUs.
  - 5.2. Both parties to the NDU shall have a demat account with the same depository and be KYC compliant.
  - 5.3. Pursuant to entering the NDU, the Beneficial Owner (BO) along with the other party shall make an application through the participant (where the BO holds his securities) to the depository, for the purpose of recording the NDU transaction.



- 5.4. The application shall necessarily include details of BO ID, PAN, email-id, signature(s), name of the entity in whose favor such NDU is entered and the quantity of securities. Such entity in whose favor NDU is entered shall also authorize the participant of the BO holding the shares, to access the signatures as recorded in that entity's demat account.
- 5.5. The participant after being satisfied that the securities are available for NDU shall record the NDU and freeze for debit the requisite quantity of securities under NDU in the depository system. .
- 5.6. The depositories shall make suitable provisions for capturing the details of BO ID and PAN of the entity in whose favor such NDU is entered by the participant. The depositories shall also make available to the said participant, the details of authorized signatories as recorded in the demat account of the entity in whose favor such NDU is entered.
- 5.7. On creation of freeze in the depository system, the depository/ participant of the BO holding shares, shall inform both parties of the NDU regarding creation of freeze under NDU.
- 5.8. The depositories shall make suitable provisions for capturing the details of company/ promoters if they are part of the NDU.
- 5.9. In case if the participant does not create the NDU, it shall intimate the same to the parties of the NDU along with the reasons thereof.
- 5.10. Once the freeze for debits is created under the NDU for a particular quantity of shares, the depository shall not facilitate or effect any transfer, pledge, hypothecation, lending, rematerialisation or in any manner alienate or otherwise allow dealing in the shares held under NDU till receipt of instructions from both parties for the cancellation of NDU.
- 5.11. The entry of NDU made as per para 5.5 above may be cancelled by the depository/ participant of the BO through unfreeze of specified quantity if parties to the NDU jointly make such application to the depository through the participant of the BO.
- 5.12. On unfreeze of shares upon termination/ cancellation of NDU, the depository shall inform both parties of the NDU in the form and manner agreed upon at the time of creating the freeze. The unfreeze shall be effected in the depository



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**Securities and Exchange Board of India**

system after a cooling period of 2 clear business days but no later than 4 clear business days.

6. The freeze and unfreeze instructions executed by the Participant for recording NDUs will be subject to 100% concurrent audit.
7. The DPs shall not facilitate or be a party to any NDU outside the depository system as outlined herein
8. The Depositories shall implement the provisions of this circular within four months from the date of this circular.
9. The Depositories are advised to:-
  - i. make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision, as may be applicable/necessary;
  - ii. to carry out system changes if any to implement the above;
  - iii. disseminate the provisions of this circular on their website;
  - iv. communicate to SEBI, the status of implementation of the provisions of this circular in their Monthly Development Report.
10. This circular is being issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 and section 19 of the Depositories Act, 1996 to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.

**Yours faithfully**

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