Operative guidelines for the limited two way fungibility under the "issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993"

a) Re-issuance of ADR/GDR would be permitted to the extent of ADRs/GDRs which have been redeemed into underlying shares and sold in the domestic market. The arrangement is demand driven with the process of reconversion emanating with the request for acquisition of domestic shares by non-resident investor for issue of ADRs/GDRs.

b) Investments under the Foreign Currency Convertible Bonds and Ordinary Shares(Through Depository Receipt Mechanism) Scheme,1993 is treated as direct foreign investment. Accordingly, the transaction under the reconversion arrangement will be distinct and separate from FII portfolio investments.

c) The transaction will be effected through Securities and Exchange Board of India (SEBI) registered stockbrokers as intermediaries between foreign investors and domestic shareholders. A general permission has been conveyed by Reserve Bank of India (RBI) through a Notification No.FEMA.41/2001-RB dated 2nd March 2001 authorising such stock brokers to acquire domestic shares on behalf of the overseas investors for being placed with the domestic custodian.

d) For this purpose all SEBI registered brokers will be able to act as intermediary in the two-way fungibility of ADRs/GDRs. RBI has conveyed general permission through a Notification No.FEMA.41/2001-RB dated 2nd March 2001 for these brokers to buy shares on behalf of the overseas investor.

e) As a secondary market transaction, the acquisition of such shares through the intermediary on behalf of the overseas investors would fall within the regulatory purview of SEBI. The Custodian would monitor the re-issuance and furnish a certificate to both RBI & SEBI to ensure that the sectoral caps are not breached. RBI would monitor the receipt of certificates from the Custodian to this effect.

f) The domestic custodian who is the intermediary between overseas depository on the one hand and Indian company on the other will have the record of the ADRs/GDRs issued and redeemed and sold in the domestic market.

g) The domestic custodian will also be required to ascertain the extent of registration in favour of ADR/GDR holders/non-resident investor based on the advice of Overseas Depository to the Domestic custodian for the underlying shares being transferred in the books of account of the issuing company in the name of the non-resident on redemption of the ADRs/GDRs.

h) the custodian is also required to verify with the Company Secretary/NSDL/CDSL if the total cap is being breached if there is a percentage cap on foreign direct investment.

i) On request by the overseas investor for acquisition of shares for re-issuance of ADRs /GDRs, the SEBI registered Broker will purchase a given number of shares after verifying with the custodian whether there is any Head Room available:

j) Head Room= Number of ADRs/GDRs originally issued minus number of GDRs outstanding further adjusted for ADRs/GDRs redeemed into underlying shares and registered in the name of the non-resident investor(s). The domestic custodian would notify the extent up to which re-issuance would be permissible – the redemption effected minus the underlying shares registered in the name of the non-resident investor with reference to original GDR issue and adjustment on account of sectoral caps/approval limits.

k) The Indian Broker would receive funds through normal banking channels for purchase of shares from the market. The shares would be purchased in the name of the Overseas Depository and the shares would need to be purchased on a recognized stock exchange.

l) Upon acquisition the Indian Broker would place the domestic share with the custodian; the arrangement would require a revised custodial agreement under which the custodian would be authorized by the company to accept shares from entities other than the company

m) Custodian would advise overseas depository on the custody of domestic share and that corresponding ADRs/GDRs may be issued to the non-resident investor.

n) Overseas depository would issue corresponding ADRs/GDRs to the investor.

o) The domestic custodian in addition would have to ensure that the advices to the overseas depository is issued on the first come first serve basis i.e. the first deposit of domestic /underlying shares with a custodian shall be eligible for the first re-issuance of ADRs/GDRs to the overseas investors.

p) The custodian would also have to ensure that ordinary shares only to the extent of the depletion in ADR/GDRs stock are deposited with it. This can be readily ensured by adopting a system similar to the trigger mechanism adopted for FIIs. Once the trigger mechanism is reached, say at 90% of the depletion in the ADR/GDR stock, each buying transaction of domestic shares would be complete only after the custodian has approved it.

q) A monthly report about the ADR/GDR transaction under the two-way fungibility arrangement is to be made by the Indian Custodian in the prescribed format to RBI and SEBI.

r) The Broker has to ensure that each purchase transaction is only against delivery and payment thereof is received in foreign exchange.

s) The Broker will submit the contract note to the Indian custodian of the underlying shares on the day next to the day of the purchase so that the Custodian can reduce the Head Room accordingly. Copy of the Contract Note would also need to be provided by the custodians to RBI and SEBI. The Broker will also ensure that a separate rupee account will be maintained for the purpose of buying shares for the purpose of effecting two-way fungibility. No forward cover will be available for the amounts lying in the said rupee account. The ADs will be permitted to transfer the monies lying in the above account on the request of the Broker.

t) The custodian of the underlying shares and the Depositories would coordinate on a daily basis in computing the Head Room. Further, the company secretary of each individual company would provide details of non-resident investment at weekly intervals to the custodian and the depository. The custodian would monitor the re-issuance and furnish a certificate to both RBI & SEBI, to ensure that the sectoral caps are not breached. RBI would monitor the receipt of certificates from the custodian to this effect.

u) The re-issuance would be within the already approved/issued limits and would only effectively mean transfer of ADRs/GDRs from one non-resident to another and accordingly no further approval mechanism be insisted upon.

v) In the limited two way fungibility arrangement, the company is not involved in the process and is demand driven i.e request for ADRs/GDRs emanates from overseas investors. Consequently, the expenses involved in the transaction would be borne by the investors, which would include the payments due to overseas intermediary/broker, domestic custodians, charges of the overseas and domestic brokers.

w) The tax provision under Section 115 AC of the Income Tax Act 1961, which is applicable to non-resident investors investing in ADRs/GDRs offered against issue of fresh underlying shares would extend to non-resident investors investing in foreign exchange in ADRs/GDRs issued against existing shares under these guidelines, in terms of the relevant provisions of the Income Tax Act 1961.