***Q.1. Is it compulsory for the NOFHC to have individuals as promoters?***

***Q.2. Where the promoter of NOFHC meets with condition of 2(C)(ii)(b), whether individual promoter/ his relatives / entities in which they hold more than 50 per cent shares must hold equity shares in NOFHC [refer 2(C)(ii)(a)].***

***Q.3. Where a promoter is an individual and his relatives and entities in which they hold more than 50% shares, is it necessary that the promoter, his relatives, entities in which they hold more than 50% shares must hold equity shares in NOFHC [refer 2(C)(ii)(a)]. In other words, is holding shares by individual promoters / their relatives / their entities a pre-requisite?***

***Q.4. Since this guideline mentions that capital structure of NOFHC shall consist of item (a) and item (b), would it be mandatory that a part of NOFHC equity (not exceeding 10%) must be held by any individual belonging to the Promoter Group, along with his relatives / entities in which he and / or his relatives hold not less than 50 per cent of the voting equity shares?***

**A.(1 to 4)** It is not necessary that individual alongwith his related parties have shareholding in the NOFHC. However, if any individual belonging to the Promoter Group chooses to become a promoter of the NOFHC, he along with his relatives (as defined in Section 6 of the Companies Act 1956) and along with entities in which he and / or his relatives hold not less than 50 per cent of the voting equity shares can hold voting equity shares not exceeding 10 per cent of the total voting equity shares of the NOFHC. [para 2 ( C ) (ii) (a) of the guidelines]

***Q.5. Is it possible that ten independent individuals holding voting equity shares not exceeding 10 per cent each of the total voting equity shares of the NOFHC, be the promoters and set up this NOFHC?***

***Q.6. Can 10 or more unrelated individuals act as promoters each holding not more than 10 per cent shares in NOFHC?***

***Q.7. Can 10 individual promoters holding not more than 10% shares each alone can also set up the NOFHC, as mentioned in 2C(ii)(b)?***

**A.(5 to 7)** No. The requirement is that not less than 51 per cent of the voting equity shares of the NOFHC shall be held by companies in the Promoter Group, in which the public hold not less than 51 percent of the voting equity of such companies. If 10 independent individuals form a Group, then such a Group cannot satisfy the above criteria laid down for holding the NOFHC. Additionally, such newly formed Promoter Group would not be able to meet one of the 'Fit and Proper' criteria, which requires Promoters/Promoter Groups to have a successful track record of running their business for at least 10 years. Essentially, the intention is that existing groups should set up banks and not groups set up for this purpose. However, it is clarified that individuals belonging to the Promoter Group can participate in the voting equity shares of NOFHC. While any such individual

along with his relatives (as defined in Section 6 of the Companies Act 1956) and along with entities in which he and / or his relatives hold not less than 50 per cent of the voting equity shares, can hold voting equity shares not exceeding 10 per cent of the total voting equity shares of the NOFHC, all such individuals (along with their relatives and companies as specified above) irrespective of their numbers, cannot hold more than 49 per cent of the voting equity shares of the NOFHC (since the companies forming part of the Promoter Group whereof companies in which the public hold not less than 51 per cent of the voting equity shares shall hold not less than 51 per cent of the total voting equity shares of the NOFHC).[ para 2 ( C ) (ii) (a) and (b) of the guidelines]

***Q.8. Is it compulsory for a public listed company to be a Promoter / Promoter Group of the NOFHC? Does it mean that such promoter group companies should be listed companies where public holds at least 51per cent of the voting shares?***

***Q.9. With reference to condition 2(C)(ii)(b), whether the companies which form part of promoters group where public holds not less than 51 per cent of voting capital, have to be listed companies at the time of application for banking license? Are these companies required to continue to remain listed?***

***Q.10. W.r.t. 2(C)(ii)(b), the companies which form part of promoters group where public holds not less than 51% of voting capital has to be a listed company?***

***Q.11. Is it mandatory to have a public company as a part of the Promoter Group?***

***Q.12. W.r.t. 2(C)(ii)(b), is it mandatory to have a public company which has more than 51% shareholding in the NOFHC as part of the promoter group?***

***Q.13. Please also clarify whether 'public' shareholding in an entity presupposes listing of equity shares of that entity***

**A.(8 to 13)** The requirement is that the companies in the Promoter Group in which the public hold not less than 51 per cent of the voting equity shares shall hold not less than 51 per cent of the total voting equity shares of the NOFHC.[ para 2 (C) (ii) (b) of the guidelines]

A company in which public holds 51 per cent need not necessarily be listed. For the purpose of these guidelines, 'public shareholding' implies that no person along with his relatives (as defined in Section 6 of the Companies Act, 1956) and entities in which he and / or his relatives hold not less than 50 per cent of the voting equity shares, by virtue of his shareholding or otherwise, exercises 'significant influence' or 'control' (as defined in Accounting Standard 23) over the company.

***Q.14. Does this condition (51 per cent shareholdings by a listed company) only apply for entities / groups in the private sector that are 'owned and controlled by residents'?***

**A.** Yes. The condition (not less than 51 per cent of the total voting equity shares of the NOFHC to be held by the companies in the Promoter Group, which have not less than 51 percent public shareholding) is applicable to the companies in the Promoter Groups in the private sector that are 'owned and controlled by residents'[as defined in Department of Industrial Policy and Promotion(DIPP) Press Note No.2, 3 and 4 of 2009/FEMA Regulations as amended from time to time].However, such a company need not necessarily be listed.[para 2 (A) and (C) (ii) of the guidelines]

***Q.15. Since the Promoters / Promoter Groups with an existing NBFC will have to set up NOFHC, whether such NOFHC will also have to comply with 51 per cent public holding condition?***

**A.** The NOFHC has to be wholly owned by the Promoters/Promoter Group. However, at least 51 per cent of the voting equity shares of the NOFHC have to be held by companies in the Promoter Group in which public hold not less than 51 per cent of the voting equity of those companies.[para 2 (C) (ii) (b) of the guidelines]

***Q.16. If promoter group companies (where public holding is less than 51 per cent) wish to apply for banking license, whether any grace period will be given to such companies to increase public holding to over 51 per cent?***

**Q.17.** ***Where the Promoter Group is required to make changes to its existing organization/ investment structure, would the RBI consider a transition period, during which regulations would be waived on a case by case basis so that the existing entity is afforded an easy transition without impacting the stakeholders and for ease of operations?***

***Q.18. (i) We understand that at the time of making applications for banking license, the applicants will need to submit the proposed structure which meets with RBI guidelines and requirements. The setting up of the NOFHC, Bank and realignment of businesses assets / portfolio into financial services, non-financial services etc. will be done after receiving in-principle approval from RBI and before the final approval of the RBI. RBI may please clarify our above understanding.***

***(ii) Whether formation of NOFHC is required prior to submission of Bank License application, because it requires RBI approval and thus it may not be possible to set up NOFHC prior to deadline, i.e. 01.07.2013.***

***Q.19. Is there a need to put the NOFHC structure in place at the time of filing of the application or is it enough if the promoter gives an undertaking to do so and completes the NOFHC setup after obtaining the in principle approval but before starting the Bank?***

***Q.20. Is there a need to increase the public shareholding in the company / companies promoting the NOFHC to 51 per cent at the time of filing of the***

***application or is it enough if promoter gives an undertaking to do so and completes the disinvestment after getting in principle approval but before starting the bank?***

***Q.21. From a business transfer perspective, is it required that the businesses be transferred by the NBFC to the proposed bank immediately on obtaining an in principle approval or can this be done in stages as the bank is able to raise liabilities?***

***Q.22. Paragraph 2 (C) (iv) provides that the general principle is that no financial services entity held by the NOFHC would be allowed to engage in any activity that a bank is permitted to undertake departmentally. In the event a Promoter Group has more than one legal entity that undertakes business activities that can be departmentally undertaken by the bank, we request a clarification in relation to what is the quantum of time that will be afforded to fold these activities into the bank post commencement of business by the bank?***

***Q.23. In the application, the promoter / promoter group would provide a clear roadmap for formation of NOFHC and letters of approval of key stakeholders. Do we understand that the NOFHC could then be formed after the grant of in-principle approval, as a condition precedent to getting a certificate of commencement of business –unless specifically instructed otherwise?***

***Q.24. In order to comply with the NOFHC structuring requirements, existing applicants may need to undergo merger/ demerger. Whether there is any scope of giving exemption to applicants who have to restructure their assets portfolio to meet with new banking licence guidelines of RBI.***

***Q.25. When submitting the application for the banking license, is it required that the company envisaged to hold voting equity shares in the NOFHC satisfy conditions under clause 2C (ii) (b) above. Eg. If the promoter holding in the above company is currently greater than 49% would this holding have to be reduced when applying for the license or would a plan detailing out the process that will be used to reduce this holding suffice at application stage?***

***Q.26. Where the current group structure of a bank applicant group is not in compliance with the Guidelines, can they submit a proposed structure and plan of action for compliance with the Guidelines after in-principle approval but before commencement of the banking operations ?***

***Q.27. We understand that at the time of making applications for banking licence, the applicants will need to submit the proposed structure which meets with RBI guidelines and requirements. The setting up of the NOFHC, bank and realignment of businesses assets / portfolio into financial services, non-financial services etc. will be done after receiving in-principle approval from RBI and before the final approval of the RBI. The above understanding may be clarified.***

***Q.28. As per 2C (i) Promoter / Promoter Group will be permitted to set up a bank only through a wholly-owned Non-Operative Financial Holding Company (NOFHC).***

***Query:***

***Whether the formation of NOFHC is required prior to submission of bank license application form, because it requires RBI approval and thus it may not be possible to set up NOFHC prior to deadline i.e 1.7.2013?***

***Q.29. Where an existing company in which promoter in his individual capacity holds more than 10 percent is converted into NOFHC, will RBI allow any transition time for the promoter's shareholding to go below 10 per cent as per condition 2C(ii)(a)?***

***Q.30. If individual promoters hold more than 10% in NOFHC at the time of its creation, will RBI allow any transition time for the promoter's shareholding to go below 10%, as per guideline 2C(ii)(a)?***

***Q.31. We understand that at the time of making applications for banking license, the applicants will need to submit the proposed structure which meets with RBI guidelines and requirements. The setting up of the NOFHC, bank and realignment of businesses assets / portfolio into financial services, non-financial services etc. will be done after receiving in-principle approval from RBI and before the final approval of the RBI. RBI may clarify our above understanding.***

**A. (16 to 31)** At the time of making applications, the Promoters/Promoter Group will have to furnish a road map and methodologies they would adopt to comply with all the requirements of the corporate structure indicated in para 2 (C)(ii) and (iii) of the guidelines and realign the business between the entities to be held under the NOFHC [para 2(C)(iv) of the guidelines] within a period of 18 months. After the 'in-principle approval' is accorded by RBI for setting up of the bank, the actual setting up of NOFHC and the bank, re-organization of the Promoter Group entities to bring the regulated financial services entities under the NOFHC as well as realignment of business among the entities under the NOFHC have to be completed within a period of 18 months from the date of in-principle approval or before commencement of banking business, whichever is earlier.

***Q.32. Where the promoter of an existing financial services company desires to promote a bank, can that financial services company act as a promoter?***

***Q.33. Where there are no promoters of an existing financial services company, can that financial services company act as a promoter?***

***Q.34. Can an existing financial services company be converted into NOFHC? In such a case, can the financial services business be divested to a company which will become bank?***

***Q.35. If the applicant is engaged only in financial services business and sets up a NOFHC, will it meet condition 2C (iii)? Will there be any relaxations for NBFCs? Does this mean that a financial services company will be required to set-up two layers of NOFHC which have holding-subsidiary relationship?***

***Q.36. Where the promoter of an existing financial services company desires to promote a bank, can that financial services company act as a promoter?***

***Q.37. If the applicant is engaged only in financial services business, will it meet 2C(iii) requirement? Will there be any relaxations for NBFCs? Does this mean that a financial services company will be required to set-up two layers of NOFHC which have holding-subsidiary relationship?***

**A.(32 to 37)** All regulated financial services entities of the Promoters/Promoter Group in which the Promoters/Promoter Group has 'significant influence' or 'control' (as defined in Accounting Standard 23) have to be held by a NOFHC. Regarding financial groups setting up banks, the existing NBFC must transfer all regulated financial services business to a new company and shares in that new company must be held by the NOFHC. Conversion of the NBFC into a non operating holding company would enable meeting the requirement of para 2(C)(iii) of the guidelines provided the listed non operating holding company meets the requirement of para(C)(ii)(b) of the guidelines i.e. the public hold not less than 51 percent voting equity shares in the company.

***Q.38. Whether under no circumstances promoters would be allowed to increase their holdings in such companies to beyond 49 per cent in future (after the commencement of the bank)?***

**A.** Under all circumstances at least 51 per cent of the voting equity shares of the NOFHC shall be held by companies in the Promoter Group, in which public shareholding is not less than 51 percent.[para 2 (C) (ii) (b) of the guidelines]

***Q.39. Given that capital structure guidelines talk about conditions only on voting equity shareholding, can promoter entities also have non-voting equity shareholding in NOFHC or bank? If yes, will such non-voting equity shareholding fall out of ambit of these guidelines?***

**A.** Non-voting equity shares are not a part of the guidelines, but are subject to relevant laws/ SEBI guidelines. Non-voting capital will not be reckoned for the purpose of calculation of promoter shareholding in the NOFHC/ bank.

***Q.40. Whether Memorandum and Articles of Association, latest financial statements for past ten years and IT returns for last three years are required in respect of all the entities in the Promoter Group or only in respect of Promoter entities which subscribe to the voting equity capital of the NOFHC.***

***Q.41. Whether the details required to be submitted with the project plan are applicable to only the promoter of the NOFHC or all the entities of the Promoter group.***

**A.(40 &41)** The entities/individuals belonging to the Promoters/Promoter Group, which would participate in the voting equity shares of the NOFHC, would have to provide theMemorandum and Articles of Association, financial statements for past ten years and IT returns for last three years, as appropriate, at the time of submission of their application. The last available financial statements in respect of other Group entities, which do not participate in the voting equity shares of the NOFHC will also have to be furnished. The details of the Promoters' direct and indirect interest in various entities/companies/industries and details of credit/other facilities availed by the Promoters/Promoter Group would be required of all entities. [ para 3 of Annex II to the guidelines]

***Q.42. Can NOFHC have a promoter group consisting of separate groups of companies? Under the separate group of companies, 51% voting shares of the NOFHC will be held only by the company(s) in which the public holding is 51% and / or above to comply with the existing guidelines and the remaining 49% of the voting shares can be held other private / public companies within the group.***

**A.** The NOFHC has to be wholly owned by a single Promoter/Promoter Group ( as per the definition given in the Annex I to the guidelines) and the pattern of shareholding would be as per the provisions laid down at para 2 ( C ) ( ii ) & ( iii) of the guidelines. Two or more separate Groups cannot combine together to set up a NOFHC.

***Q.43. Whether a group which does not have any company with public shareholding cannot apply for banking licence? Also, even if the Group is having the same, whether it is necessarily required to include such a company in the NOFHC capital structure.***

**A.** A Group which does not have any company or which will not be able to have a company with public shareholding of not less than 51 per cent cannot apply for banking licence, since at least 51 per cent of the voting equity shares of the NOFHC have to be held by companies in the Promoter Group, in which public hold not less than 51 per cent of the voting equity shares. If the Promoter Group has a company in which public holding is not less than 51 per cent, at least 51 per cent of the voting equity shares of the NOFHC is required to be held by that company. It is not necessary that all Group companies in which public shareholding is not less than 51% should be shareholders of the NOFHC [para 2 (C) (ii)(b) of the guidelines].

***Q.44. Can a company as a single non- resident shareholder hold 49 per cent voting equity capital of the bank? If yes, will it be automatic or will the same be requiring approval from RBI.***

**A.** No. No non-resident shareholder, directly or indirectly, individually or in group through subsidiary, associate or joint venture will be permitted to hold 5 per cent or more in the paid up voting equity capital of the bank for a period of 5 years from the commencement of the business of the bank. [ para 2 (F) of the guidelines ]

***Q.45. In the case of an existing conglomerate, is it envisaged that all the "Promoter Group" companies have to set-up a wholly owned NOFHC?***

**A.** No.It is not envisaged that all the companies in the Promoter Group have to set up the wholly owned NOFHC. As provided in para 2(C)(iii) of the guidelines, only the non-financial services companies/entities and non-operative financial holding companies in the Promoter Group and individuals belonging to Promoter Group, conforming to the stipulation in para 2(C)(ii)(a) and (b), will be allowed to hold the shares of NOFHC. Further, para 2(C)(vii) requires that all the regulated financial services entities, in which the Promoter Group has 'significant influence' or 'control', (as defined in Accounting Standard 23) shall be held by the NOFHC, and that, such entities cannot hold shares in the NOFHC [para 2 (C) (iii) & (vii)].

***Q.46. Could a bank be promoted by a sub-set of promoters group companies?***

**A.** The Promoters/Promoter Group cannot set up a bank directly. They have to first set up a wholly owned NOFHC, which will hold the bank and other regulated financial services entities/companies in which the Promoter Group has 'significant influence' or 'control' (as defined in Accounting Standard-23).NOFHC could be set-up with equity participation by a sub-set of non-financial services companies/entities/individuals and non-operative financial holding companies in the Promoter Group provided the equity participation is in conformity with the stipulation at para 2 (C) (ii) of the guidelines.

***Q.47. If companies in the Promoter Group have significant interest /control in regulated and / or unregulated financial services activities, but do not wish to participate in the set-up of a new bank, is this permissible or do they need to necessarily exit from their interests in the company/group of companies wishing to promote a new bank.***

**A.** The Promoters/Promoter Group have to first set up a wholly owned NOFHC for holding the bank. They cannot set up a bank directly. In case, some entities/companies in the Promoter Group having 'significant influence' or 'control' (as defined in Accounting Standard-23) in regulated or unregulated financial services activities do not wish to participate in the voting equity of the NOFHC, they can do so. However, the regulated financial services entities, in which the companies in the Promoter Group have 'significant influence' or 'control' (as defined in Accounting Standard-23), have to come under the NOFHC. The unregulated financial services activities/entities of the Promoter Group cannot come under the NOFHC. [para 2 (C) (i), (ii), (iii) & (vii) of the guidelines]

***Q.48. In the event the NOFHC/ bank being promoted by a sub-set of existing promoters (having regard to the definition of "Promoter/ Promoter Group"),***

***would the regulated financial services entities of the remaining Promoter Group (not promoting the NOFHC/ bank), be required to become subsidiaries of the NOFHC?***

**A.** Yes. All the regulated financial services entities in which the Promoter Group has 'significant influence' or 'control' (as defined in Accounting Standard 23) will have to be brought under the NOFHC as subsidiaries, or associates or joint ventures. [para 2 (C) (iii) & (vii) of the guidelines]

***Q.49. Will 10 years of successful track record be limited to only financial services sector or to overall business activities? Does every entity forming part of the Promoter Group need to have a 10 year track record?***

**A.** The overall track record of the Promoters/Promoter Group for at least 10 years will be seen in all its activities both financial and non-financial. If some, but not all, companies forming part of the Promoter Group have been in existence for less than 10 years, the track record of such companies will be seen for the period they are in existence. [para 2 (B) (b) of the guidelines]

***Q.50. What could be some of the indicative criteria that the RBI would consider in determining if an entity/ group has/have "sound credentials and integrity"?***

**A.** The requirement that Promoters / Promoter Group should have a past record of sound credentials and integrity as a part of 'Fit and Proper' criteria is a matter of overall judgment and no indicative criteria can be spelt out. [para 2 (B) of the guidelines]

***Q.51. Could NOFHC itself be a listed entity?***

**A.** No. NOFHC is to be wholly-owned by the Promoters/Promoter Group. Therefore, it cannot be a listed company. [para 2 (C) (i) of the guidelines]

***Q.52. Could a non-corporate entity such as an LLP or Trust (public, private or charitable) be permitted as being a part of the Promoter/ Promoter Group for setting up the NOFHC?***

***Q.53. Where shares of a NOFHC are held by public trusts, whose trustee are the promoters, whether the same could be considered under 2(C)(ii)(b) category for considering 51% holding in NOFHC?***

**A. (52 & 53)** The shares of NOFHC can be held by individuals, corporate entities and companies belonging to the Promoter Group. An LLP and trust do not fall under any of these categories. Therefore, an LLP or trust cannot hold voting equity shares directly in the NOFHC but can hold indirectly through a company in the Promoter Group which holds voting equity shares of the NOFHC.

***Q.54. If a Core Investment Company (CIC), being the promoter, is newly incorporated for holding the NOFHC, would the track record of the Promoter/ Promoter Group in the CIC be considered?***

**A.** The overall track record of the Promoters/Promoter Group for at least 10 years will be seen. If the Promoters/Promoter Group incorporates a new CIC for the purpose of holding shares in the NOFHC, the track record of the Promoters/Promoter Group setting up the CIC will be seen. [para 2 (B) (b) of the guidelines]

***Q.55. Where the CIC is a listed entity (and meets the owned and controlled by residents test as per the extant DIPP guidelines), would the stated Promoter Group of the CIC for listing purposes be also treated as the Promoter Group for the new bank?***

**A.** Promoter Group for the purpose of these guidelines will be as per the definition given in Annex I to the guidelines.

***Q.56. Would any investor holding more than 10 per cent of the 'free float' in the listed CIC be also compulsorily viewed as being a Promoter by virtue of a more than 10 per cent ownership in the CIC even if such investor does not otherwise form part of the Promoter Group (the working assumption here being that the CIC will hold significant interests in non-financial services businesses as well as 100 per cent interest in an NOFHC).***

**A.** Merely holding 10 per cent of the free float in the listed CIC would not make the investor a Promoter. If the investor does not form a part of the Promoters/Promoter Group as per the definition given in Annex I to the guidelines, he would not be considered as a Promoter.

***Q.57. In respect of the capital structure of the NOFHC, having regard to the use of the word "and" are sub-clauses (a) and (b) of clause 2 (C)(ii), to be read as conditions to be fulfilled cumulatively?***

**A.** It is essential that clause (b) of para 2(C)(ii) (i.e. not less than 51 per cent of the voting equity shares of the NOFHC to be held by companies in which the public hold not less than 51 per cent of the voting equity shares) is satisfied in all cases, whereas clause (a) of para 2(C) (ii) does not stipulate any minimum shareholding. Accordingly, it is not necessary that an individual, along with his relatives (as defined in Section 6 of the Companies Act, 1956) and along with entities in which he and/or his relatives hold not less than 50 per cent of the voting equity shares should hold shares in the NOFHC. [para 2 (C) (ii) of the guidelines]

***Q.58. Having regard to clause 2 (C)(ii)(a), can a single individual investor hold 10 per cent directly in the NOFHC and also have significant holdings in other Promoter group companies in which the public holds not less than 51 per cent of voting equity shares?***

**A.** Yes. It would be possible for an individual belonging to the Promoter Group, along with his relatives (as defined in Section 6 of the Companies Act, 1956) and along with entities in which he and/or his relatives hold not less than 50 per cent of voting equity shares, to have significant holdings in other Promoter Group companies in which the public holds not less than 51 per cent of voting equity shares.

***Q.59. Does 51 per cent holding by public in clause 2 (C)(ii)(b) mean a company has to be necessarily a listed entity or could be an entity where 51 per cent is held by other than Promoters?***

***Q.60. In the context of at least 51% of the total voting equity of the NOFHC to be held by companies of the Promoter group having at least 51% of the voting equity held by the public, please clarify whether the concept of public includes "Non-Promoter" shareholders in an unlisted entity. Also, we presume that the definition of Public companies would be in consonance with SEBI Guidelines. Please confirm.***

**A. (59&60)** A company in which public holds 51 per cent need not necessarily be listed. For the purpose of these guidelines, 'public shareholding' implies that no person along with his relatives (as defined in Section 6 of the Companies Act, 1956) and entities in which he and / or his relatives hold not less than 50 per cent of the voting equity shares, by virtue of his shareholding or otherwise, exercises 'significant influence' or 'control' (as defined in Accounting Standard 23) over the company.[para 2 (C) (ii) of the guidelines]

***Q.61. Subject to the Companies Act, 1956 / Companies Bill, 2012, could the NOFHC issue non-voting equity shares/ preference shares?***

***Q.62. The references in paragraph 2 (C) (ii) relate to holdings of voting equity capital. Would the NOFHC be permitted to issue non-voting equity capital or other classes of capital to persons other than promoter group entities ?***

**A. (61 &62)** Yes, to the extent permissible under the relevant laws. However, it will not be reckoned for the purpose of calculation of promoter shareholding in the NOFHC.

***Q.63. Should the percentage holding in the NOFHC/ bank be computed with reference to the last audited balance sheet or as on the date of the proposed investment?***

**A.** The percentage holding of the NOFHC/bank will be computed with reference to the date of the investment.

***Q.64. We understand that the NOFHC does not need to wholly own the 'other regulated financial services entities' and that direct participation in such entities by non-Promoter group individuals/ companies is permitted. Additionally, we understand that FDI in such entities as per the extant DIPP guidelines is permitted.***

**A.** As per Para 2 C (vii) of the guidelines, only the regulated financial sector entities in which a Promoter Group has 'significant influence' or 'control' (as defined in Accounting Standard 23) will be held under the NOFHC. Thus, the NOFHC does not need to wholly own the regulated financial services entities and direct participation in such entities by non-Promoter Group individuals/ companies is permitted. The pattern of shareholding and the capital requirements in the regulated financial services entities held by the NOFHC shall be as prescribed by the respective sectoral regulators. The FDI limits in such entities would be as per extant FDI policy of the Government of India/ Notifications issued under FEMA. As regards the bank, the foreign shareholding would be as per para 2 (F) of the guidelines.

***Q.65. It is currently unclear as to whether any unregulated financial services business e.g. investment advisory services (not covered within the scope of the extant SEBI guidelines) are permitted to be undertaken and whether they need to fall within the NOFHC umbrella or outside the same and directly held by the Promoter Group entities, or would the Promoter Group mandatorily be required to divest its holdings?***

**A.** The bank as well as the other financial services entities in which the Promoter Group has 'significant influence' or 'control' (as defined in Accounting Standard 23) and that are regulated by RBI or other financial sector regulators will have to be necessarily held under the NOFHC. If any financial service is not regulated by RBI or any of the other financial sector regulators, any entity in the Promoter Group providing such service, cannot come under the NOFHC. The Promoter Group will not be required to divest its holdings in such entities. [para 2 (C) (iii) of the guidelines]

***Q.66. Where a financial services company (Company A) under its current corporate structure has subsidiaries/ associates whose sole business is to undertake outsource activities which are wholly consumed by Company A (for example, a company carrying on back office/ sales operations for a insurance company or a mutual fund), then whether such outsource company would be regarded as a financial services company and be permitted to be held under the NOFHC? Will the answer change if the outsource company also undertakes some activities for other Group entities including non-financial services entities?***

**A.** If a Promoter Group entity rendering outsourced services is regulated by any of the financial sector regulators, it would come under the NOFHC. If the said entity is not regulated by any of the financial sector regulators, it cannot come under the NOFHC. The position remains the same irrespective of whether the outsourced services are provided to the regulated financial services entities of the group or to other group entities, including non financial services entities or to non-group entities. [para 2 (C) (vii) of the guidelines]

***Q.67. Companies within the Promoter Group that are registered with RBI as an NBFCs- Investment Companies are sought to be brought under the NOFHC pursuant to the requirement in the Guidelines to bring all regulated financial entities of the Promoter/ Promoter Group under the NOFHC. Since the activities***

***undertaken by the aforementioned NBFC-Investment Companies are not permitted to be done departmentally by a bank, and no entity under the NOFHC can have equity/ debt exposure to a Promoter Group Company, they will need to liquidate entire investment holding (equity and / or debt) in the Promoter Group Companies. Post Liquidation of the investment holdings, these entities will retain cash or become a non–operative shell company which obviates the very need to bring such companies under the NOFHC in the first place. We would therefore suggest that listed/ unlisted investment companies and /or unlisted investment companies owned by listed companies of the Promoter / Promoter Group (insofar as they are not engaged in the financial services), where a significant portion of the assets are deployed in promoter group entities, be kept outside of the purview of consolidation under the NOFHC as these entities are already regulated by and under the direct supervision of RBI.***

***Q.68. There could be instances where a particular Group has non-operative NBFC/CICs (in addition to the NOFHC), which act solely as a holding companies for companies carrying on non-financial services businesses of the Group. In such situations, would it be correct to read the regulations in a manner that such NBFCs/ CICs would not be considered as companies engaged in financial services business? If yes, then would such NBFCs/CICs be permitted to be held outside of the purview of the NOFHC (since they hold non-financial services businesses of the Group)?***

**A. (67&68)** Para 2(C)(iii) of the guidelines provide that only non-financial services companies/entities and non-operative financial holding company in the Group and individuals belonging to Promoter Group will be allowed to hold shares in the NOFHC. Accordingly, a non-operative financial holding company though regulated by RBI will remain outside NOFHC. NBFC (Investment Companies) which hold/deal in equity shares of Promoter Group Companies cannot be under the NOFHC because, in terms of para 2 (I) (IV) (a) of the Guidelines, the financial entities held by NOFHC shall not have any credit and investment (including investments in the equity/debt capital instruments) exposure to the Promoters/Promoter Group entities or individuals associated with the Promoter Group or the NOFHC. Therefore, NBFC (Investment Companies), which would include CICs and other non-operative holding companies, would remain outside NOFHC. However, if there are investments in voting equity shares of regulated financial sector entities in which the Group has significant influence or control, such entities will have to be brought under the NOFHC. 'Investment Company' as defined under para 2(I)(vi) of the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Direction, 1998, means any company which is a financial institution carrying on, as its principal business, the acquisition of securities.

***Q.69. Where it is not contemplated that the NOFHC be held by the non-financial services operating companies/ entities, does the NOFHC necessarily need to be held by a non-operating financial holding company i.e. a company that undertakes no other activity other than holding the shares in the NOFHC? We understand that***

***the NOFHC may be held by a CIC that also undertakes certain non-financial business.***

***Q.70. Promoters/Promoter Group will be permitted to set up a bank only through a wholly-owned NOFHC. Whether a Core Investment Company with an asset size of more than `100 crore (which would be registered and regulated by RBI can wholly own the NOFHC as per 2(c)(iii) of the guidelines states that non financial companies and non operative financial holding company belonging to the promoter group will be allowed to hold shares in the NOFHC but at the same time stipulates that the NOFHC shall hold the bank as well as all the other financial services entities of the Group regulated by RBI or other financial sector regulators.***

**A. (69 & 70)** It is not necessary that a NOFHC should be held only by non-financial services companies/ entities. It can be held by a CIC or a non-operating holding company. The regulated financial business / entities of the holding company, if any, cannot remain with the holding company. It has to come under the NOFHC. [para 2 (C) (iii) & (vii) of the guidelines]

***Q.71. (a) If a NBFC is desirous of setting up a bank/converting itself into a bank, the guidelines require setting up a NOFHC which will hold the bank (paragraph 2L). However, paragraph 2(C)(iii) does not allow financial services companies (e.g. NBFCs) to have a stake in NOFHC. Hence, by implication, NBFCs are prevented from directly setting up NOFHC and setting up the bank.***

***RBI may clarify if there would be any relaxation for shareholding in NOFHC (promoted by NBFC) with regard to paragraph 2(C) (iii)? What about the applicants who are predominantly into the financial services, and whose parent company itself is finance company, and that too listed.***

***b) As per our interpretation, a widely held and publically listed NBFC can go for banking license by adopting the following structure:***

***a. Listed NBFC forms a NOFHC***

***b. NOFHC forms a bank***

***For a) above, the condition of paragraph 2(C)(ii)(b) would be met as more than 51 percent (in fact 100 percent) shares of NOFHC would be held by the listed NBFC (where public holds > 51 percent). Thereafter, listed NBFC will transfer all assets/ loan portfolio to a new company, thereby listed NBFC would become non-operative financial holding company. This will help meet the condition of paragraph 2(C) (iii). The NOFHC can then form a bank as per b) above. Can you please confirm that above ms with the condition of paragraph 2(C) (iii)?***

**A.** a (i) There would be no relaxation for the pattern of shareholding in the NOFHC with regard to the provisions at the para 2 (C) (iii) of the guidelines

(ii) For the purpose of these guidelines, NBFC (Investment Companies) (which would include CIC and a non-operative holding company) would be held outside the purview of the NOFHC. [para 2 (C) (iii) of the guidelines]. The regulated financial business/entities of the holding company, if any, cannot remain with the holding company. It has to come under the NOFHC. [para 2 (C) (iii) & (vii) of the guidelines]

(iii) In the case of other NBFCs in which public holds more than 51 percent of voting equity shares, wishes to set up a bank or convert itself into a bank, it must transfer all its regulated financial services business to a separate company/companies and transfer the shareholding in such companies to the NOFHC. After it has transferred the regulated financial services business, it can set up a NOFHC, provided it meets the requirements of para 2 (C) (ii) and (iii) of the guidelines.

(b) As stated above, before the listed NBFC holds shares in the NOFHC, it must transfer all regulated financial services business to a new company and shares in that new company must be held by the NOFHC. Conversion of the listed NBFC into a listed non operating holding company would enable meeting the requirement of para 2(C) (iii) of the guidelines provided the listed non operating holding company meets the requirement of para 2(C)(ii)(b) of the guidelines i.e. the public hold not less than 51 percent voting equity shares in the company.

***Q.72. Whether an existing Non-operating listed Holding company, with more than 51 percent public shareholding, will be eligible to promote a Non-Operative Financial Holding Company (NOFHC)?***

**A.** Yes. An existing non-operating listed holding company, with more than 51 percent public shareholding, will be eligible to promote a Non-Operative Financial Holding Company (NOFHC). [para 2 (C) (ii) (b) and 2 (C) (iii) of the guidelines]

***Q.73. Will a Non-operating holding company, being a promoter of NOFHC and holding investments in unregulated financial sector entities and non-financial sector entities, would be required to be registered as a Core Investment Company with the RBI?***

**A.** A non operating holding company being a promoter of NOFHC and holding investments in unregulated financial sector entities and non financial sector entities will be required to be registered as a CIC with RBI if it meets the criteria laid down in para 2 and 3 (h) of Notification No DNBS.PD. 219/CGM(US)-2011 dated January 05, 2011 regarding Regulatory Framework for Core Investment Companies.

***Q.74. Can the NOFHC hold physical assets belonging to the Group and charge for them on an arm's length basis? Similarly, since unregulated activities cannot be held by the NOFHC, we assume that the holding company above the NOFHC can, through a subsidiary, hold related businesses such as technology services or banking correspondent services or distribution services. Is this correct?***

**A.** NOFHC, being a non-operative financial holding company, cannot hold physical assets belonging to the Group and charge for them on an arm's length basis. A holding company of the Promoter Group, which holds the NOFHC can undertake related businesses such as technology services or banking correspondent services or distribution services on its own, or through a subsidiary. If the non-operative holding company is a CIC or NBFC, the relevant regulations will be applicable.

***Q.75. Can an existing non-operating listed holding company, in which the public shareholding exceeds 51 percent and which is proposed to be registered as a CIC, be allowed to operate as the NOFHC?***

**A.** No. An existing non-operating listed holding company, with more than 51 per cent public shareholding cannot operate as the NOFHC as the NOFHC has to be wholly-owned by the Promoter / Promoter Group. The above cited example does not meet this criteria as the non-operating listed holding company has equity shareholding from non-promoters/promoter group entities. However, this existing non-operative listed holding company in which public shareholding exceeds 51 per cent can promote a NOFHC.

A non operating holding company being a promoter of NOFHC will be required to be registered as a CIC with RBI if it meets the stipulated criteria.

If the non operating holding company does not meet the criteria for being defined as a Core Investment Company but is an NBFC (Investment Company) it will be required to be registered with RBI as NBFC(Investment Company).

***Q.76. In many Industrial Groups, the Group investments in non financial Group companies are held through an investment company (SPV/CIC). Since NOFHC is not permitted to hold / invest in non financial entities belonging to the Group, we presume that the requirement of bringing such SPV/CIC below NOFHC would not be applicable. The presumption is made also because it is impractical / economically inefficient / strategically imprudent, for the Industrial Group to house all these Group investments in an Operating Company.***

**A.** For the purpose of these guidelines, the investment company (SPV/CIC) that holds shares only in non-financial companies of the Promoter Group would not be considered as a financial services company and would be held outside the purview of the NOFHC. [para 2 (C) (iii) of the guidelines]

***Q.77. Paragraph 2(C)(iii) also states that only non-financial services companies / entities and non-operative financial holding company in the Group and individuals belonging to the Promoter Group will be allowed to hold shares in the NOFHC. Could you clarify how and the circumstances in which a non-operative financial holding company could be a shareholder of a NOFHC?***

**A.** A non-operative financial holding company is a company which has no operational activities and holds the non-financial sector companies of the Promoter Group and which

has no subsidiaries, joint venture or associate or other controlled entities in the financial sector except investments in the NOFHC. Such company can hold voting equity shares in the NOFHC in accordance with Paragraph 2 (C) (ii) and (iii) of the guidelines. The said holding company can hold upto 100 per cent of the voting equity of the NOFHC, if it has public shareholding of not less than 51 per cent. [para 2 (C)(ii)(b) of the guidelines].

**Q.78. *Could an NOFHC undertake services in the nature of advisory services which are unregulated by any regulator; advisory services which are regulated by SEBI or any other financial services regulator and provide infrastructure (e.g. office space, amenities etc) and related services to entities held by it or otherwise, and receive considerations for the same? Is lending to or investing in entities that are held under the NOFHC are the only financial activity that the NOFHC may undertake?***

**A.** NOFHC cannot provide any advisory services to any entity both within the Group and outside the Group.

The NOFHC can make investment in bank deposits, money market instruments, government securities and actively traded bonds and debentures besides lending to or investing in entities that are held under it. [para 2(H)(i)(c) of the guidelines]

***Q.79. (i) A promoter group that meets clause C (ii) (b) wherein 100% per cent of its voting equity shares are held by the public. It is important to clarify that the promoter group does not have any individual Promoter or relatives of Promoter at all and therefore is a completely public and FI owned corporate entity***

**(ii) A listed NOFHC held by the promoter (above stated publicly held corporate) and has direct public holding. The board of the NOFHC consists of 8 independent directors, 1 promoter nominee and ' employees. We believe this structure meets RBI's intent on the NOFHC which is effectively 100% owned by the public/FI (directly or indirectly), thereby creating the most transparently held NOFHC structure and a ring-fenced NOFHC with almost 80% independent directors on the Board ensuring governance of highest order.**

**A. (a)** It is not necessary that there has to be an individual promoter. The company wherein 100% of voting equity shares are held by the public can set up the NOFHC and hold to the extent of 100% of the voting equity shares of the NOFHC if such a company is a non-financial services company or a non-operating financial holding company in the group. Further, the company itself will be deemed to be the Promoter and all the provisions of the guidelines applicable to the Promoter and the Promoter Group will apply to it.

(b) The listed company cannot be the NOFHC. It will need to form a NOFHC which is wholly owned by it. The number of independent Directors on the Board of the NOFHC should be in compliance with the provisions of paragraph 2 (G) (iv) of the guidelines.

***Q.80. Certain core investment companies are set up or may be set up in the future, purely as investment vehicles in order to hold the promoter investments in other companies. While these are not financial services companies, they are regulated by the RBI. Would these companies be included under clause 2 C (iii) above?***

**A.** For the purpose of these guidelines, a non-operative holding company that holds shares only in non-financial companies of the Promoter Group would not be considered as a financial services company and would be held outside the purview of the NOFHC.

***Q.81. Please clarify that promoter group entities, which hold investments in group companies or investments in normal course of business, are not required to come under the NOFHC and that such promoter group entities can hold shares in the NOFHC***

**A.** Promoter Group entities, which hold investments in group companies or investments in the normal course of business, are not required to come under the NOFHC. They can hold shares in the NOFHC, provided the conditions stipulated in para 2(C) (ii) & (iii) of the guidelines are met.

***Q.82. If a financial services company is a listed company and the promoter holding therein is not more than 49 per cent, can this be regarded as compliance with condition at 2(C)(ii)(b)?***

**A.** No. A financial services company of the Promoter Group cannot participate in the voting equity shares of the NOFHC.

If the Promoters/Promoter Group which has a financial services company, listed or otherwise, wishes to set up a bank, the said financial services company must transfer all its regulated financial services business to a separate company/companies and transfer the shareholding in such companies to the NOFHC. After it has transferred the regulated financial services business, it will cease to be a financial services company, and it can set up a NOFHC provided, the public shareholding in it is not less than 51 per cent. [ Paragraph 2(C)(ii) and (iii) of the guidelines]

***Q.83. What kind of non operative holding companies of a group are envisaged to be holding shares in the NOFHC? Would such companies be classified as CICs?***

***Q.84. Will a non-operating holding company, being a promoter of NOFHC and holding investments in unregulated financial sector entities and non-financial sector entities, would be required to be registered as a Core Investment Company with the RBI?***

**A. (83 & 84)** A non operating holding company that holds investments in unregulated financial sector entities and non financial sector entities will be eligible to hold voting equity shares in the NOFHC. It will be required to be registered as a CIC or NBFC with RBI if it meets the stipulated criteria.

***Q.85. In respect of activities that a bank could conduct either within the bank or through a separate entity (such as credit cards, primary dealers, leasing, hire purchase, factoring, etc), is such entity required to be a subsidiary / joint venture / associate of the bank or of the NOFHC?***

**A.** Activities such as credit cards, primary dealer, leasing, hire purchase, factoring etc., can be conducted by a bank departmentally or through a separate entity or entities outside the bank. If such an activity is to be carried through a separate entity, then it should be carried on by a subsidiary, joint venture or associate of the NOFHC, and not of the bank, unless it is legally required or specifically permitted by RBI. [para 2 (C) (iv) of the guidelines].

***Q.86. In respect of business that a bank is permitted to carry on through a separate entity, are the activities limited to credit cards, primary dealers, leasing, hire purchase, factoring or could it include any other ancillary activities at the discretion of the bank?***

**A.** As per the extant instructions, prior permission of RBI is necessary for the banks to invest in the equity of subsidiaries and financial services entities. Accordingly, banks would require RBI's approval for setting up subsidiaries / joint ventures / associates for conducting activities permitted to banks under Section 6 of the BR Act, 1949. The general principle in this regard is that para-banking activities, such as credit cards, primary dealer, leasing, hire purchase, factoring etc., can be conducted either inside the bank departmentally or outside the bank through subsidiary/ joint venture /associate. Activities such as insurance, stock broking, asset management, asset reconstruction, venture capital funding and infrastructure financing through Infrastructure Development Fund (IDF) sponsored by the bank can be undertaken only outside the bank. Lending activities must be conducted from inside the bank. However, other regulated financial servicesentities (excluding entities engaged in credit rating and commodity broking) in which the Promoter/Promoter Group has 'significant influence' or 'control' (as defined in Accounting Standard 23) have to be held under the NOFHC and not under the bank unless it is legally required or specifically permitted by RBI. [para 2 (C) (iv) of the guidelines].

***Q.87. Is there any restriction on FDI in subsidiary/ies of banks as well?***

**A.** In the normal course, a bank held under the NOFHC will not be permitted to have subsidiaries. A subsidiary of the bank can be set up only where it is legally required or specifically permitted by RBI [para 2(C) (vi) of the guidelines]. FDI investments in the subsidiary of the bank or in the financial services entities held under the NOFHC would be as per the DIPP guidelines of Government of India/Notifications issued under FEMA.

***Q.88. Under clause 2 (C)(vi), the NOFHC is not permitted to set up any new financial services entity for at least 3 years from date of commencement of its business, what does "set-up" envisage? Could minority shareholding be regarded as "set-up"?***

**A.** Setting-up would mean incorporating a new entity or acquiring shares in an existing entity in which the Promoter Group will have 'significant influence' or 'control' (as defined in Accounting Standard 23) and which carries on regulated financial services business whereby such entities would be required to be a subsidiary, joint venture or associate of the NOFHC. [para 2 (C) (vi) of the guidelines]

***Q.89. Can the bank "set-up" new financial services business as subsidiaries/ joint ventures below it with RBI permission?***

**A.** Normally the bank will not be permitted to set up a subsidiary / joint venture under it. However, a bank may be permitted to set-up a subsidiary / joint venture under it, where it is legally required or specifically permitted by RBI (For example, a banking subsidiary for carrying on the business of banking exclusively outside India). [para 2 (C) (vi) of the guidelines]

***Q.90. If the intention to "set-up" new financial services business is mentioned in the application for banking licence made to the RBI, would this be considered / permitted?***

**A.** Promoters/Promoter Groups will not be permitted to set up any new financial services entity within three years from the date of commencement of business of the NOFHC, even if such intention is mentioned in the applications. [para 2 (C) (vi) of the guidelines]

***Q.91. Clause 2(C)(vii) provides that only those regulated financial sector entities in which a Promoter Group has significant influence or control will be held under the NOFHC. Could the Promoter Group continue to hold non-regulated financial services entities over which it has significant influence or control (or otherwise) outside of the NOFHC structure or would it mandatorily be required to divest its holdings?***

**A.** Yes. The financial services entities of the Promoter Group which are not regulated by RBI or any other financial sector regulator cannot be brought under the NOFHC structure. [para 2 (C) (iii) of the guidelines]

***Q.92. Clause 2D(iv) of the Guidelines envisages an increase in voting capital in first 5 years by way of public issue or private placements. Can funds be raised by way of rights issue?***

**A.** Yes, subject to regulations relating to rights issues. The shareholding of the NOFHC will be a minimum of 40 per cent of the paid up voting equity capital of the bank which shall be locked in for a period of five years from the date of commencement of the business of the bank. The shareholding in excess of 40 per cent of the total paid up voting equity capital should be brought down to 40 per cent within three years from the date of commencement of business of the bank. [para 2 (D) (ii) and (iii) of the guidelines]

***Q.93. Are the bank and the NOFHC permitted to have common directors? Can they therefore also have some and/or all common independent directors? Similarly, can the NOFHC have some and/or all common independent directors as other regulated financial services entities held by the NOFHC?***

**A.** There could be common directors in the NOFHC and the bank. [para 2(G)(i) of the guidelines]. A director of the NOFHC cannot be considered as independent director of the bank. The common directorship between the NOFHC and other regulated financial services entities would be as per the regulations of the sectoral regulators concerned. [para 2 G (iv) of the guidelines]

***Q.94. Whether a bank is to be incorporated prior to making an application to the RBI for a licence? Is the bank to be incorporated as a public or private limited company?***

**A.** No. The bank cannot be incorporated without obtaining 'in-principle approval' from the Reserve Bank. The bank will be incorporated as a public limited company.

***Q.95. Is the banking company required to be incorporated before submitting the application? If not, how should form III, which seeks details of the date of incorporation etc. be completed ?***

**A.** No. The bank cannot be incorporated without obtaining 'in-principle approval' from the Reserve Bank. In case in-principle approval is given by the Reserve Bank, the bank should be set up within a period of 18 months from the date of in-principle approval. The same may be mentioned in the Form III.

***Q.96. For a listed NBFC (which has individual promoter holding more than 10 percent shares in individual capacity), that desires to form a bank - the ownership of listed NBFC needs to be moved to NOFHC as per paragraph 2(C) (iii).***

***This can be achieved by swap of shares in which NOFHC will acquire shares of listed NBFC from the existing shareholders and will in turn issue NOFHC shares to the shareholders. In such a scenario, the limit of 10 percent holding by individual promoter in NOFHC as mentioned in paragraph 2(C) (ii)(a) may not be met on the day one as the shareholding of NOFHC will be the mirror image of that of the listed NBFC. However, since NOFHC will have to bring its holding in the bank to 40 percent within three years, the individual promoter's holding will be automatically reduced to below 10 percent, although it may be more than 10 percent in NOFHC to begin with.***

***Will there be any dispensation / relaxation for condition of paragraph 2(C)(ii)(a)?***

***Will individual promoters be allowed to divest their holding over a period of time – say 2-3 years to get reduced to 10 percent?***

**A.** This model is not possible for the following reasons:

(i) The NOFHC should be wholly owned by the Promoters/Promoter Group [para 2(A) of the guidelines].

(ii) If as a result of the share swap, any part of the shareholding of the NOFHC is held by the public, which holds shares in the listed NBFC, then the NOFHC cannot be wholly owned by the Promoters/Promoter Group.

The model to be followed in such cases is described in reply to Query at Sl.No.71 above.

***Q.97. The capital structure of the wholly-owned NOFHC set up by Promoter / Promoter Groups in Private Sector shall consist of:***

***a) voting equity shares not exceeding 10 percent of the total voting equity shares of the NOFHC held by any individual belonging to the Promoter Group, along with his relatives (as defined in Section 6 of the Companies Act 1956) and along with entities in which he and / or his relatives hold not less than 50 percent of the voting equity shares, and***

***b) companies forming part of the Promoter Group whereof companies in which the public hold not less than 51 percent of the voting equity shares shall hold not less than 51 percent of the total voting equity shares of the NOFHC."***

**Our query is: -**

**"How to bring rest 90 percent voting equity shares in NOFHC to make it fully owned" assuming promoters do not have any listed company, in which public is substantially interested?**

**A.** The requirement is that the NOFHC has to be wholly owned by the Promoters/Promoter Group. Further, at least 51 percent of the voting equity shares of the NOFHC have to be held by companies in the Promoter Group in which public hold not less than 51 percent of the voting equity of those companies. A company in which public holds 51 per cent need not necessarily be listed.[para 2 (C) (i) & (ii) of the guidelines]

***Q.98. Whether a CIC listed on a Stock Exchange, either registered with RBI or not, can be a 100 percent promoter of an NOFHC to promote a bank?***

**A.** Yes. A listed CIC in the Promoter Group can have a 100 percent shareholding in the NOFHC, provided the public hold not less than 51 percent of the voting equity shares in the CIC. [para 2 (C) (ii)(b) and 2 C (iii) of the guidelines]

***Q.99. Are both conditions at paragraph 2 (c) 2 (a) and (b) necessary. Will a promoter group company where the public holding is greater than 51% allowed to hold 100% of the voting equity shares of the NOFHC.***

**A.** A promoter group company where the public holding is greater than 51 per cent can have a 100 percent shareholding in the NOFHC. [para 2 (C) (ii) (a) and (b) of the guidelines]

***Q.100. Whether a multi-layered, non-operative company i.e. Promoting company Holding only investments, while the one on top of it involved in Financial Sector, can be a 100 percent promoter of an NOFHC to promote a bank, if the promoter company meets public holding criteria of at least 51 percent ?***

**A.** The guidelines require that:

i. all regulated financial services entities of the Promoters/Promoter Group in which the Promoters/Promoter Group has 'significant influence' or 'control' (as defined in Accounting Standard 23) should be carried on only through entities held by the NOFHC.
ii. no entity in which the NOFHC has a shareholding can hold shares in the NOFHC.

Therefore, there cannot be a company involved in the financial sector which is on top of the NOFHC and is a 100 percent promoter of the NOFHC.

***Q.101. Will a Housing Finance Company (HFC) or Housing Finance Activities of the promoting company will necessarily have to be brought under NOFHC ? In case the HFC is substantially held by a Financial Sector Regulated entity will RBI insist on the investing company (financial sector entity) to come under NOFHC?***

***Q.102. If the Group presently provides housing finance through an entity established for this purpose, please could you clarify whether these activities could continue to be undertaken by the housing finance entity under the NOFHC? Alternately, could the bank hold the housing finance entity as its subsidiary, a structure which some other banks appear to have adopted ?***

**A. (101 & 102)** Lending activities must be conducted from inside the bank. Therefore, the housing finance activity of the HFC should be transferred to the bank under the NOFHC. The financial sector regulated entity which holds the HFC substantially will have to come under the NOFHC.[para 2(C)(iii) of the guidelines]

***Q.103. Can an entity incorporated under Companies Act which is listed on stock exchanges, regulated by one of the financial sector regulator and engaged primarily in retail mortgage lending, promote the NOFHC?***

**A.** No. Such an entity cannot promote a NOFHC because lending activities must be conducted from inside the bank. Therefore, the retail mortgage lending activity of the entity should be transferred to the bank under the NOFHC. Further, all regulated financial services entities of the Group in which the Promoter Group has 'significant influence' or 'control' (as defined in Accounting Standard 23) have to be held by a NOFHC. [para 2 (C)(iii) and (vii) of the guidelines]

***Q.104. Will the applicant be treated as a private sector entity if the total Government /Public Sector Undertaking / Government companies' shareholding in the applicant is less than 50 percent?***

**A.** Entities, in which the Government / Public Sector Undertaking / Government Companies' shareholding is less than 50 percent, would be treated as private sector entities, provided there are no explicit or implicit agreements or arrangements through which Government can exercise control. [para 2 (A) (i) of the guidelines]

***Q.105. If 40 percent of the applicant is held by a regulated public financial institution incorporated under an Act of Parliament and wholly owned by the Government of India, by virtue of the applicant's shareholding by a public financial institution incorporated under an Act of the Parliament, will such financial institution be treated as an entity not belonging to the Promoter Group ? Further, due to the proviso to Clause II of Annexure I of the guidelines, can it be interpreted that this financial institution will not be part of the Promoter Group?***

***Q.106. In the event of the FI floating a new bank under the NOFHC structure, which entities would be deemed as the promoter group for the purpose of the new bank licence guidelines? A reference is also invited to the clarification provided in Annexure to the RBI guidelines wherein it is stated that FIs and banks holding 10% or more equity in the corporate who promotes NOFHC, would not be treated as promoter group.***

**A. (105 & 106)** Whether a public financial institution is part of the Promoter Group will depend upon whether it is in effective control of the NOFHC to the exclusion of any other person.

***Q.107. Please clarify whether it is compulsory to transfer the existing mortgage lending business of the promoter Company to the new Bank and whether any dispensation would be given to permit the existing mortgage business to be continued within the existing company outside the bank ?***

***Q.108. NBFC-IFC framework was given shape to meet the increasing financing needs of the Infrastructure sector which could not be met by banks within the regulatory framework for banks. Now that the promoters/promoter entities are required to bring all their financial sector activities under the NOFHC promoting the bank, does RBI require that the Infrastructure lending activity currently being undertaken by the promoter be necessarily folded into the bank or it can be undertaken by a separate NBFC-IFC under the NOFHC?***

***Q.109. Can a Promoter Group having existing NBFC operations continue the NBFC operations (of loan business) even after setting up of the Bank especially since they finance to niche areas and also since the financial investors of the NBFCs may be uncomfortable migrating to a–banking system - Para 2 C (iv) (b) seems to permit this.***

***Q.110. From the paragraph 2 (C) (iv) (b) of the guidelines, it is clear that hire purchase / leasing activities / factoring activities are permitted to be carried on. Hence, the objective appears to be, to allow activities which a Bank can operate concurrently with another entity / NBFC alongside. However, the term "loan business" has not been specifically mentioned. Whether the term "etc" can include loan companies also? There does not seem to be any rationale for exclusion only for loan companies while permitting hire purchase & leasing companies. It may be noted that all NBFC activities are essentially in the nature of hire purchase / leasing transactions and the nomenclature / migration to that of a loan agreement was done (about 5-6 years back) only due to the imposition of additional costs like service tax. For NBFCs, the hire purchase and lease is only a financing transaction and not an operating lease etc. The objective in all 3 transactions (Hire purchase, Lease and Loan) is only to lend money and recover the same with interest over a fixed period.***

***Can a Promoter Group having existing NBFC operations continue the NBFC operations (of loan business) even after setting–up of the Bank - Para 2 C (iv) (b) seems to permit this.***

***Q.111. Infrastructure Lending is perceived riskier than some other types of lending, within an Infrastructure Finance Company framework, the investors / debtors are well aware of the use of their funds. However under a bank set-up since the liabilities are fungible, the risk (of lending to infra projects) is passed on to the depositor. We therefore believe that the infra business should be allowed to be kept outside a new bank considering the risks and difficulties in initial integration, and therefore request the RBI to make an exception.***

**Q.112. We believe that Infrastructure Financing should be considered as a specialized activity to be conducted through a separate financial entity outside the bank but under the NOFHC. RBI has frequently expressed its concerns on the increasing share of bank lending to the Infrastructure sector, given its long term liability profile and higher weighted risks. Therefore, it is our submission that it would be better to allow Infrastructure Financing to be carried out in an IFC format, with its more stringent and appropriate regulatory compliances.**

***Q.113. Whenever an activity can be undertaken both by a bank and by an NBFC (e.g. Housing Finance) we understand that Promoter would be allowed to exercise either of the options, at his discretion. Please confirm.***

**A. (107 to 113)** The general principle in this regard is that para-banking activities, such as credit cards, primary dealer, leasing, hire purchase, factoring etc., can be conducted either inside the bank departmentally or outside the bank through subsidiary/ joint venture /associate. Activities such as insurance, stock broking, asset reconstruction, venture capital funding and infrastructure financing through Infrastructure Development Fund (IDF) sponsored by the bank can be undertaken only outside the bank. Lending activities must be conducted from inside the bank. However, other regulated financial services

entities (excluding entities engaged in credit rating and commodity broking) in which the Promoters/Promoter Group has 'significant influence' or 'control' (as defined in Accounting Standard 23) have to be held under the NOFHC and not under the bank unless it is legally required or specifically permitted by RBI. [para 2 (C) (iv) of the guidelines]

***Q.114. (i) Is it possible to form a 'consortium' of business entities/groups that creates a NOFHC to promote a new bank?***

***(ii) Alternatively, if a strategic partner were to acquire a stake (below 26 percent) in one of the companies holding the NOFHC promoted by an existing group, would that partner also be construed as a promoter?***

***(iii) Would the strategic partner be required to bring its existing financial services businesses also under the NOFHC set-up by the promoters?***

**A.** (i) No. The NOFHC has to be wholly owned by a single Promoter/Promoter Group (as per the definition given in Annex I to the guidelines) and the pattern of shareholding would be as per the provisions laid down at par 2(C)(ii) & (iii) of the guidelines. Two or more separate groups cannot combine together to set up a NOFHC.

(ii) & (iii) A strategic shareholder not being a part of the Promoter Group, can be a shareholder in a company belonging to the Promoter Group (as per definition in Annex I to the guidelines), which holds shares in the NOFHC. If the strategic partner is in control of the company and is not a resident, then the company cannot hold shares in the NOFHC, as NOFHC has to be owned and controlled by residents. The strategic partner cannot be considered as part of the public shareholding, if he, by virtue of his shareholding or otherwise, exercises significant influence and control over the company.

***Q.115. Where a listed/ unlisted public company/ private company is a promoter, can a strategic investor of such listed/ unlisted public company / private company who is not a promoter/ promoter group, hold shares directly in the banking company?***

**A.** Yes. However, no single entity or group of related entities, other than the NOFHC, shall have shareholding or control, directly or indirectly, in excess of 10 per cent of the paid-up voting equity capital of the bank and any acquisition of shares which will take the aggregate holding of an individual / entity / group to the equivalent of 5 per cent or more of the paid-up voting equity capital of the bank, will require prior approval of RBI. [ para 2 (K)(ii)(iii) of the guidelines ]

***Q.116. Can an NOFHC be set up jointly by 2 different promoter groups each satisfying the conditions laid out in 2(A) of the guidelines?***

**A.** No. The NOFHC has to be wholly owned by a single Promoter/Promoter Group (as per the definition given in Annex I to the guidelines and the pattern of shareholding would

be as per the provisions laid down at para 2(C)(ii) & (iii) of the guidelines. Two or more different promoter groups cannot combine together to set up an NOFHC.

***Q.117. What would be construed as 'misaligned with the banking model?' Would pure agency business, though market- linked, be construed as speculative? (e.g. broking) If so, then if the overall contribution is less than 15 percent of the revenues and/or assets, then would it still be substantial enough to be construed as misaligned.***

***Q.118. Promoter / Promoter Groups' business model and business culture should not be misaligned with the banking model and their business should not potentially put the bank and the banking system at risk on account of group activities such as those which are speculative in nature or subject to high asset price volatility. Businesses / activities that are being considered as speculative or having high asset price volatility may be explicitly clarified*.***

***Q.119. Please elaborate and provide parameters for / specific description / examples of :***

***a. business model and business culture considered by RBI to be misaligned with banking model***

***b. businesses / activities which RBI considers to be speculative in nature or subject to high asset price volatility.***

***These clarifications will be helpful in appreciating RBI's expectations and for planning future business.***

**A. (117 to 119)** 'Misaligned with the banking model' would mean business model and business culture which potentially puts the bank and the banking system at risk on account of group activities such as those which are speculative in nature or subject to high asset price volatility [para (2) (B) (c) of the guidelines]. It is not possible to exactly define substantial contribution in terms of percentage, but it will be seen in the overall context of business activities.

***Q.120. On ownership of the NOFHC, Can the company (with > 51 percent public holding) be a Core Investment Company?***

**A.** If the core investment company belonging to the promoter group has more than 51 percent public holding, then it can set up the NOFHC, and have upto 100 percent voting equity shares of the NOFHC.

***Q.121. Does public holding mean (i) Listing is necessary? (ii) Absence of any other large shareholders? (e.g. 2-3 others owning 5-10 percent each)***

**A.** Public shareholding does not necessarily imply that the company is listed. What is required is that at least 51 percent of the shareholding is widely dispersed among shareholders other than the Promoters and none of such shareholder along with his relatives (as defined in Section 6 of the Companies Act, 1956) and entities in which he and / or his relatives hold not less than 50 percent of voting equity shares exercise 'significant influence' or 'control' (as defined in Accounting Standard 23) by virtue of his shareholding or otherwise.

***Q.122. On holding structure, will the transfers of shares to NOFHC be tax exempt?***

***Q.123. Aligning the existing Group business and ownership structure to the form required by the Guidelines will require transfers of shareholdings and / or business activities within the Group. Such transfers may be liable to income tax, VAT and / or stamp duty. The Financial Holding Working Group Report released by the RBI had recommended amendments to taxation and stamp duty laws to minimise the transition cost of migrating to the Financial Holding Company Structure. This was also reiterated during the discussions in relation to the amendment to the Banking Regulation Act, 1949. Can any relief be expected in this regard ?***

***Q.124. There may be a one-time tax implication on the transfer of existing financial services entities from their current holding structure to the NOFHC, would the RBI recommend an exemption for such kind of transfers due to the fact that these have been done to comply with regulation?***

***Q.125. The applicants who go for new bank licence will have to make changes in their structure/ shareholding / asset portfolio. It is submitted that RBI may take up the matter with Ministry of Finance for giving one time dispensation from income tax by way of exemption to applicants who have to restructure their shareholding / assets / portfolio etc. to meet with New Banking licence guidelines.***

***Q.126. Whether exemption from tax or duties (stamp duty or otherwise) shall be available, which may arise pursuant to any restructuring, which shall be required to be undertaken for complying with the Banking guidelines.***

***Q.127. The Final Guidelines require Promoters to form an NOFHC and transfer all the regulated financial services activities of the Promoter group under the NOFHC. Also, activities that a bank can do departmentally need to be transferred from multiple regulated financial services entities to the Bank. Both these stipulations require significant restructuring of existing businesses with attendant material tax and stamp duty implications. For a successful and timely adherence to the prescribed guidelines, it would be critical if RBI and Government can provide a one time tax and stamp duty exemption for restructuring undertaken pursuant to these guidelines.***

***Q.128. Creation of NOFHC will add one more layer to the corporate Structure of a Promoter Group. Consequently, there will be a material additional incidence of***

***Dividend Distribution Tax under the extant tax regulations. It would be critical for RBI and Government to provide pass through benefit of dividends declared and received by an NOFHC from financial services entities under it.***

***Q.129. Process of restructuring the existing financial entities (of Promoter group) to comply with guidelines involves substantial unintended costs including by way of stamp duty, income tax etc (e.g. MAT implication for NOFHC, as NOFHC would be non-operating entity having no offset available under MAT). Hence, appropriate changes to various legislations would be required to avoid this burden. We request that appropriate transition period is provided till the relevant legislations are so amended.***

***Q.130. Conversion of an existing NBFC into Bank through transfer / divestment / sell of portfolio could be subjected to stamp duty. It is submitted that RBI may take up the matter with Central Government for giving exemption to applicants who have to restructure their assets portfolio to meet with New Banking license guidelines of RBI. Central Government may persuade the State Government to follow suit.***

**A. (122 to 130)** Taxation will be as per the laws / rules of the tax authorities.

***Q.131. (i) Is it necessary to name a CEO at the application stage?***

***(ii) Although Form III of the Banking Regulation (Companies Rule, 1949) requires applicants to provide the name of the CEO at the time of submission, applicants may find it difficult to attract the very best talent before getting clarity in the form of an in-principle approval. Hence it may not be desirable to have a particular CEO identified at the time of submission of the application itself. In view of the foregoing, and since the choice of the Bank CEO would in any case be subject to final approval by the RBI, our understanding is that we need to identify the particular candidate for the CEO's position after getting an in-principle approval for the bank license but before commencement of operations. Please confirm.***

**A.** (i) & (ii)If a CEO is not identified at the application stage, names of management team including the CEO would be required to be furnished to the Reserve Bank after grant of in-principle approval.

***Q.132. The prescribed Form III requires the Applicant to give the name of the proposed Chief Executive Officer, his qualifications, experience, age and the proposed remuneration.***

***Pending the in-principle approval from RBI for a bank license, many likely CEO candidates with existing engagements may not be able to accept a role with potential applicants.***

***It would be useful if RBI could clarify that pending the grant of a licence, a professional who is part of the Promoter Group can be appointed as an interim CEO and post the grant of an in-principle approval, the successful applicant can appoint a full time CEO with the prior approval of RBI.***

**A.** Ownership and management shall be separate and distinct in the NOFHC, the bank and entities regulated by RBI. [Paragraph (G) (vii) of the guidelines]. If a CEO is not identified at the application stage, names of management team including the CEO would be required to be furnished to the Reserve Bank after grant of in-principle approval.

***Q.133. Would RBI allow new banks to use their/group brand name or logo or taglines used by other entities in the promoter group?***

**A.** Yes. The banks could use the promoter group's brand name / logo or taglines in so far they represent and convey the banking function.

***Q.134. Will a promoter holding minority stakes (say 27 percent) in the entity holding 100 percent of the NOFHC promoting a bank, be restricted from increasing its stakes in the promoting entity? If yes, for what period?***

**A.** The requirement as per the guidelines is that companies forming part of the Promoter Group whereof companies in which the public hold not less than 51 percent of the voting equity shares shall hold not less than 51 percent of the total voting equity shares of the NOFHC. As such, under no circumstances promoters would be allowed to increase their shareholdings in such companies beyond 49 percent in future in accordance with the requirement of para (2) (C) (ii) of the guidelines.

***Q.135. Will RBI consider providing on its website, a list of unbanked centres with population less than 9,999?***

**A.** List of unbanked centres with population less than 9,999 can be obtained from the concerned State Level Bankers Committees (SLBCs) and District Consultative Committees (DCCs) at the time of opening branches.

***Q.136. (i) It is our understanding that a widely held, listed NBFC, with no operations, can be the NOHFC that holds a Bank. Please confirm.***

***(ii) It is also our understanding that a widely held listed NBFC, with no operations, and with no Promoter / Promoter Group, can be the NOHFC that holds a Bank. Please confirm.***

***(iii) Please confirm that it would be permissible for the Government of India to own more than 10 percent, but less than 26 percent, of a widely held, listed NOFHC, with no Promoter/Promoter Group, that holds the Bank.***

***(iv) Para 2K(iii) states that "No single entity or group of related entities, other than the NOFHC, shall have shareholding or control, directly or indirectly, in excess of 10 percent of the paid-up voting equity capital of the bank". Our understanding is that it would be permissible if the Government of India were to be the only entity that holds more than 10 percent, but less than 26 percent of the Bank.***

**A.** (i) to (iii)The NOFHC must be wholly owned by the Promoters/Promoter Group. Therefore, it cannot be listed and accordingly a listed NBFC cannot be a NOFHC.

(iv) The 10 percent stipulation will also apply to the Government of India shareholding in the bank, as these banks would be private sector banks.

***Q.137. Para 2A of the Guidelines state that "Entities / Groups in the private sector that are 'owned and controlled by residents' as defined in DIPP & FEMA regulations are eligible to promote NOFHC". It is our understanding that a listed company that is deemed today to be a "Foreign Owned Indian Company", can apply for a banking license and is eligible to become the NOFHC that holds the Bank, provided however it becomes an "Indian Company owned and controlled by residents" prior to the commencement of the operations of the Bank, i.e. it becomes compliant with the Guidelines within 12 months of the issuance of the in-principle license. Please confirm.***

**A**. The NOFHC has to be wholly owned by the Promoters/Promoter Group. Therefore, a listed company cannot be a NOFHC.

At the time of making applications, the Promoters/Promoter Group will have to furnish a road map and methodologies they would adopt to comply with all the requirements of the corporate structure indicated in para 2 (A) and (C) of the guidelines. After the 'in-principle approval' is accorded by RBI for setting up of a bank, the Promoters/Promoter Group will have to comply with all the requirements and the proposed bank has to start operations within 18 months from the date of in-principle approval or the date of commencement of operations whichever is earlier.

***Q.138. Para 2D(iii) of the Guidelines talks about the minimum voting equity capital requirements for banks and shareholding by NOFHC. It states that "the shareholding by the NOFHC in the bank in excess of 40 percent of the total paid-up voting equity capital shall be brought down to 40 percent within three years from the date of commencement of business of the bank". Keeping the principle of diversified ownership in mind, could you clarify the following two points in particular context of a widely held, listed NOFHC with no Promoter/Promoter Group and with no single entity owning more than 10 percent:***

***(i) Would such an NOFHC be required to dilutes stake in the Bank to 40 percent?***

***(ii) Would the Bank held by such an NOFHC need to be listed?***

**A.** The Promoters/Promoter Group have to set up a wholly owned NOFHC as per the corporate structure prescribed in para 2(C) of the guidelines. The NOFHC, therefore, cannot be a listed company. The wholly owned NOFHC has to bring down its shareholding in the bank in excess of 40 percent to 40 percent within three years from the date of commencement of the business of the bank. The bank shall get its shares listed in stock exchanges within three years of its commencement of the business.

***Q.139. (i) Under DIPP guidelines, if the non-resident shareholding in a company is less than 50 percent, the 'see through' clause does not apply for downstream investments. As per Para 2F of the Guidelines for licensing of New Banks in the Private Sector, no non-resident can hold more than 5 percent in the Bank. In a situation where the total foreign shareholding in an NOFHC is less than 50 percent, could a non-resident individual shareholder continue to hold more than 5 percent but less than 10 percent in the NOFHC, since the "see through" clause does not apply? Please clarify.***

***(ii) In the same vein as the above point, in a situation where the NOFHC is holds>50 percent by Indian share holders, does NOFHC holding qualify as Indian ownership considering no "see though". In this context, when the Bank has to be listed and its holding by the NOFHC dilutes 40 percent, can the Bank have up to 49 percent aggregate non-resident shareholding? Please clarify.***

**A.** (i) The requirement is that the NOFHC has to be wholly owned and controlled by resident. Therefore, non-residents cannot hold shares in the NOFHC.

(ii) The NOFHC being wholly owned by the entities / Groups in the private sector that are 'owned and controlled by residents', its shareholdings in the bank would not be counted for non-resident shareholding, and the bank can have an aggregate foreign shareholding of 49 per cent of the paid up voting equity capital for the first five years from the date of licensing. [Paragraph 2 (F) of the guidelines]

***Q.140. Para 2C(iii) of the Guidelines states that "The NOHFC shall hold the bank as well as all the other financial services entities of the Group …". Notwithstanding this para, could the NOFHC hold a non-financial services company as a subsidiary, provided however, such a company is a Section 25 Company for the sole purpose of carrying out Corporate Social Responsibility activities? Please clarify.***

**A.** No, unless permitted by RBI.

**Q.141.** ***(i) Whether a Multi-State Cooperative Society is eligible to promote a bank as per the NOFHC? This clarification is sought as "Private Sector" is not defined in the guidelines.***

***(ii) Whether entities registered under the Multi State Cooperative Societies Act wholly owned by Cooperatives with no GOI equity are eligible to be counted as being in Private Sector?***

**A:** The guidelines do not bar a Multi-State Cooperative Society (MSCS) from being a Promoter. A MSCS can be a public sector entity or private sector entity depending upon the extent of Government control. These guidelines do not cover setting up of private sector banks by cooperative banks or conversion of cooperative banks into commercial banks in the private sector.

***Q.142. The proposed guidelines require the Promoter / Promoter Group to set up a Bank only through a wholly owned Non-Operative Financial Holding Company (NOFHC). NOFHC is also required to hold all the other financial services entities of the Group regulated by RBI or other financial services regulators. We seek clarification on the applicability of this provision in the guidelines for joining of two different entities to form the Promoter Group.***

***Q.143. Can two or more unrelated listed entities act as promoters in NOFHC?***

**A.(142 & 143)** The NOFHC has to be wholly owned by a single Promoter/Promoter Group (as per the definition given in Annex 1 to the guidelines) and the pattern of shareholding would be as per the provisions laid down at par 2(C)(ii) & (iii) of the guidelines. Two or more separate groups cannot combine together to set up a NOFHC.

***Q.144. Can a Promoter / Promoter group which even though has an existing NBFC, choose to be classified under Para 2 A (i) (promote a bank through a wholly-owned Non-Operative Financial Holding Company (NOFHC)) instead of Para 2 A (ii) (promote a bank or convert the NBFC into bank and transfer permitted activities to the bank), such that there is no requirement of the conditions set out in Para 2 (L) which deals with migration of NBFC business into the bank?***

**A.** Yes. Promoters/Promoter Group having an existing NBFC can choose to promote a bank through a wholly owned NOFHC. However, the existing business of the NBFC will have to be migrated into the bank in compliance with conditions laid down in para 2 (L) and 2 (C) (iv) of the guidelines.

***Q.145. The Final Guidelines indicate that the RBI would come out with an overall policy discussion paper on banking structure in India within two months. Kindly clarify what this is and whether the existing guidelines will undergo a change due to this?***

**A.** The policy discussion paper mentioned in the guidelines relates to the banking structure of the country. The policy discussion paper mentioned in the guidelines will relate to the banking structure in the country and will be applicable both to existing and new banks. The present policy guidelines for licensing of new banks in the private sector will not undergo any change due to the policy discussion paper on banking structure in India.

***Q.146. Para 2 C deals with Corporate structure of the NOFHC. Para 2 C (i) states that the NOFHC should be wholly owned by the Promoter"/ Promoter G"o–p. We***

***request you to clarify what is meant by the term "wholly owned" - To confirm that there is no problem for any minority foreign share h'lding in the promoter / promoter group entities that promote the NOFHC's. For Eg: If A promotes an NOFHC, there is no issue if another foreign entity / entities own a minority stake between 10 to 35 percent in A, as long as A is a Promoter entity and it is Indian owned and controlled. While the entity will be mainly owned and controlled by the Indian promoter, can there be some small minority foreign investors in the NOFHC who could either be financial investors or could be long term technology / operation partners.***

**A.** The Promoters/Promoter Group entity setting up the NOFHC can have minority foreign shareholding provided these entities are 'owned and controlled by residents' as per para 2(A)(i) of the guidelines. The guidelines do not envisage any direct holding by non-promoters/promoter group entities including foreign investors in the NOFHC. Further, the promoters will have to comply with stipulations at–para 2 (C) (i) and (ii) of the guidelines.

***Q.147. Para 2 C (ii) (a) - mentions about a cap of 10 percent on ownership by individuals while Para 2 C (ii) (b) mentions about shares of the NOFHC being held to the extent of 51 percent by companies in which public hold "more than 51 percent". This seems to be contrary to the definition of a "wholly owned NOFHC". As this may result in a situation where companies which are not fully owned & controlled by the Promoters becoming shareholders of the NOFHC, this may please be clarified.***

**A.** The guidelines provide that a NOFHC should be wholly owned by the Promoters/Promoter Group i.e., by individuals belonging to the promoter group and entities in the promoter group in which the Promoter/Promoter Group are in effective control. Within such shareholding, not less than 51 percent of the voting equity shareholding of the NOFHC must be held by companies in which the public hold not less than 51 percent of the voting equity shareholding. The remaining 49 per cent of voting equity shareholding in such publicly held companies [para 2(C)(ii)(b) of the guidelines] will be held by promoter group individuals/ entities who have 'significant influence' and 'control' (as defined in Accounting Standard 23) over such companies.

***Q.148. Can there be a NOFHC only for–the bank while the other financial entities are held by another NOFHC - Para 2 C (iii) and Para 2 C (viii). Here the Main NOFHC will hold all finance sector activities and also hold another NOFHC which holds the Bank. This would ensure all financial activities are ring fenced and regulated by RBI. The bank will also be ring fenced and controlled by a separate NOFHC. We presume that this will also be allowed as it has a stronger structure which meets the regulatory requirements also.***

**A.** Two NOFHCs are not envisaged. Only one NOFHC shall hold the bank as well as all the other regulated financial services entities of the Group in which the Promoter Group has 'significant influence' or 'control'(as defined in Accounting Standard 23). [para 2 (C) (iii) & (vii) of the guidelines]

***Q.149. Promoter holding in the Bank Clause 2 C (viii) indicates that the Promoter / Promoter Group should hold their investments in the bank and other financial entities only through the NOFHC. In our view, this only indicates that the NOFHC should be the holding vehicle for the Promoter / Promoter Group and there is no restriction on a financial entity under the NOFHC- say an NBFC, to hold shares in the Bank. As there does not appear to be any specific provision against such holding, this may be clarified.***

**A.** No. Paragraph 2 (C) (viii) stipulates that the Promoter / Promoter Group entities / individuals associated with Promoter Group shall hold equity investment in the bank and other financial entities held by it, only through the NOFHC. Further, paragraph 2 (I) (iv) (b) of the guidelines indicate that the financial entities held by NOFHC shall not make investment in the equity / debt capital instruments amongst themselves. Therefore, an NBFC held by the NOFHC cannot hold shares in ‘he bank.

***Q.150. Please confirm if paragraph 2(L) will apply only for 'banks to be promoted by existing NBFCs’ and that the same will not apply to promoter / promoter group of NBFC's, which will in turn be the promoter / shareholders of the NOFHC.***

**A.** Para 2 (L) of the guidelines will be applicable both to promoter converting the NBFC into a bank or promoting a bank.

***Q.151. How does RBI propose to grant a level playing field between the new banks and the existing banks? Generally, a new entrant should be encouraged and given preference as the old players are already well entrenched and earning profits and have a branch network. However, a perusal of the Final Guidelines indicates that the requirements are more stringent for new entrants. To name a few like - (a) At least 25 percent of the Branches should be in Tier 3 to Tier 6 cities (b) Existing Banks are allowed upto 74 percent FDI, while the new entrants are allowed only upto 49 percent FDI (c) Existing Banks have floated within their group NBFCs and Housing finance companies while RBI seems to impose restrictions for the new banks. I– it possible that RBI will have uniform dispensation to all the banks - Existing and New, with some privileges and dispensations to the New entrants to meet the Regulations / directions over a period of time due to more difficult conditions, competition etc.***

**A.** With a view to enhancing financial inclusion, the conditions relating to the branch network are specifically prescribed at 25 percent for unbanked rural centres. Further, this norm has been extended to the existing banks also and they are required to comply with this stipulation while opening new branches.

As regards the foreign investment, it is capped at 49 percent for the initial period of 5 years to ensure that domestic banks are established in the private sector. However, after expiry of 5 years, the aggregate foreign shareholding in the bank would be allowed as per the extant FDI policy of the Government.

The reason for not permitting the NOFHC to set up any new financial services entity for at least three years from the date of commencement of the NOFHC is on account of the fact that it is necessary that the newly set up bank gets on sound footing before the NOFHC diversifies into other financial sector business. The existing regulated financial sector business would, however, continue under the NOFHC.

***Q.152. Will individuals in the promoter group who are not relatives, as defined in Section 6 of the Companies Act, 1956, be allowed to hold 10 per cent each in the NOHFC or will their aggregate shareholding be restricted 10 per cent?***

***Q.153. Where a Group has two or more otherwise unconnected individuals as its promoters, will each individual (along with relatives and entities connected to such individual) be permitted to hold up to 10 percent of the voting equity shares of the NOFHC or will the 10 percent limit apply in aggregate to the shares held by all individuals (and connected persons) forming part of the promoter group? This is in terms of the requirements set out in paragraph 2(C)(ii)(a)***

**A.(152&153)** The limit of 10 per cent applies to an individual's own shareholding along with the shares held by his relatives (as defined in Section 6 of the Companies Act, 1956) and the entities in which he and / or his relatives hold not less than 50 per cent of voting equity shares [para 2 (C) (ii) (a) of the guidelines].If there are two or more individuals who are part of the Promoter Group and are not relatives of each other, the limit would apply individually, and need not be aggregated. However, all such individuals cannot hold more than 49 per cent of the voting equity shares of the NOFHC.

***Q.154. The present guidelines use the term 'voting equity', whereas the 2005 guidelines (February 28, 2005) on ownership and governance use 'equity capital' to determine ownership. One reason for this could be the possibility that the new banks will have 'indirect' ownership going up many levels and therefore equity other than 'voting equity' needs to be ignored to avoid confusion, particularly with regard to financial investors above the NOFHC. It would be good to clarify whether non-voting equity directly held in the NOFHC/bank, wherever defined will also be ignored for the purpose of ownership.***

**A**. Only the voting equity share capital will be reckoned for the purpose of compliance with the guidelines on capital structure of the NOFHC, the minimum capital requirement for the new bank and shareholding by NOFHC in the new bank. The non-voting equity shares are out of the purview of these guidelines. [ para 2 (C)(ii) and para 2 (D) (i) to (v) of the guidelines ]

***Q.155. The guidelines require that all regulated financial services entities of the Promoter Group, wherein effective controlling interest is held by the Promoter Group, will have be brought under the NOFHC. Are the terms Promoter/Promoter Group to be applied in exclusion? For example, if entity X (which is part of a large conglomerate but has no common controlling shareholding) applies for the licence aulfils 100 per cent investment through NOFHC, does it still need to fulfill all***

***conditions applicable to a Promoter Group (as defined in paragraph C(iii) to include entities having a common brand name under the NOFHC? To rephrase, even if the promoter company is an entity with no common controlling shareholding, would it still need to bring all financial services business held by entities with a common brand name under the NOFHC?***

**A.** The Promoter Group includes a "Promoter" as per the definition of the Promoter Group given in Annex I to the guidelines and a Promoter is a "person" who satisfies the definition given in Annex I to the guidelines. As per para II(vi) of Annex I, Promoter Group includes entities sharing common brand names (please see this clause for details).All the regulated financial sector entities in which a Promoter Group has 'significant influence' or 'control' (as defined in Accounting Standard-23) will be held under the NOFHC. [ para 2(C)(vii) of the guidelines ]

***Q.156. Does the term "public" refer to shareholding in a listed company; or does it also include shareholding by non-promoters in a widely held unlisted company?***

***Q.157. We understand that the term 'public' includes shareholding by all non-Promoter Group entities including Private Equity, FIIs and Domestic Institutional Investors in both listed and unlisted companies. Is this understanding correct?***

***Q.158. Please define the term 'public'.***

**A. (156to158)** A company in which public holds 51 per cent of the total voting equity shares need not necessarily be listed. The term 'public' refers to all the shareholders other than those belonging to Promoter/Promoter Group (as defined in Annex I to the guidelines).

For the purpose of these guidelines, 'public shareholding' implies that no person along with his relatives (as defined in Section 6 of the Companies Act, 1956) and entities in which he and / or his relatives hold not less than 50 per cent of the voting equity shares, by virtue of his shareholding or otherwise, exercises 'significant influence' or 'control' (as defined in Accounting Standard 23) over the company. [para 2 (C) (ii) of the guidelines]

***Q.159. Will the "public" shareholding threshold requirement of atleast 51per cent be considered only at the immediate level; or a pass-through/overflow basis i.e if a Promoter Group Company has 40 per cent public shareholding; and balance 60 percent shareholding by Promoter Company A, which in turn has 40 percent public shareholding.***

**A.** The requirement of 51 per cent of public shareholding will apply to the companies in the Promoter Group, which are shareholders of NOFHC and such companies must collectively hold not less than 51 per cent of the voting equity shares of the NOFHC.

***Q.160. Further, in case of a listed Promoter entity, which is Indian owned and controlled, is there (or will there be) any mechanism to control the shareholding on***

***an ongoing basis. In absence of such a mechanism, since the shares of the listed entity are freely traded on the stock exchange, an FII or NRI could purchase shares of the listed Promoter entity and it may cease to be Indian owned.***

**A.** Entities / groups in the private sector that are 'owned and controlled by residents' [as defined in Department of Industrial Policy and Promotion (DIPP) Press Note 2, 3 and 4 of 2009 / FEMA Regulations as amended from time to time] shall be eligible to promote a bank through a wholly-owned Non-Operative Financial Holding Company (NOFHC) [para 2(A) (i) of the guidelines]. Therefore, the NOFHC should be owned by individuals belonging to the Promoter Group and entities in the promoter group in which the promoter/promoter group are in effective control. The Promoters should ensure that ownership and effective control of the promoter entity remains with the persons resident in India /resident entities, at all times[para 2 (A)(i) of the guidelines].There is a mechanism in place to monitor foreign shareholding in entities having sectoral caps for such holdings.

***Q.161. Will the regulated financial services companies in the Group below the NOFHC be allowed to make overseas investments outside India in accordance with the FEMA guidelines; or can the overseas investments only be made by the NOFHC?***

**A.** The regulated financial services entities in the promoter group held by the NOFHC will not be allowed to make overseas investment in entities whereby such entities would become a subsidiary, joint venture or associate of the regulated financial services entities, unless such investments are legally required or specifically permitted by RBI/ other financial sector regulators and are in accordance with FEMA guidelines. However, NOFHC can make overseas investments subject to FEMA guidelines.

***Q.162. Banks in India are not allowed to hold commodity broking businesses. In case the applicant has a commodity broking business, will it be considered to be a regulated financial service to be held by the NOFHC or above the NOFHC?***

***Q.163. NOFHC shall hold bank as well as entities regulated by other financial regulators, whether the promoter group entity engaged in commodities broking business which is regulated by Forward Market Commission be also held by NOFHC.***

**A. (162 & 163)** The commodity broking business is not considered to be regulated financial services for the purpose of these guidelines, and entities in the Promoter Group which are carrying on commodity broking business cannot be held under the NOFHC.

***Q.164. What would be the status of activities that are permitted in the bank with restrictions, (such as loans against shares) or not permitted (such as promoter financing, loans for purchase of land)? Can such activities continue to be conducted in a group NBFC?***

***Q.165. (a) There are certain business activities that are not permissible or are restricted within banks, under the extant guidelines. For example, advances to promoters against shares/debentures/bonds are restricted to tenor of less than one year through clause 2.4.7 of the DBOD circular No.Dir.BC.3/13.03.00/2012-13 dated July 2, 2012. It is our understanding that such businesses as acquisition financing, promoter funding, etc. that have restrictions within a bank, can be run as a business through an NBFC, as a subsidiary of the NOFHC, separate from the Bank;***

***b. Infrastructure lending falls under para 2C(iv)(b), and hence is required to be run from within the Bank. However, in view of the importance of infrastructure lending to the national agenda, and given that separate guidelines for Infrastructure Finance Companies (IFCs) already exist, could the NOFHC be allowed to hold an NBFC-IFC as a subsidiary separate from the Bank? Please clarify.***

***Q.166. There are certain lending activities which are restricted for a bank but which an NBFC can conduct. For e.g.***

***a. Lending against shares / Margin Financing above `20 lakh to an individual / Promoters / other borrower;***

***b. Financing against the security of land or financing for the purpose of acquisition of land***

***Can such activities which cannot be carried out by a bank be carried out by an NBFC belonging to the promoter group under the NOFHC framework?***

**A. (164 to 166)** The general principle for activities that have to be conducted from within the bank and by NBFCs in the group is that para-banking activities, such as credit cards, primary dealer, leasing, hire purchase, factoring, etc., can be conducted either inside the bank departmentally or outside the bank through subsidiary/ joint venture /associate. Activities such as asset management, insurance, stock broking, asset reconstruction, venture capital funding and infrastructure financing through Infrastructure Development Fund (IDF) sponsored by the bank can be undertaken only outside the bank. Lending activities must be conducted from inside the bank. However, other regulated financial services entities (excluding entities engaged in credit rating and commodity broking) in which the Promoter/Promoter Group has 'significant influence' or 'control' (as defined in Accounting Standard 23) have to be held under the NOFHC and not under the bank unless it is legally required or specifically permitted by RBI. [para 2 (C) (iv) of the guidelines].

Within these principles, the activities that are permitted to be undertaken by the bank, such as loans against shares, have to be undertaken by the bank to the extent permitted, and lending activities that are not permitted to a bank, but are not prohibited to NBFCs, such as promoter financing, loans for purchase of land, etc. would have to be wound up within a period of 18 months from the date of in-principle approval or before commencement of banking business, whichever is earlier.

***Q.167. Once the DIPP condition of 'resident owned and controlled' is met, are there additional requirements to be met at/above the promoter level as regards foreign shareholding? Specifically, can FIIs/Private Equity/Institutional investors hold up to the remaining 49 percent in the shareholder of the NOFHC; and in parallel, will foreign shareholding of 49 per cent also be allowed at the bank level?***

**A.** The NOFHC shall be wholly owned by entities/groups in the private sector that are 'owned and controlled by residents' [as defined in Department of Industrial Policy and Promotion (DIPP) Press Note 2, 3 and 4 of 2009/ FEMA Regulations as amended from time to time], and also subject to capital structure given at paragraph 2 (C) (ii) (a) and (b) of the guidelines. The level of foreign shareholding in these entities should be at such level that does not make them 'owned and/or controlled' by non-residents. FIIs/Foreign Private Equity/Foreign investors cannot hold any voting equity shares in the NOFHC as only companies/ entities in the Promoter Group that are owned and controlled by residents in India are allowed to hold the voting equity shares of the NOFHC. [para 2 (A) (i) and para 2 (C) (i) of the guidelines ]

The foreign shareholding allowed at the bank level should satisfy the requirements under paragraph 2 (F) of the guidelines.

***Q.168. Furthermore, does the 5 percent 'direct or indirect' ceiling apply at the immediate bank level; or on a pass-through basis i.e. if a FII holds 10% shares in the promoter entity and the promoter holds 100 percent equity of the NOFHC, will the FII be deemed to hold 10 percent equity in the bank 'indirectly'? What if the same situation arises regarding a private equity investor in an unlisted promoter company? To take another example, if an NRI holds 5 percent investment in the promoter entity, which in turn holds 100 per cent investment in the NOFHC, can the same NRI hold any additional equity in the bank?***

**A.** The 5 percent limit on shareholding by any non-resident shareholder would apply at the bank level. The indirect foreign investments through the Promoter Group companies [owned and controlled by residents – paragraph 2 (A) of the guidelines], which would hold the NOFHC, will not be counted for foreign investments in the bank.

***Q.169. Would non-resident shareholding in any Promoter Group entity holding shares in NOFHC be treated as 'indirect' non-resident shareholding in the Bank?***

***Q.170. If yes, how would such 'indirect' non-resident shareholding in the Bank be calculated for the purpose of 5% and 49% limit?***

**A.(169&170)** The indirect foreign investments through the Promoter Group companies [owned and controlled by residents – paragraph 2 (A) of the guidelines], which would hold the NOFHC, will not be counted for foreign investments in the bank, as only companies/entities in the Promoter Group that are owned and controlled by resident in India are allowed to hold the voting equity shares of NOFHC. [Paragraph 2 (F) of the guidelines]

***Q.171. Will residents of India (as per FEMA), who have Overseas Citizenship of India ('OCI') be allowed to hold 10 per cent in the NOFHC if they are regarded as promoters?***

**A.** The requirement is that the NOFHC has to be wholly owned by entities/ Groups in the private sector that are 'owned and controlled by residents' [ as defined in Department of Industrial Policy and Promotion(DIPP) Press Note 2, 3, and 4 of 2009/FEMA Regulations as amended from time to time]. Therefore OCIs cannot hold shares in the NOFHC.

***Q.172. Will residents of India (as per FEMA), who are Persons of Indian origin ('PIO'), not having an Indian passport, be allowed to hold 10 per cent in the NOFHC if they are regarded as promoters? Will residents of India, who are non-NRIs, non-PIOs, non-OCIs be allowed to hold 10 per cent in the NOFHC, if they are promoters; or in the bank, if they are non-promoters.***

**A.** The requirement is that the NOFHC has to be wholly owned by entities/ Groups in the private sector that are 'owned and controlled by residents' [ as defined in Department of Industrial Policy and Promotion(DIPP) Press Note 2, 3, and 4 of 2009/FEMA Regulations as amended from time to time]. Therefore PIOs cannot hold shares in the NOFHC.

No single entity or group of related entities, other than the NOFHC, shall have shareholding or control, directly or indirectly, in excess of 10 per cent of the paid-up voting equity capital of the bank [para 2 (K) (iii) of the guidelines].

Any acquisition of shares by persons resident in India or otherwise which will take the aggregate holding of an individual / entity / group to the equivalent of 5 per cent or more of the paid-up voting equity capital of the bank, will require prior approval of RBI [Para 2 (K) (ii) of the guidelines].

***Q.173. Will OCIs / PIOs be allowed to become Chairman/CEO of the proposed bank?***

**A.** *OCIs*/PIOs will be allowed to become Chairman/CEO of the proposed bank provided they are persons resident in India as per Foreign Exchange Management Act, 1999.

***Q.174. We understand that the term 'major supplier and major customer' will have the same meaning throughout the guidelines i.e. as defined at endnote 4(including for the purposes of maintaining an arm's length relationship by the bank as required in paragraph K(iv) of the guidelines. Is this correct?***

**A.** Yes. The term 'major supplier and major customer' will normally have the same meaning (as defined in footnote 4 at page 7 of the guidelines) throughout the guidelines.

**Q.175.** ***(I) Since the provisions at para 2 (L) of the guidelines mandate transfer of 'activities', does it mean that the existing book of assets may be retained in the transferor entity and future activity of similar nature needs to be conducted from the bank? For example, an NBFC holding a large asset book of home loans can***

***start booking new home loans in the bank post- commencement, but does it also need to migrate the existing portfolio?***

***(ii) Since banks will be allowed to retain branches under the prescribed framework for banks, can NBFC branches be retained for the limited businesses not allowed /allowed with restrictions in the bank?***

***(iii) Furthermore, if migration of the existing portfolio is required, wille net-worth of the demerged business (migrating business) be considered towards the `5 billion requirement?***

**A.** (i) The general principle for activities that have to be conducted from within the bank and by NBFCs in the group is that para-banking activities, such as credit cards, primary dealer, leasing, hire purchase, factoring, etc., can be conducted either inside the bank departmentally or outside the bank through subsidiary/ joint venture /associate. Activities such as asset management, insurance, stock broking, asset reconstruction, venture capital funding and infrastructure financing through Infrastructure Development Fund (IDF) sponsored by the bank can be undertaken only outside the bank. Lending activities must be conducted from inside the bank. However, other regulated financial services entities (excluding entities engaged in credit rating and commodity broking) in which the Promoter/Promoter Group has 'significant influence' or 'control' (as defined in Accounting Standard 23) have to be held under the NOFHC and not under the bank unless it is legally required or specifically permitted by RBI. [para 2 (C) (iv) of the guidelines].

The existing business of NBFCs of the Promoter Group setting up/converting into a bank will have to be reorganized accordingly.

(ii) RBI may consider allowing the bank to take over and convert the existing NBFC branches into bank branches only in the Tier 2 to 6 centres. All NBFC branches in Tier 1 centres which would carry out banking business may be permitted to be converted into bank branches and the excess over the entitled number of Tier 1 branches would be adjusted against the future entitlements of the new bank within a maximum period of 3 years from the date of commencement of business by the bank. The branches of the bank and NBFC should be distinct and separate. Erstwhile branches of NBFC, retained and converted into bank branches, cannot conduct businesses of the NBFC.

(iii) The new bank should have a minimum voting equity capital of `5 billion. However, where an NBFC is permitted to convert into a bank, it should have a minimum networth of ` 5 billion at all times.[para 2 (L) (C) of the guidelines]

***Q.176. Can RBI provide more clarity on the initial capital required for a bank? Is it net worth of ` 500 crore or the paid up equity capital of ` 500 crore as per paragraph 2D(i) and 2L(b)?***

***Q.177. We presume that the minimum paid up equity voting capital of ` 5 billion can also be complied by Net Worth of the entity and not entirely by paid-up voting equity capital.***

**A.(176 & 177)** The new bank should have a minimum voting equity capital of `5 billion. However, where an NBFC is permitted to convert into a bank, it should have a minimum networth of ` 5 billion at all times.[para 2(L)(C) of the guidelines].

***Q.178. What will be the financial criteria (e.g. networth, paid up capital, etc.) applicable to NOFHC?***

**A.** The minimum capital required for the bank is `5 billion, and the NOFHC is initially required to have atleast 40% shareholding in the bank. The minimum capital of the NOFHC should be such as to meet the above requirements as well as the requirement of holding prescribed capital in other financial sector entities held by the NOFHC as per the norms laid down by the financial sector regulators.[Paragraph 2 (D) of the guidelines]

***Q.179. Can an NBFC divest the activities which the banks are not allowed to do to another NBFC of the group?***

***Q.180. Section (2) (L) deals with conditions for converting NBFC into a bank. In such a case for activities that are not allowed to be undertaken by the bank, whether such activities can be transferred to another NBFC within the Group.***

***(ii) Further, for existing branches of the NBFC which are not allowed to be converted into a bank branch, can these branches be transferred to another NBFC within the Group.***

***Q.181. Section (2) (L) deals with conditions for converting NBFC into a bank. In such a case for activities that are not allowed to be undertaken by the bank, whether such activities can be transferred to another NBFC within the Group. Further, for existing branches of the NBFC which are not allowed to be converted into a bank branch, can these branches be transferred to another NBFC within the Group.***

**A. (179 to 181)** The general principle for activities that have to be conducted from within the bank and by NBFCs in the group is that para-banking activities, such as credit cards, primary dealer, leasing, hire purchase, factoring, etc., can be conducted either inside the bank departmentally or outside the bank through subsidiary/ joint venture /associate. Activities such as asset management, insurance, stock broking, asset reconstruction, venture capital funding and infrastructure financing through Infrastructure Development Fund (IDF) sponsored by the bank can be undertaken only outside the bank. Lending activities must be conducted from inside the bank. However, other regulated financial services entities (excluding entities engaged in credit rating and commodity broking) in which the Promoter/Promoter Group has ‘significant influence’ or ‘control’ (as defined in Accounting Standard 23) have to be held under the NOFHC and not under the bank

unless it is legally required or specifically permitted by RBI. [para 2 (C) (iv) of the guidelines].

Within these principles, the NBFC converting into the bank is required to divest the activities which the banks are not allowed to undertake departmentally and such activities can be migrated to and conducted from another NBFC/entity. However, lending activities that are not permitted to a bank, or are subject to restrictions, but are not prohibited to NBFCs, such as promoter financing, loans for purchase of land etc. would have to be wound up. This may be completed within a period of 18 months from the date of in-principle approval of before commencement of the banking business, whichever is earlier.

***Q.182. For the purpose of furnishing information, we understand that the promoter entity(ies) have to furnish information only with regard to the entities of the group making investment in the NOFHC and their owner entities. If only one entity is used as a 'promoter', does information with regard to the Group (as defined) still need to be submitted beyond the organogram: or would the above information only be required for other group companies as well?***

**A.** The entities/individuals belonging to the Promoters/Promoter Groups, which would participate in the voting equity shares of the NOFHC, would have to provide the Memorandum and Articles of Association, financial statements for past ten years and Income Tax returns for last three years, as appropriate, at the time of submission of their application. The last available financial statements in respect of other Group entities, which do not participate in the voting equity shares of the NOFHC will also have to be furnished. The details of the Promoters' direct and indirect interest in various entities/companies/industries and details of credit/other facilities availed by the Promoters/Promoter Group would be required of all entities. [ para 3 of Annex II to the guidelines]

***Q.183. If an existing NBFC in the Group provides loans against shares which while complying with prevailing NBFC regulations, which in instances exceed the maximum amount that may be advanced by a bank. In such a case, could such lending activities continue to be undertaken through the NBFC if it is ensured that the overall capital market exposure on a consolidated basis is at all times maintained to comply with the caps prescribed by the RBI in this regard?***

**A.** The general principle for activities that have to be conducted from within the bank and by NBFCs in the group is that para-banking activities, such as credit cards, primary dealer, leasing, hire purchase, factoring, etc., can be conducted either inside the bank departmentally or outside the bank through subsidiary/ joint venture /associate. Activities such as asset management, insurance, stock broking, asset reconstruction, venture capital funding and infrastructure financing through Infrastructure Development Fund (IDF) sponsored by the bank can be undertaken only outside the bank. Lending activities must be conducted from inside the bank. However, other regulated financial services entities (excluding entities engaged in credit rating and commodity broking) in which the Promoter/Promoter Group has 'significant influence' or 'control' (as defined in Accounting

Standard 23) have to be held under the NOFHC and not under the bank unless it is legally required or specifically permitted by RBI. [para 2 (C) (iv) of the guidelines].

Within these principles, the activities that are permitted to be undertaken by the bank, such as loans against shares, have to be undertaken by the bank to the extent permitted. Lending activities that are not permitted to a bank or subject to restrictions to a bank cannot be carried out through an NBFC.

***Q.184. Where a Group holds an equity interest in one or more financial entities, and such financial services entities undertake activities that can be undertaken by a bank departmentally, the Group can transfer its equity holdings in such financial entities to the NOFHC, but cannot transfer the business to the bank since there are other external, unconnected shareholders holding equity interests in such financial entities. Please confirm that the requirements of the RBI's Licensing Guidelines will be regarded as fulfilled so long as the Group transfers its equity holdings in any such financial entities to the NOFHC.***

**A.** The transfer of equity holdings by the Promoters/Promoter Group entities in such regulated financial sector entities to the NOFHC, without the transfer of these business of the financial entities to the bank i.e. activities which have to be undertaken by the bank only, will not be in compliance with the provisions at para 2(C) (iv) of the guidelines.

***Q.185. Paragraph 2(l)(ii)(b) provides that the NOFHC's investments in capital instruments issued by unconsolidated financial and insurance entities within the Group should not exceed 10 percent of its consolidated capital funds. In this regard, please could you clarify:***

***(i) How is the term "consolidated capital funds" to be interpreted?***

***(ii) If the Group has relatively capital intensive financial service activities other than the bank e.g. insurance activities, to whom consolidation requirements do not apply, the 10 percent limit appears to be constraining given that the NOFHC structure is itself a construct imposed by the Guidelines. Is this RBI's intent?***

***Q.186. 2 (l) (ii) (b) provides that the NOFHC's investments in capital instruments issued by unconsolidated financial and insurance entities within the Group should not exceed 10 percent of its consolidated financials and insurance entities within the Group should not exceed 10 percent of its consolidated capital funds.***

***In this regard, please could you clarify how is the term "consolidated capital funds" to be interpreted?***

**A. (185 & 186)** Consolidated capital funds means the Capital, Reserves and Surplus of the NOFHC determined on the consolidation of its subsidiaries, associates and joint ventures in accordance with the applicable Accounting Standards.

Consolidated capital funds for regulatory purpose means the consolidated regulatory capital of the NOFHC under the regulatory scope of consolidation. (Please refer to the 'scope of Application' under Section B of Annex 1 of circular DBOD.No.BP.BC.98 /21.06.201/2011-12 on guidelines on 'Implementation of Basel III Capital Regulations in India' dated May 2, 2012 for details on regulatory scope of consolidation. Please also refer to the guidelines for 'consolidated accounting and other quantitative methods to facilitate consolidated supervision' contained in circular DBOD.No.BP.BC.72 /21.04.018/2001-02 dated February 25, 2003 in terms of which the NOFHC will have to prepare consolidated financial statements and other consolidated prudential reports.)

This is a cross holding limit in the capital instruments on unconsolidated financial entities which applies on a consolidated basis. The limit ensures that the NOFHC has the continued ability to provide capital support to banking business.

However, since the investment of the NOFHC in the insurance subsidiary is fully deducted from its consolidated capital for prudential purposes such as consolidated capital adequacy, exposure norms etc., the investment of the NOFHC in the capital of its insurance subsidiary is not considered for the purpose of cross holding limit of 10 per cent.

**Q.187. (i)** ***An Indian company, listed on Indian stock exchange(s), has foreign investment of less than 50 per cent. Its public holding is 51 per cent and promoter group holds 49 per cent. Of the 49 percent of the promoter group's holding, 2/3rd is held by a 'non-resident promoter'. The 'non-resident promoter' does not have right to nominate director on Board. The company is 'controlled' by 'resident promoter group'. The said company, in terms of paragraph (C)(ii)(b) of the extant Guidelines (i.e., Corporate Structure of the NOFHC) is eligible to promote a NOFHC. The NOFHC, in turn, intends to hold 100 per cent of the new bank initially. In terms of the aforesaid foreign investment guidelines, would the RBI consider that the new bank does not have any indirect foreign investment?***

**ii)** ***Though more than 50 percent shareholding of the promoter group is held by non-resident shareholder, would the RBI consider the Indian company as resident?***

**iii)** ***Whether an unlisted company in which the non-promoter group shareholders hold more than 51 percent of the voting equity shares is eligible to promote a NOFHC?***

**A.** (i & ii) If two third of the Promoter Group's holding in the Indian company is held by a "non-resident promoter", the company is not controlled by a resident. So long as the non-resident holds two third of the voting equity shares held by the Promoter Group, he controls the Promoter Group's investment in the Indian company and the fact that he does not have right to appoint a nominee director is irrelevant. The Indian company is therefore not eligible to promote a NOFHC.

(iii) It is essential that not less than 51 per cent of the voting equity shares of the NOFHC are to be held by Promoter Group companies in which the public hold not less than 51 per cent of the voting equity shares. A company in which public holds 51 per cent or more of the voting equity shares need not necessarily be listed. For the purpose of these guidelines, 'public shareholding' implies that no person along with his relatives (as defined in Section 6 of the Companies Act, 1956) and entities in which he and / or his relatives hold not less than 50 per cent of the voting equity shares, by virtue of his shareholding or otherwise, exercises 'significant influence' or 'control' (as defined in Accounting Standard 23) over the company. [ para 2 (C) (ii) of the guidelines]

***Q.188. Where a non-financial services company is a listed company and the promoter holding therein is not more than 49 per cent, can this be regarded as compliance with condition at 2(C)(ii)(b)?***

**A.** It is essential that clause (b) of para 2(C)(ii) (i.e. not less than 51 per cent of the voting equity shares of the NOFHC to be held by companies in which the public hold not less than 51 per cent of the voting equity shares) is satisfied in all cases. For the purpose of these guidelines, 'public shareholding' implies that no person along with his relatives (as defined in Section 6 of the Companies Act, 1956) and entities in which he and / or his relatives hold not less than 50 per cent of the voting equity shares, by virtue of his shareholding or otherwise, exercises 'significant influence' or 'control' (as defined in Accounting Standard 23) over the company.If these conditions are satisfied, then the listed non financial services company would comply with the conditions at 2 (C) (ii)(b) of the guidelines.

***Q.189. Is it mandatory to have a public company as a part of the Promoter Group?***

***Q.190. With reference to condition 2(C)(ii)(b), is it mandatory to have a public company which has more than 51 per cent shareholding in the NOFHC as part of the promoter group?***

**A.(189&190)** Yes. It is essential that not less than 51 per cent of the voting equity shares of the NOFHC have to be held by companies in the Promoter Group in which the public hold not less than 51 per cent of the voting equity shares. [para 2(C)(ii)(b) of the guidelines]

***Q.191. An existing NBFC has a joint venture ('JV') with a foreign partner on 50:50 basis. As per paragraph (C)(vii) of the extant guidelines, only those regulated financial sector entities in which a promoter group has significant influence or control are required to be held under the NOFHC. In such circumstances, would the RBI allow the promoters of the JV NBFC to continue its business on 'as is where is' basis because:***

***i) The promoters do not have controlling interest in the said JV though they have management rights in the said JV;***

***ii) The 50:50 JV is an Asset Finance Company ('AFC') and even though it does hypothecation loans / leases etc., it does not finance any consumable assets (like cars, trucks, etc.) but equipments (like mining machines, loader, cranes, dumpers, infrastructure construction equipment) supporting productive/ economic activity'?***

**A. (i & ii)** The JV NBFC has to be brought under the NOFHC, as it is a regulated financial sector entity, and the Promoters of the NBFC through the 50 per cent equity holding by the NBFC in the JV NBFC have 50 percent ownership and management rights in the JV NBFC. Hence, the Promoters would be deemed to have 'significant influence' or 'control' (as defined in Accounting Standard-23) over the JV NBFC. [para 2(C)(iv) and(vii) of the guidelines]

***Q.192. An existing NBFC is classified as Infrastructure Finance Company ('IFC') and has a Public Finance Institution ('PFI') status. In such circumstances, would the RBI allow the promoters of the 'IFC-PFI' to continue its business on 'as is where is' basis under the NOFHC?***

**A.** Infrastructure financing through Infrastructure Development Fund (IDF) sponsored by the bank has to remain outside the bank, under the NOFHC. The infrastructure financing activities of the Promoters/Promoter Group through the IFC have to be conducted from within the new bank held by the NOFHC.

***Q.193. Annex I of the Guidelines defines various terms used in the Guidelines and provides that the term 'promoter group' includes relatives of the promoter. The definition of the term 'relative' is as per Section 6 of the Companies Act, 1956. Annex II of the Guidelines requires submission of financial statements and credit information of promoters / promoter entities and promoters' direct and indirect interests in various entities / companies and industries.***

***i) Are the financial statements and credit information required to be submitted even in relation to a married daughter, her husband and relatives of married daughter's husband?***

***(ii) Whether promoters' direct and indirect interest in various entities / companies and industries would include investment made by promoters in venture capital / private equity fund/s. Further, whether information about the investment made by such venture capital / private equity funds also needs to be submitted?***

**A.** (i) Yes. The relatives (as defined in Section 6 of the Companies Act, 1956) of the individuals (belonging to the Promoter Group) who would participate in the voting equity shares of the NOFHC, have to provide the financial statements for past ten years and Income Tax returns for last three years, as appropriate, at the time of submission of their application. The details of their direct and indirect interest in various entities/ companies/ industries and details of credit/other facilities availed by the Promoters/Promoter Group would be required of all entities. The last available financial statements in respect of other

Group entities, which do not participate in the voting equity shares of the NOFHC will also have to be furnished.[para 3 of Annex II to the guidelines]

(ii) Yes. The details of the Promoter/ Promoter Group's direct and indirect interest in various entities/ companies/ industries and details of credit/other facilities availed by them would be required of all entities. While the details of investments made by the Promoters/Promoter Group in the venture capital/ private equity fund/funds need be submitted, information about the investment made by such venture capital / private equity funds need not be submitted.[ para 3 of Annex II to the guidelines]

***Q.194. In cases where there is transfer of ownership of promoters' company investments in other regulated entities such as insurance etc. to the NOFHC, will the promoter companies have to take up the issue of change in nominal ownership with the concerned regulators or will this be a deemed approval and it would suffice to keep the other regulators informed of the change in nominal ownership structure.***

**A.** The Promoters/Promoter Group will have to obtain prior approval from the sectoral regulators, required under respective statutes/regulations.

***Q.195. Company D, a subsidiary (51%) of a joint venture Company, is a composite insurance broker, licensed by the Insurance Regulatory Development Authority ("IRDA"), to act as a Direct Broker and a Reinsurance Broker in both the Life and Non Life Insurance sectors. As per banking guidelines, investment in Company D held by Company S, needs to be transferred to NOFHC. Further, in terms of banking license, RBI shall issue separate set of directions for governing NOFHC. NOFHC shall be a NBFC-CIC as NOFHC shall hold investments in group companies (i.e., regulated financial services entities of the group) more than 90% of its net assets. Whether NOFHC shall be allowed to hold investments in Company D?***

**A.** Yes.Since all regulated financial sector entities in which a Promoter Group has 'significant influence' or 'control' will be held under the NOFHC, Company D in the example will be held under NOFHC, if it is a Group company of the Promoters. [Paragraph 2(C)(vii) of the guidelines]

***Q.196. The guidelines require that Insurance Companies (General / Life) of the Group be brought under NOFHC. As IRDA does not permit a subsidiary to own Insurance Companies, this requirement would need to await appropriate modification from IRDA.***

***Q.197. Currently the IRDA does not allow a subsidiary of a company to hold stake in an insurance company. Since the NOFHC would be a subsidiary of the promoter group entity holding it, it (the NOFHC) would not qualify as a promoter of an insurance company. In such a case would an exception be made for insurance companies under clause 2 C (iii) above, or would a specific approval from the IRDA***

***be available enabling the NOFHC to qualify as a promoter of an Insurance company?***

***Q.198. On holding structure, IRDA guidelines currently require the Insurance Company to be directly held by the Promoting entity, and also prohibits changes in shareholding for five years since the grant of license. Will the RBI enable the movement of insurance company under NOFHC?***

***Q.199. Under the extant Insurance law, the promoter is required to hold a stake in the insurance company directly. How will this converge/ align with the requirement that the NOFHC should hold all regulated financial services of the Group including the insurance companies? Exemptions from the provisions of guidelines can be considered depending upon the statutory prescriptions as well as the regulatory requirements of different sectoral regulators.***

***Q.200. The Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulation 2000, state that an Indian Promoter of an Indian Insurance Company cannot be a subsidiary of another company. It is further stated in the Guidelines that each financial services entity will be governed by its respective regulator. Since NOFHC is permitted to be wholly owned by Promoter/ Promoter Group and it is mandatory to bring the insurance entities under the NOFHC. IRDA will have to issue suitable amendments to the aforementioned regulations to enable the consolidation of the insurance companies without breach of the aforementioned condition, unless the RBI is able to relax the requirement for consolidation under the NOFHC I the context of insurance companies.***

**A. (196 to 200)** The general principle is that the regulated financial services sector entities in which a Promoter Group has 'significant influence' or 'control' (as defined in Accounting Standard 23) will be held under the NOFHC. While this is a preferred structure, these requirements are subject to the regulations of the respective regulators. The applicants may approach IRDA in this regard. The decision of IRDA will prevail.

***Q.201. On holding structure, SEBI currently requires that an AMC be held by a SEBI registered entity; Will there be an exemption granted to move the AMC under the NOFHC?***

**A.** The general principle is that the regulated financial services sector entities in which a Promoter Group has 'significant influence' or 'control' (as defined in Accounting Standard 23) will be held under the NOFHC. While this is a preferred structure, these requirements are subject to the regulations of the respective regulators. The matter has been examined in consultation with SEBI. The applicants may approach SEBI in this regard. The decision of SEBI will prevail.

***Q.202. NOFHC shall not be permitted to set up any new financial services entity for at least three years from the date of commencement of business of the NOFHC. However, this would not preclude the bank from having a subsidiary or joint***

***venture or associate, where it is legally required or specifically permitted by RBI. Will this mean that any restructuring of existing businesses held by NOFHC which may give rise to forming new entities or transfer of existing business to new entities by way of merger, demerger, internal restructuring etc. is also prevented for a period of 3 years from the commencement of business of NOFHC? If the sector regulator say, SEBI or IRDA, are to specify new norms regulating sector specific entities entailing setting up of new entities, will this require prior approval of RBI?***

**A.** The stipulation that the NOFHC shall not be permitted to set up any new financial services entity for at least three years from the date of commencement of business of NOFHC means that the NOFHC cannot undertake a new financial service activity [para banking activities as defined in Master circular DBOD.No.FSD.BC.24/24.01.001/2012-13 dated July 2, 2012] and those financial services activities that must be undertaken from outside the bank (para 2 (C) (iv) (a)] and set up a new financial services entity for this purpose during the specified period. For the purpose of reorganization of existing business of the Promoter Group to bring all regulated financial services under the NOFHC and to carry out existing business through separate financial entities under the NOFHC as required under the guidelines, [Paragraph 2 (C) (iv) (a) & (b) of the guidelines], the NOFHC would be free to establish new financial services entity. In fact, this process will have to be completed within a period of 18 months from the date of in-principle approval or before the commencement of the banking business, whichever is earlier.

If the sectoral regulators viz. SEBI or IRDA, are to specify new norms, the applicants may approach SEBI/IRDA for their approval.

***Q.203. Will the NOFHC be permitted to hold a stake greater than 50 per cent in the Insurance ventures of the Group.***

**A.** The capital requirements for the regulated financial services entities held by the NOFHC shall be as prescribed by the respective sectoral regulators.

***Q.204. In case the promoter company is a listed NBFC and the investments in regulated entities are transferred to the NOFHC, the businesses which can be done by the bank are transferred to the proposed bank; after such transfers, the NBFC will have investments and residual borrowings. Will the residual NBFC be classified as CIC and continue to have a certificate of registration from the RBI?***

***Q.205. Promoter group has an investment holding company "A". The said Company "A" is registered with RBI as a non-deposit taking systemically important NBFC (NBFC-ND-SI), Listed entity with majority public shareholding, has no public funds, holds equity investments in few promoter group companies, Has surplus funds (created out of ploughed back profits & out of dividend and investment income) meant for investment in group companies as and when required by them.***

***As the underlying group companies, at present do not require funds, in order to maximize the return for its stakeholders, the said surplus funds are invested in***

***money market instruments, Government securities, mutual funds, listed debentures and equities as a temporary measure. The said investments are for long term and the company does not trade in its investments.***

***Other than the above said investments of its owned funds, Company A does not undertake any other activity and in essence a CIC with surplus funds.***

***Whether Company A can be held outside the NOFHC?***

**A. (204 & 205)** A NBFC (Investment Company) will not be brought under the NOFHC. It has to be registered with Reserve Bank of India as a CIC or as a NBFC (Investment Company), as appropriate.

***Q.206. (i) Can the liabilities like debentures and bank borrowings associated with these asset businesses be transferred wherever possible, to the new bank?***

***(ii) In cases where there is transfer of businesses from the promoter company , say an NBFC to the proposed bank; will the RBI give any separate guidelines for the methodology of valuing such businesses or the current provisions will be applicable?***

**A.**(i) Yes. As transfer of assets and liabilities to the new bank would be a part of the re-organization of the business of the group entities to comply with the provision of our guidelines, more particularly to comply with the NOFHC structure, it will be permitted. However, while allowing grandfathering of term borrowings and other secured liabilities taken over from NBFCs, RBI will impose additional capital charge on the new bank, where it would allow creation/ continuation of floating charges on the assets of the new bank, in order to protect the interests of the depositors.

(ii) The assets and liabilities for the purpose of transfer from one entity to another under restructuring of the existing business may be valued as per the relevant provisions of the applicable laws/ regulations. No separate guidelines will be issued by RBI in this regard.

***Q.207. Will the RBI consider permitting FDI investment from a single strategic investor (foreign bank / foreign development bank) who fulfils all "Fit and Proper" norms to hold greater than 4.99 per cent and less than 20 per cent in the proposed Bank.***

**A.** No. No non-resident shareholder, directly or indirectly, individually or in groups, or through subsidiary, associate or joint venture will be permitted to hold 5 per cent or more of the paid-up voting equity capital of the bank for a period of 5 years from the date of commencement of business of the bank. After the expiry of 5 years from the date of commencement of business of the bank, the aggregate foreign shareholding would be as per the extant FDI policy.

***Q.208. Will it be required to indicate the names of the Board members and key management personnel of the proposed Bank at the time of application or post obtaining the in principle approval?***

***Q.209. Are the applicants expected to state the details of the key managerial personnel of NOFHC as part of the application?***

**A.(208 & 209)** If a CEO/Management Team has not been identified at the application stage, names of management team including the CEO would be required to be furnished to the Reserve Bank after grant of in-principle approval.

***Q.210. Are the Applicants expected to list out the Board of Directors of NOFHC as part of the application?***

**A.** The names of the Board of Directors of the NOFHC would be required to be furnished to the Reserve Bank after grant of in-principle approval. [Paragraph 2 (G) (vii) of the guidelines]

***Q.211. (i) Is there a need to provide details of all the areas / centres (population, demographics, agriculture & mining activity, import, export etc) where branches will be opened by the bank at the time of the application?***

***(ii) Does the applicant need to provide a one year or a five year business plan as part of the application?***

**A.** (i) & (ii)The period of business plan is left to the applicants. The business plan should be realistic and viable. It should address how the bank proposes to achieve financial inclusion. It would be desirable to give business plan covering three to five years.

***Q.212. Will the RBI take up with the Government to waive off tax related issues if any, arising from shifting of investments from promoter company to the NOFHC and from the NBFC to the bank?***

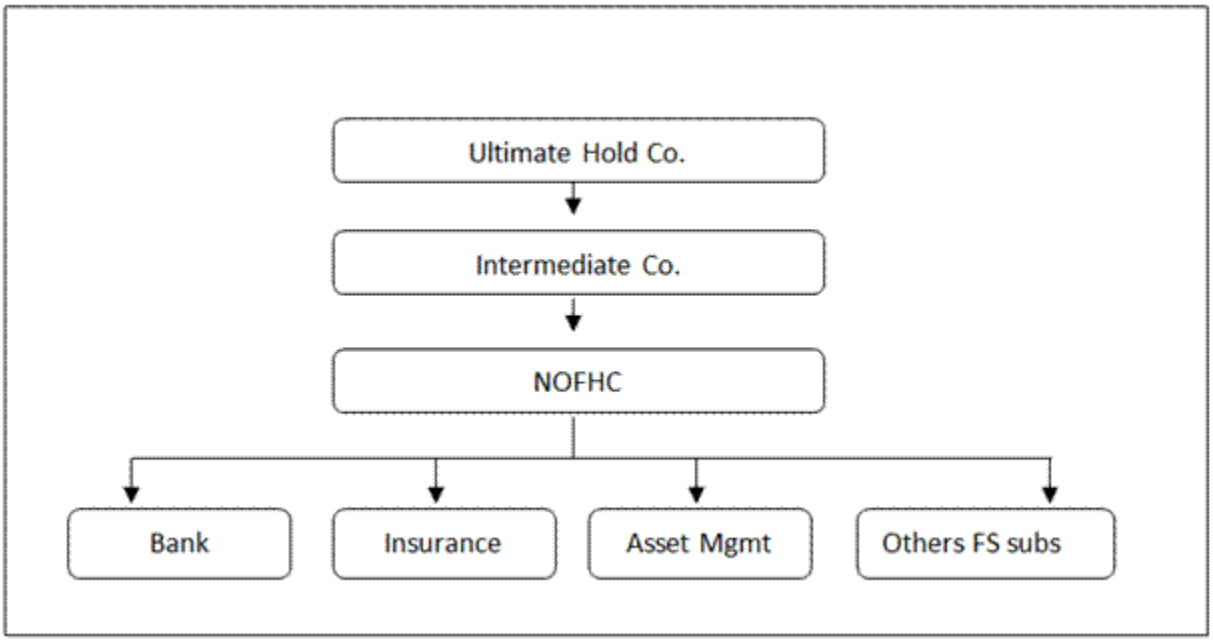
**A.** Taxation will be as per the laws/rules of the tax authorities.

***Q.213. Will the proposed new bank be a direct member of clearing from day one or will they have to act as sub members?***

**A.** This would depend upon completion of certain formalities such as opening of current account with RBI, eligibility norms of the clearing houses, etc. for a member or a sub member.

***Q.214. In case a multi-layered holding structure is implemented for the NOFHC ( as set out in the illustration below), we believe the criteria of 'Public' holding would be complied if the shareholding pattern of the Ultimate Hold Co satisfies this condition. In the illustration below. Since the intermediate Co would be a company***

***within the Promoter Group as well as a subsidiary of the Ultimate Hold Co., it is our understanding that it would not be necessary for the Intermediate Co. to also separately meet the condition of 'Public' holding. We request you to confirm our understanding in this regard.***




**A.** No. As per the guidelines, not less than 51 per cent of the voting equity shares of a NOFHC shall be held by companies in the Promoter Group in which the public hold not less than 51 per cent of the voting equity. Therefore, in a multi-layered holding structure, 51 per cent public holding requirement is to be complied with by the company(ies), which will be holding the voting equity shares of NOFHC. Public holding in a company which holds shares in the holding company of the NOFHC i.e. the ultimate holding company, will not be reckoned as compliance with the guidelines. [para 2 (C)(ii(b) of the guidelines]

***Q.215. The requirement for 'public' shareholding will be satisfied as long as the shareholders that are proposed to be considered 'public' do not come within the definition of the term 'Promoter' or 'Promoter Group', as defined in Annexure I of the Guidelines- in other words, all shareholders that are not promoters or a part of the promoter group will be considered as public shareholders for the purpose of the Guidelines.***

**A.** For the purpose of these guidelines, 'public shareholders' would mean individuals/entities not belonging to the promoter group. 'Public Shareholding' implies that no person along with his relatives (as defined in Section 6 of the Companies Act, 1956) and entities in which he and / or his relatives hold not less than 50 per cent of the voting equity shares, by virtue of his shareholding or otherwise, exercises 'significant influence' or 'control' (as defined in Accounting Standard 23) over the company. Such

companies will hold not less than 51 per cent of the voting equity of the NOFHC. [para 2 (C) (ii) of the guidelines]

***Q.216. Globally, automotive companies often have captive financial companies. Some of these financing companies operate as banks in geographies that permit them to operate as such. These entities are registered with and regulated by the RBI as NBFCs, and are required to comply with prudential norms prescribed by RBI on income recognition , asset classification, provisioning, capital adequacy, etc. As these entities are already under the direct supervision of RBI and these entities are critical and an integral part of the business operations of the industrial enterprises (s) they support, we request RBI to clarify that captive financing company/(ies) which are unlisted subsidiary/(ies) of a listed (overseas and / or domestically) automotive company in which Promoter/ Promoter Group hold less than 49 per cent, is not required to be brought under the NOFHC. We would alternatively request RBI to include a provision for granting case by case relaxation based on specific fact pattern of the applicant.***

**A.** All regulated financial sector entities, in which a Promoter has 'significant influence' or 'control' (as defined in Accounting Standard 23) will be held under the NOFHC[ para 2(C)(vii) of the guidelines]. No exemption can be granted to auto-finance companies in the Promoter Group in this regard. Further, no financial services entity held by the NOFHC would be allowed to engage in any activity that a bank is permitted to undertake departmentally. The activities that could be carried outside the bank are as mentioned in paragraph 2 (C) (iv) of the guidelines.

***Q.217. Paragraph 2 (k) (vi) of the Guidelines provided that the bank should 'build' its priority sector lending portfolio from the commencement of its operations. We request a clarification from RBI on whether the current practice applicable to banks will be applicable to new banks also i.e. Priority Sector targets being set based on closing balance of advances of the previous financial year. Consequently, if a new bank commences on or after April 1, 201X, the advances at the end of the previous financial year will be nil, and hence priority sector targets will be set based upon the advances at March 31, 201X + 1 and this will need to be achieved by March 31, 201X + 2.***

**A.** The priority sector lending targets/achievements for a bank for the current year ending 31st March, will be based on the adjusted net bank credit (ANBC) outstanding as on 31st March of the previous year. The above example states the position correctly.

***Q.218. Pursuant to paragraph 2 (I) (ii) (a), the consolidated NOFHC is required to adhere to all the exposure norms on the consolidated basis such as single and group borrower exposure limits, capital market exposure limit etc, as applicable to bank groups. Since NOFHC shall only hold investments in financial services entities in the group, it may breach single and group borrower exposure limits for such entities, the RBI therefore requested to clarify that these limits shall not be applicable to investment by the NOFHC in financial services entities that belong to***

***the Promoter Group. Such consolidated monitoring should not be applicable to Policy Holder Funds of insurance companies and mutual funds held under the NOFHC.***

**A.** The exposure norms stipulated at paragraph 2 (I) (ii) (a) of the guidelines refer to third party exposures and capital market exposures of the consolidated NOFHC as defined in circular DBOD.No. BP.BC.72/21.04.018/2001-02 dated February 25, 2003. As regards the stand alone NOFHC, its exposure to the entities held under it are not subject to single and group borrower exposure limits. The overarching exposure norms of the insurance companies and mutual funds under the NOFHC have been indicated in Paragraph 2 (I) (iv) (a) to (c). Their exposure norms would be as prescribed by IRDA and SEBI respectively.

***Q.219. We also request a clarification that in the event of conversion of an NBFC to a bank, it would be possible to transfer the business of such NBFC (assuming such business cannot be undertaken by the bank) to another NBFC held by NOFHC, before such conversion.***

**A.** All regulated financial sector entities in which a Promoter Group has 'significant influence' or 'control' (as defined in Accounting Standard 23) will be held under the NOFHC. If any activity is required to be carried on outside the bank, it is for the Promoters/Promoter Group to decide in which entity such activity would be carried on. The Promoters/Promoter Group may undertake transfer of business activities from one entity to another in the Group (after obtaining the approval of the concerned regulators and authorities, as required), for the purpose of compliance with the requirements of these guidelines only after obtaining 'in-principle' approval from the RBI for conversion of a NBFC into a bank or for setting up of a new bank. This may be completed within a period of 18 months from the date of in-principle approval of before commencement of the banking business, whichever is earlier.

***Q.220. Paragraph 2 and 3 of Annexure II to the Guidelines provide that where the applicant belongs to an existing group , the details of ownership, management and corporate structure of all the entities in the group should be furnished, including an organogram showing shareholding and management and further Applications should also be supported by detailed information on the background of Promoters, their expertise, track record of business and financial worth, Memorandum and Articles of Association and latest financial statements of the Promoter entities for the past ten years, income tax returns for last three years, details of Promoters' direct and indirect interests in various entities/companies/industries, details of credit/other facilities availed by the Promoters/ Promoter entity(ies)/ other group entity(ies) along with details of the bank's/ financial institution's branches where such facilities were / are availed. For a large diversified Promoter Group that has many entities, it is voluminous and laborious task to collate the aforementioned data for all entities. In light of the above we request a clarification from the Reserve Bank of India on whether it would be sufficient to submit the above data for the top***

***5 companies in the Promoter Group (as is accepted by SEBI for the purpose of filling a prospectus).***

**A.** The entities/individuals belonging to the Promoters/Promoter Groups, which would participate in the voting equity shares of the NOFHC, would have to provide the Memorandum and Articles of Association, financial statements for past ten years and IT returns for last three years, as appropriate, at the time of submission of their application. The last available financial statements in respect of other Group entities, which do not participate in the voting equity shares of the NOFHC will also have to be furnished. The details of the Promoters' direct and indirect interest in various entities/companies/industries and details of credit/other facilities availed by the Promoters/Promoter Group would be required of all entities. [ para 3 of Annex II to the guidelines]

***Q.221. In the application, the promoters / promoter group will show visibility into the investors who constitute the minimum Bank capitalization (Rs 5 billion) specified in the guidelines, and into investors that satisfy the minimum 40 per cent NOFHC shareholding requirements. We presume that this does not preclude the promoter / promoter group from presenting a business plan with higher than the minimum prescribed capitalization requirements, and that the investors (while fulfilling the 'fit and proper' criteria) who would contribute capital beyond the minimum threshold could be identified in future, unless specifically instructed otherwise?***

**A.** (i)Yes. The business plan can provide for share capital which is beyond the minimum prescribed.

(ii) It is essential that at least 40 per cent of the initial voting equity capital of the bank is held by the NOFHC and the NOFHC continues to hold at least 40 per cent of the voting equity capital during the first five years from the commencement of the business of the bank.

(iii) No single entity or the group of the related entities, other than the NOFHC shall have the shareholding or control, directly or indirectly, in excess of 10 per cent of the paid up voting equity capital of the bank and any acquisition of shares which will take the aggregate holding of an individual/entity/group to the equivalent of 5 per cent or more of the paid up voting equity capital of the bank will require prior approval of RBI.

(iv) It is therefore essential that the full details to be furnished of all the individuals/ entities/ groups who will hold voting equity capital in the bank at its inception.

(v) The applicants should furnish the detailed information about the persons/entities who would subscribe to the voting equity capital of the proposed NOFHC and the bank including foreign equity participation in the proposed bank.

***Q.222. The guidelines stipulate a 10 per cent maximum shareholding for promoter, his relatives and his majority-held companies in the NOFHC. Does the 10 per cent restriction also apply to non-promoter domestic investors (individuals / institutions) in the NOFHC?***

**A.** The NOFHC has to be wholly owned by the Promoters/Promoter Groups. Therefore, no investor (domestic or foreign) not being part of the Promoter Group can hold voting equity shares in the NOFHC. At least 51 per cent of the voting equity shares of the NOFHC have to be held by entity/entities in which public shareholding is not less than 51 per cent. A person along with his relatives as defined in Section 6 of the Companies Act, 1956 and entities in which he and/or his relatives hold not less than 50 per cent of the voting equity shares can hold shares in excess of 10 per cent provided by virtue of his shareholding or otherwise, is not in a position to exercise 'significant influence' or 'control' (as defined in Accounting Standard 23) over the company

***Q.223. If the promoter / promoter group companies hold a minority (i.e. <49 per cent) stake in one or more entities that also have stakes in the NOFHC, do we understand that these indirect holdings will not count towards the 10 per cent limit stipulated above?***

**A.** For the purpose of computing the 10 per cent limit for an individual belonging to the Promoter Group in the voting equity shares of the NOFHC, the voting equity shares to be held by his relatives (as defined in Section 6 of the Companies Act 1956) and entities in which he and / or his relatives hold not less than 50 per cent of the voting equity shares will be aggregated.[ para 2 (C)(ii)(a) of the guidelines]

If an individual belonging to the Promoter Group holds a minority stake (i.e. <49 per cent) in one or more entities that also hold voting equity shares in the NOFHC, the shares holdings of those company/ies will not count towards the 10 per cent limit stipulated in terms of para 2C (ii)(a) of the guidelines.

The individual shareholding referred to in para 2(C)(ii)(a) and (b) of the guidelines are not correlated.

***Q.224. (i) If there is an individual foreign shareholder with minority stake in the investment vehicles that own the NOFHC, do we understand that this indirect stake does not count towards the 5 per cent limit for an individual foreign shareholder in the bank?***

***(ii) In the total foreign shareholding of a bank (which needs to be below 49 per cent), do we presume foreign minority shareholding in investment vehicles that own the NOFHC will not be counted towards the 49 per cent limit?***

**A.** (i) & (ii) The NOFHC is required to be wholly owned by entities 'owned and controlled' by residents and individuals belonging to the Promoter Group. Therefore, if the investment vehicles of the Promoter Groups are 'owned and controlled' by residents, the

indirect foreign investment through these entities will not be counted as foreign investments in the bank. [para 2(A)(i) and para 2(F) of the guidelines]

***Q.225. Commercial banks currently can have foreign ownership beyond 5 per cent (upto a maximum of 10 per cent) with prior approval from the RBI. We presume that a similar rule and process will be applied to the new banks?***

**A.** No non-resident shareholder, directly or indirectly, individually or in groups, or through subsidiary, associate or joint venture will be permitted to hold 5 per cent or more of the paid-up voting equity capital of the bank for a period of 5 years from the date of commencement of business of the bank. After the expiry of 5 years from the date of commencement of business of the bank, the aggregate foreign shareholding would be as per the extant FDI policy. [para 2(F) of the guidelines]

***Q.226. How will "voting equity shares" be specifically defined? Should we presume that all ownership restrictions specified in the guidelines apply only to voting equity shares?***

**A.** The voting equity shares are those that confer voting rights to the shareholders. The ownership restrictions specified in the guidelines apply only to voting equity shares.

***Q.227. Having ensured that paid-up equity voting capital of the bank is over ` 5 billion, will the bank be able to offer preferential, convertible or other classes of voting shares or Tier II capital (subordinated debt)?***

**A.** The initial minimum paid-up voting equity capital for the bank is ` 5 billion. Depending upon the business plan, additional capital can be brought in. The bank will be able to issue preference shares permissible under the Banking Regulation Act, 1949, and other Tier I and Tier II capital instruments etc. as per RBI guidelines contained in circular DBOD.No.BP.BC.98/21.06.201/2012-13 dated May 2, 2012.

***Q.228. i) We assume that all activities allowed currently for Feet-on-street (FOS) of commercial banks, will be permitted for the new banks as well; as we believe that the FOS model is a key pillar of achieving financial inclusion unless specifically advised otherwise.***

***(ii) Many existing commercial banks have feet-on-street employees on the rolls of wholly owned subsidiaries –we assume that the new banks could, if they wish, adopt a similar model, unless specifically advised otherwise.***

***(iii) Many existing commercial banks have Business Correspondents (BC) and hence we assume that the new banks will also be allowed to appoint BCs at the time of commencement of business, unless specifically advised otherwise.***

**A.** (i) Yes. A new bank can adopt FOS model for the purpose of financial inclusion.

(ii) No. The bank cannot have a subsidiary under it.

(iii) Yes. The new bank can appoint Business Correspondents for the purpose of financial inclusion.

***Q.229. As per Section 2 (F) of the guidelines, foreign shareholding in the bank shall not exceed 49% of the paid-up voting equity capital for the first 5 years from the date of licensing of the bank. No non-resident shareholder, directly or indirectly, individually or in groups, or through subsidiary, associate or joint venture will be permitted to hold 5 % or more of the paid up voting equity capital of the bank for a period of 5 years from the date of commencement of business of the bank. Whether FII shareholding forming part of the public shareholding at the listed promoter company level will also be considered for the purpose of arriving at 5% holding limit in the new bank?***

**A.** No, the FII shareholding forming part of the public shareholding at the listed promoter company level will not be considered for the purpose of arriving at 5% holding limit in the new bank.

***Q.230. In case an applicant, in order to comply with the NOFHC requirements, needs to convert a small public company into a listed one, will any relaxation be provided for the timelines to comply to the takeover code?***

**A.** A public company need not necessarily be a listed company. At the time of making applications, the Promoters/Promoter Group will have to furnish a road map and methodologies they would adopt to comply with all the requirements of the corporate structure indicated in para 2 (C)(ii) and (iii) of the guidelines within a period of 18 months. After the 'in-principle approval' is accorded by RBI for setting up of a bank, the Promoters/Promoter Group will have to comply with all the requirements and the proposed bank has to start operations within this period.

***Q.231. If there are existing Foreign Funding Institution / Indian Investment Institution as equity holder, how they may be accommodated as equity partners in the proposed NOFHC / and or the Bank.***

**A.** The NOFHC has to be wholly owned by a Promoter/Promoter Group (as per the definition given in Annex I to the guidelines) and the pattern of shareholding would be as per the provisions laid down at paragraph 2(C)(ii) & (iii) of the guidelines. The existing foreign funding institution / Indian Investment Institution who hold shares in the promoting entity of the NOFHC, not being Promoter or belonging to the Promoter Group cannot hold shares in the NOFHC. As regards shareholding in the bank by foreign funding institutions, it should be in consonance with paragraph 2 (F) of the guidelines. Further, no single entity or group of related entities, other than the NOFHC, shall have shareholding or control, directly or indirectly, in excess of 10 percent of the paid-up equity capital of the bank and any such acquisition of 5 per cent or more of the paid up equity capital of the bank will require prior approval of RBI. [Paragraph 2 (K) (ii) and (iii)]

***Q.232. In case the promoter group company that is envisaged to hold voting equity shares of the NOFHC has issued GDRs or ADRs (i.e. equity instruments that do not have attached voting rights). How would the public holding in these companies be calculated? Would the GDRs / ADRs (and their underlying shares) be excluded or will the public holding be calculated notwithstanding the nature (voting / non-voting) of the shares issued.***

**A.** Public shareholding would mean, at least 51 percent of the shareholding is widely dispersed among shareholders other than the Promoters and none of such shareholders along with his relatives (as defined in Section 6 of the Companies Act, 1956) and entities in which he and / or his relatives hold not less than 50 percent of voting equity shares exercise 'significant influence' or 'control' (as defined in Accounting Standard 23) by virtue of his shareholding or otherwise. Therefore, GDRs / ADRs and their underlying shares would be counted as public shareholding, provided that, by virtue of their shareholding, the holders or their custodians do not have 'significant influence' or 'control' (as defined in Accounting Standard 23) and there are no agreements or other arrangements whereby the GDR / ADR holders or their custodian have undertaken to exercise their voting rights in accordance with the Promoters/management.

***Q.233. With reference to paragraph 2 (C) (vi), is the condition applicable for setting up new business lines even within existing businesses eg. Health Insurance (where a regulatory approval is required) as part of the existing Life insurance businesses***

**A.** The stipulation that the NOFHC shall not be permitted to set up any new financial services entity for at least three years from the date of commencement of business of NOFHC means that the NOFHC cannot undertake a new financial service activity [para banking activities as defined in Master circular DBOD.No.FSD.BC.24/24.01.001/2012-13 dated July 2, 2012 and those financial services activities that must be undertaken from outside the bank [para 2 (C) (iv) (a) of the guidelines] and set up a new financial services entity for this purpose during the specified period.

However, adding a new business line within existing business line would be as per the rules and regulations laid down by the concerned financial sector regulator.

***Q.234. Whether NOFHC, being NBFC-CIC, shall be allowed to sponsor Company C (a newly incorporated IDF-NBFC) in compliance with the Banking Guidelines?***

**A.**Yes, but the NOFHC shall not be permitted to set up any new financial services entity for at least three years from the date of commencement of business of the NOFHC. [para 2 (C) (vi) of the guidelines].

***Q.235. While the RBI has made an exception for bank's setting up subsidiaries where it is legally required, would the same be applicable for other businesses under the NOFHC where it is legally required for that business to set up a subsidiary / joint venture to undertake certain businesses.***

**A.** Yes, subject to RBI approval and subject to the regulations / approvals of the concerned financial sector regulators.

***Q.236. Can the NOFHC shareholding in the bank be brought down by a stake sale, dilution or a combination thereof.***

**A.** Yes, the shareholding of the NOFHC in the bank can be brought down by a stake sale or dilution or a combination thereof subject to complying with the requirement at para 2(K)(ii) and (iii) of the guidelines.

***Q.237. Would investments in debt mutual funds be covered under money market instruments for the purpose of the Clause 2 H (i) (c) of the guidelines?***

**A.** No. Debt mutual funds are not covered under money market instruments. [Para 2(H)(i)(c) of the guidelines].

***Q.238. In respect of exposure norms for financial entities held by the NOFHC, are investments made by these entities, that are permissible under extant regulations formed by their respective regulators under the ambit of these guidelines. Eg. Equity investments by AMCs and Life insurers.***

**A.** Paragraph 2 (I) (iv) (a) and (b) of the guidelines lay down the overarching principles for the financial entities held by the NOFHC. These entities cannot have any credit and investments (including investments in the equity/debt capital instruments) exposure to the Promoters / Promoter Group entities or individuals associated with the Promoter Group or the NOFHC. These entities cannot make investments in the equity and debt Capital instruments amongst themselves. Apart from these, the exposure norms laid down by the other financial sector regulators will be applicable.

***Q.239. What should be the duration covered by the business plan submitted by the applicant, i.e. how many years should be covered from the date of business commencement in the business plan?***

***Q.240. Applicants for new bank licenses will be required to furnish their business plans for the banks along with their applications. The business plan will have to address how the bank proposes to achieve financial inclusion. What should be the period for the business plan (3, 5 or 10 years) to be submitted as a part of the application?***

***Q.241. What should be the period for the business plan (3, 5 or 10 years) to be submitted as a part of the application?***

**A. (239 to 241)** The period of business plan is left to the applicants. The business plan should be realistic and viable. It should address how the bank proposes to achieve financial inclusion. It would be desirable to give business plan covering three to five years.

***Q.242. In the case of a single promoter group company investing in the NOFHC, would that company be reckoned as the promoter of the NOFHC or would the promoter group holding the investing company be reckoned as the promoter group for the basis of ultimate ownership of the NOFHC or the Bank***

***Q.243. Is it necessary for the promoter to be an individual or can a body corporate that belongs to the promoter group also be regarded as a promoter?***

**A (242&243).**The Promoter Group would be as per the definition provided in the Annex I of the guidelines.

It is not necessary for all the individuals belonging to the promoter group and all group entities to participate in the voting equity shares of the NOFHC. The guidelines provide that a NOFHC should be wholly owned by the Promoters/Promoter Group i.e., by individuals belonging to the Promoter Group and entities in the Promoter Group in which the Promoter/Promoter Group are in effective control. Within such shareholding, not less than 51 percent of the voting equity shareholding of the NOFHC must be held by companies in which the public hold not less than 51 percent of the voting equity shareholding. The remaining 49 per cent of voting equity shareholding in such publicly held companies [para 2(C)(ii)(b) of the guidelines] will be held by promoter group individuals/ entities who have 'significant influence' and 'control' (as defined in Accounting Standard 23) over such companies.

***Q.244. In the case of entities under the promoter group that share a common brand name and a common logo. Whether sharing a brand name and common logo be covered under this definition?***

**A.** Yes. Please refer to the Annex I to the Guidelines.

***Q.245. Paragraph 2 ( c )(iii) provides that "the NOFHC shall hold the bank as well as all the other financial services entities of the Group regulated by RBI or other financial sector regulators." In this regard, please could you clarify the following :***

***(i) Where a financial services entity (say Company A) has one or more subsidiary entities (say Company B and Company C) which also undertake financial services activities, will the condition prescribed in paragraph 2 (C)(iii) be satisfied if the NOFHC holds the equity of Company A (and therefore indirectly holds the equity of Company B and Company C)? How should the requirement at paragraph 2 (I)(iv)(b) be interpreted in this regard ?***

***(ii) Annexure 1 of the Master Circular – Para Banking Activities dated July 2, 2012 contains a definition of "financial services companies". This definition does not appear to include an entity which is a commodities broker registered with the Forward Markets Commission. Under the circumstances, would entities registered as brokers with the Forward Markets Commission be regarded as financial services***

***entities regulated by a financial sector regulator, and therefore required to be held by the NOFHC ?***

**A.** (i)The NOFHC shall directly hold the bank as well as all the other regulated financial services entities of the Group in which a Promoter Group has significant influence or control (As defined in Accounting Standard 23). [Paragraph 2 (C) (iii) & (vii) of the guidelines]. In the above cited example, all the three companies, i.e. Company A, Company B and Company C will have to directly come under the NOFHC and Company A, Company B and Company C cannot make investment in equity / debt capital instruments amongst themselves. [Paragraph 2 (I) (iv) (b) of the guidelines]. The guidelines also provide that while this is the requirement, banks would not be precluded from having a subsidiary or joint venture or Associate where it is legally required or specifically permitted by RBI [para 2 (C) (vi)]. As regards other financial sector entities held by the NOFHC, those would not be precluded, with RBI's approval, from setting up similar structures where it is legally required or specifically required by the concerned financial sector regulators.

(ii) For the purpose of these guidelines, entities registered as brokers with the Forward Markets Commission will not be treated as financial services entities regulated by a financial sector regulator, and therefore would not be required to be held by the NOFHC.

***Q.246. Paragraph 2(C) (iv) states that "the general principle is that no financial services entity held by the NOFHC would be allowed to engage in any activity that a bank is permitted to undertake departmentally." The paragraph clarifies that this general principle is subject to two exceptions summarized in sub-paragraphs (a) and (b), In this regard, please could you clarify the following :***

i. ***Will the activities in sub-paragraph (b) cover all (and only those) activities described in RBI's Maser Circular – Para Banking Activities date July 2, 2012? How should the specific scope of activities covered by sub-paragraph (b) be identified?***
ii. ***The concluding sentence states "Accordingly, the activities at (a) above and activities at (b) above which are to be carried outside the bank will have to be carried out through separate financial entities under the NOFHC". Activities at (b) above could be undertaken by a bank. Is it obligatory that such activities must necessarily be undertaken through a separate financial entity under the NOFHC or would it also be possible to undertake such activities through the bank at the Group's option ?***
iii. ***Where the Group provides non-discretionary investment advisory services (which are regulated by SEBI but may be provided by a bank) as well as discretionary investment management services eg portfolio management services (which are also regulated by SEBI but cannot be provided by a bank), will it be obligatory to shift the non-discretionary investment advisory services to the bank ?***

**A.**(i) & (ii) The general principle in this regard is that para-banking activities, such as credit cards, primary dealer, leasing, hire purchase, factoring, etc., can be conducted either inside the bank departmentally or outside the bank through subsidiary/ joint venture

/associate. Activities such as asset management, insurance, stock broking, asset reconstruction, venture capital funding and infrastructure financing through Infrastructure Development Fund (IDF) sponsored by the bank can be undertaken only outside the bank. Lending activities must be conducted from inside the bank. However, other regulated financial services entities (excluding entities engaged in credit rating and commodity broking) in which the Promoter/Promoter Group has 'significant influence' or 'control' (as defined in Accounting Standard 23) have to be held under the NOFHC and not under the bank unless it is legally required or specifically permitted by RBI. [para 2 (C) (iv) of the guidelines].

(iii) Investment advisory services, could be conducted both from within the bank or outside the bank, by any financial services company in the group (which is held under the NOFHC) that is eligible to register with SEBI as an investment advisor. Regarding portfolio management services, these activities could be carried out by a bank departmentally subject to prior approval of RBI or by any financial services company (which is held under the NOFHC) eligible to provide PMS under SEBI PMS regulations.

***Q.247. There are certain businesses, for e.g. merchant banking, which are regulated by other financial sector regulators and which can be carried on by a bank departmentally as well as through a separate entity. Can such businesses be carried out outside the bank but under the NOFHC framework?***

**A.** The general principle is that para-banking activities, such as credit cards, primary dealer, leasing, hire purchase, factoring etc., can be conducted either inside the bank departmentally or outside the bank through subsidiary/ joint venture /associate. Activities such as insurance, stock broking, asset management, asset reconstruction, venture capital funding and infrastructure financing through Infrastructure Development Fund (IDF) sponsored by the bank can be undertaken only outside the bank. Lending activities must be conducted from inside the bank. However, other regulated financial services entities (excluding entities engaged in credit rating and commodity broking) in which the Promoter/Promoter Group has 'significant influence' or 'control' (as defined in Accounting Standard 23) have to be held under the NOFHC and not under the bank unless it is legally required or specifically permitted by RBI. [para 2 (C) (iv) of the guidelines].

The merchant banking activities can be conducted from within the bank or outside the bank under the NOFHC. [para 2 (C) (iv) of the guidelines].

***Q.248. Where a group has one or more existing non-deposit taking NBFCs, can the non-deposit taking NBFCs continue to exist until their existing book of business has been wound down, or is it obligatory that all the activities of the non-deposit taking NBFC must necessarily be transferred immediately to the bank?***

**A.** The NBFCs must transfer their existing business to the bank if the bank can undertake such activities [Paragraph 2 (C) (iv) of the guidelines] and retain with itself the activities which the bank cannot undertake from within. Both the bank and the NBFC, if required to retain with itself the activities which the bank cannot undertake, will have to come under

the NOFHC. The reorganisation of business should be done within a period of 18 months from the date of in-principle approval or before commencement of the banking business, whichever is earlier.

***Q.249. Paragraph 2 (C) (vi) states that "the NOFHC shall not be permitted to set up any new financial services entity for at least three years.." The paragraph further provides that "this would not preclude the bank from having a subsidiary or joint venture or associate, where it is legally required or specifically permitted by the RBI". Paragraph 2 (C) (iv) suggests that activities of the kind referred to in paragraph 2 (C) (vi) should be conducted in entities under the NOFHC. If so, the requirements of paragraph 2 (C) (iv), which requires certain activities to be undertaken through separate financial entities established under the NOFHC, and paragraph 2 (C)(vi), which stipulates that an NOFHC cannot establish a new entity to undertake such activities for the first three years but the bank can, appear to be contradictory. Should the requirement of paragraph 2(C)(vi) therefore be interpreted to mean that an NOFHC cannot establish any new financial entity for a three year period, except where such an entity is required to be so set up by the RBI or is otherwise specifically approved by the RBI?***

***Q.250. With reference to paragraph 2 (C) (vi), is the condition applicable to demergers within existing businesses and acquisition of new businesses from third parties***

**A. (249& 250)** The stipulation that the NOFHC shall not be permitted to set up any new financial services entity for at least three years from the date of commencement of business of NOFHC means that the NOFHC cannot undertake a new financial service activity [para banking activities as defined in Master circular DBOD.No.FSD.BC.24/24.01.001/2012-13 dated July 2, 2012 and those financial services activities that must be undertaken from outside the bank (para 2 (C) (iv) (a)] and set up a new financial services entity for this purpose during the specified period. For the purpose of reorganisation of existing business of the Promoter Group to bring all regulated financial services under the NOFHC and to carry out existing business through separate financial entities under the NOFHC as required under the guidelines, [Paragraph 2 (C) (iv) (a) & (b) of the guidelines], the NOFHC would be free to establish new financial services entities. In fact this process will have to be completed within a period of 18 month from the date of in-principle approval or before commencement of the banking business, whichever is earlier.

The stipulation at paragraph 2 (C) (vi) of the guidelines pertains to new financial services entities that are intended to be set up and these guidelines would be applicable to all acquisitions.

***Q.251. Paragraph 2 (C) (ix) provides that "Shares of the NOFHC shall not be transferred to any entity outside the Promoter Group." The paragraph also provides that any change in shareholding within the NOFHC as a result of which a shareholder acquires 5 per cent or more of the voting equity capital of the NOFHC***

***shall require prior RBI approval. In this regard, please could you clarify the following :***

i. ***Would it be possible to list the NOFHC at some stage ?***
ii. ***Would transfers of NOFHC shares between promoter group entities require prior RBI approval if the shareholding of an entity will, as a result of such transfer, reach 5 per cent or more of the NOFHC's voting equity capital ?***

**A. (i) & (ii)** No. It would not be possible to list the NOFHC as it would have to be wholly owned by the Promoters / Promoter Group. Further, any change in shareholding (by the Promoter Group) within the NOFHC as a result of which a shareholder (within the Promoter Group) acquires 5 per cent or more of the voting equity capital of the NOFHC shall be with the prior approval of RBI. [paragraph 2 (C) (ix) of the guidelines]

***Q.252. Can a promoter pledge its shares of NOFHC in any manner? If the pledge is invoked can the lender register the shares of NOFHC in its name without prior approval of RBI?***

***Q.253. Can the shares of NOFHC be transferred by transmission, Will or by operation of law to a non-promoter entity without prior approval of RBI? ?***

**A. (252&253)** No. Shares of the NOFHC shall not be transferred to any entity outside the Promoter Group. Any change in shareholding (by the Promoter Group) with in the NOFHC as a result of which a shareholder acquires 5 per cent or more of the voting equity capital of the NOFHC shall be with the prior approval of RBI. [para 2(C)(ix) of the guidelines ]

***Q.254. If the Group has established one or more overseas subsidiaries which undertake financial services activities, do such subsidiaries need to be brought under the NOFHC?***

**A.** Yes. The NOFHC shall hold the bank as well as all the other regulated financial services entities of the Group in which a Promoter Group has 'significant influence' or 'control' (as defined in Accounting Standard 23). [para 2(C)(iii) & (vii)]. However, this does not preclude the bank from having a subsidiary or joint venture or associate where it is legally required or specifically permitted by RBI [para 2(C)(vi) of the guidelines].

***Q.255. Paragraph 2(G)(ii) suggests that an NOFHC may be managed by a person who is also a Director on a subsidiary of the NOFHC. Paragraph 2(G)(vii) provides that the ownership and management of the NOFHC, the bank and other financial entities regulated by the RBI will be separate and distinct. The position in paragraph 2 (G)(ii) appears to contradict that prescribed in paragraph 2 (G)(vii). In this regard, please could you clarify the following :***

**(i)** ***Can the NOFHC, the bank and other financial entities held by the NOFHC have any common independent directors ?***

**A.** There could be common directors in the NOFHC and the bank. [para 2(G)(i) of the guidelines]. A director of the NOFHC being also a director on the Board of the bank held by it cannot be considered as independent director of the bank. Whether the other financial entities held by the NOFHC have common independent directors with the NOFHC and the bank will depend upon the circumstances of each case and the rules / regulations of the concerned regulators.

**(ii)** ***If the NOFHC is held by a listed, non-operating holding company which will be registered with the RBI as a CIC, would an individual who is the CEO, MD or Executive Director of such holding company also be permitted to serve as :***

- ***A CEO, MD or Executive Director of the NOFHC?***
- ***A CEO, MD or Executive Director of the bank?***
- ***A CEO, MD or Executive Director of both (i.e. the NOFHC and the bank)?***
- ***A director on the Board of the NOFHC?***
- ***A director on the Board of the bank?***
- ***A director on the Board of both (i.e. the NOFHC and the bank)?***

**A.** A full time executive of the non-operating holding company cannot be a CEO, MD or Executive Director of either the bank or the NOFHC. As per Section 10(1) (c) of the Banking Regulation Act, 1949, the CEO / MD of the bank has to be in full time employment of the bank. However, a full time executive of the non-operating holding company can be a director of both the NOFHC and the bank but such director will not be treated as an independent director of the bank or the NOFHC.

**(iii)** ***If the NOFHC is held by a listed, non-operating holding company which will be registered with the RBI as a CIC, would an individual who is a non-executive, non-independent director on the Board of such holding company also be permitted to serve as :***

**a.** ***A CEO, MD or Executive Director of the NOFHC?***
**b.** ***A CEO, MD or Executive Director of the bank?***
**c.** ***A CEO, MD or Executive Director of both (i.e. the NOFHC and the bank)?***
**d.** ***A non-executive, non-independent director on the Board of the NOFHC?***
**e.** ***A non-executive, non-independent director on the Board of the bank?***
**f.** ***A non-executive, non-independent director on the Board of both (i.e. the NOFHC and the bank) ?***

**A.**

a. No. [Paragraph 2 (G) (ii) of the guidelines].
b. No. [Section 10(1) (c) of the Banking Regulation Act, 1949]
c. No. [Please see (a) & (b) above]
d. Yes.
e. Yes. [Subject to compliance with Banking Regulation Act, 1949 provisions and RBI regulations].

f. Yes. [Please see (e) above].

***Q.256. Paragraph 2 (G) (iv) provides that 50 percent of the Directors of the NOFHC shall be totally independent of, inter alia, major customers and major suppliers of the promoter group entities. How should major customers and suppliers be determined in the context of a Group engaged predominantly in financial services activities?***

**A.** The stipulation with regard to major customers / suppliers in paragraph 2(G)(iv) of the guidelines, as explained in the footnote therein, refers to 10 per cent or more of the annual purchases or sales of goods and services or both taken together.

***Q.257. Paragraph 2 (A) clarifies that an eligible promoter must be an entity that is owned and controlled by residents as defined in Press Notes 2, 3 and 4 of 2009 issued by the DIPP. Will the same norms apply for computing the foreign shareholding in banks (which must be capped at 49 percent / 74 percent as per paragraph 2 (F)?***

**A.** Foreign shareholding in the new banks, as far the FDI cap is concerned, should be in compliance with paragraph 2 (F) of the guidelines. The manner in which the foreign shareholding in the bank will be calculated would be as per the extant GOI guidelines indicated in the Press Notes and DIPP guidelines/ FEMA regulations, as and when issued.

***Q.258. Paragraph 2 (H) (i) (d) provides that the NOFHC shall create a reserve fund by transferring not less than 25 percent of the NOFHC's annual profit to such reserve fund. As required under the Companies Act, the NOFHC will also need to transfer profits to reserves prior to distribution of dividends. Would the reserve in paragraph 2 (H) (i) (d) need to be created over and above the reserve that would be required to be created by the NOFHC under the Companies Act ?***

**A.** The reserves created under the Companies Act can be considered as part of the 25 per cent of the NOFHC's annual profits transferred to the Reserve Fund. [Paragraph 2 (H)(i) (d) of the guidelines].

***Q.259. Can the promoter group entities (other than the NOFHC of the financial entities held by the NOFHC), advance funds to the bank or place deposits with the bank? Can such entities advance funds to other financial entities held by the NOFHC ?***

***Q.260. Will the promoter/ promoter entities be entitled to own shares directly in the banking company on the listing of the bank?***

**A. (259 & 260)** The Promoter / Promoter Group entities / individuals associated with Promoter Group shall hold equity investment in the bank and other financial entities held by it, only through the NOFHC [Paragraph 2 (C) viii of the guidelines]. However, there is

no bar on the Promoter Group entities advancing funds (other than equity) to the bank. The Promoter Group entities would have to follow the guidelines / instructions of the respective regulators in order to advance funds to the financial entities held by the NOFHC.

As far as Promoter Group entities placing deposits with the bank or extending advances to it is concerned, the bank shall maintain arm's length relationship with Promoters / Promoter Group entities [Paragraph 2 (K) (iv) of the guidelines].

***Q.261. Paragraph 2(I)(iv) (b) provides that a financial entity held by the NOFHC shall not make investments in equity / debt capital instruments issued by any other financial entity held by the same NOFHC. Can financial entities held by the NOFHC have credit exposure inter-se?***

**A.** The bank's credit and investment (other than equity / debt capital instruments of the NOFHC and financial sector entities held under the NOFHC, on which exposure cannot be taken) exposure to financial entities under the NOFHC will be subject to intra group transactions and exposure (ITE) norms [para 2(I)(iii)(c) of the guidelines]. As regards exposure of entities regulated by other financial sector regulators, to the bank and other entities held under NOFHC, such exposures would be in accordance with the rules/regulations of the respective sectoral regulators.

***Q.262. Does an NOFHC have to be incorporated and capitalized at least to the extent of ` 2 Crore at the time of submission of the application for a banking licence ?***

**A.** At the time of submission of application for the bank licence, the Promoters have to indicate the source of funds. After obtaining the in-principle approval from RBI, the NOFHC may be incorporated and the capital may be mobilised, as required within 18 months from the date of in principle approval and before the commencement of banking business, whichever is earlier.

***Q.263. There is a need to specify:***

***a. the yardstick / criteria for assessing the 'financial soundness' of a promoter / promoter group.***

***b. the yardstick / criteria for assessing 'successful track record' of a promoter / promoter group.***

***Q.264. Promoters/ Promoter Groups should be financially sound and have a successful track record of running their business for at least 10 years. What are the yardsticks to measure 'financially sound' and 'successful track record'?***

**A (263 & 264)** The assessment of the 'financial soundness' and 'successful track record' is a matter of judgment, and will have to be determined both on quantitative and qualitative

basis; and no specific yardstick/criteria can be spelt out. In making this judgment, consideration will also have to be given to information obtained from the regulators, and enforcement and investigative agencies like Income Tax, CBI, Enforcement Directorate, etc. wherever considered appropriate. Further, the applications received will be subjected to a multi-layered evaluation process, including the High Level Advisory Committee (HLAC). [Paragraph 2(B) of the guidelines]

***Q.265. For applying the yardstick / criteria of 'financial soundness' and 'successful track record', would RBI consider all the businesses / activities of Promoters / Promoter Group or only the ones which are linked to financial services or are likely to be part of entities within the NOFHC framework?***

**A.** For applying the yardstick / criteria of 'financial soundness' and 'successful track record', RBI would consider all the businesses / activities of the Promoters / Promoter Group as considered appropriate. [Paragraph 2(B) of the guidelines]

***Q.266. Would RBI consider a promoter group to be meeting 'fit and proper' criteria if such promoter group commits to reduce, below the threshold advised by RBI, the quantum of businesses / activities considered to be speculative in nature or subject to high asset price volatility?***

**A.** The 'Fit and Proper criteria', as stipulated at paragraph 2(A) & (B) of the guidelines will be determined based upon the past record and the future plan. No threshold has been prescribed for business misaligned with the banking model.

***Q.267. Is the requirement of NOFHC applicable only in cases of corporate with a mix of both non –financial and financial services businesses?***

**A.** The requirement of the NOFHC is for both financial groups and for corporate groups having a mix of both non–financial and financial services businesses. [Paragraph 2 (C) of the guidelines]

***Q.268. It appears that the provisions related to capital structure of NOFHC are not applicable to entities in the public sector. Please clarify if any other provisions related to NOFHC are also not applicable to public sector entities.***

**A.** The provisions of para 2 (C) (ii) of the guidelines will not apply to entities in the public sector. All the other provisions of the guidelines will apply to the entities in the public sector that promote the NOFHC / bank.

***Q.269. How would the provisions apply for a Bank promoted jointly by one public sector and one private sector entity?***

**A.** Two or more different Promoter groups cannot jointly promote a bank. The NOFHC setting up a bank has to be wholly-owned by a single Promoter Group. Entities other than

the Promoters / Promoter Group can hold voting shares in the bank subject to the limitations indicated in Paragraph 2 (K) (ii) and (iii) of the guidelines.

***Q.270. Is it mandatory for promoter Groups engaged solely in the financial services business and already having a core investment company to have another NOFHC for promoting a bank?***

***Q.271. Is the Promoter required to 'set up' a new company to be classified as NOFHC or can a Promoter Group identify and reclassify one of its existing group companies as NOFHC?***

**A. (270&271)** The corporate structure of the NOFHC as given in paragraphs 2 (C) (i), (ii) & (iii) will have to be fully met. The requirement is that the NOFHC has to be wholly owned by the Promoters/Promoter Group. Further, at least 51 percent of the voting equity shares of the NOFHC have to be held by companies in the Promoter Group in which public hold not less than 51 percent of the voting equity of those companies. [Paragraph 2 (C) (i) & (ii) of the guidelines]

If an existing Promoter Group company including a core investment company of the Group satisfies the above criteria, it can be the NOFHC.

***Q.272. Please clarify which of the following types of shareholders would qualify as 'public' in an unlisted / listed entity:***

***a. India domiciled institutional investors***
***b. Employees holding ESOPs***
***c. Private Equity Funds***
***d. FIIs***
***e. Other non promoter group investors***

**A.** All the shareholders mentioned above will be treated as 'public' shareholders in both unlisted and listed entities, provided that no individual shareholder along with his relatives (as defined in Section 6 of the Companies Act, 1956) and entities in which he and/or his relatives hold not less than 50 per cent of the voting equity shares, or acting in concert with other shareholders exercises 'significant influence' or 'control' (as defined in Accounting Standard 23) over the company. [Paragraph 2(C)(ii)(b) of the guidelines]

***Q.273. Please confirm our understanding that (i) listed companies where public shareholding is atleast 51% or (ii) unlisted companies where 51% is held by investors, not being part of the Promoters/ Promoter Group, can both qualify as companies forming part of the Promoter Group allowed to hold not less than 51% of the total voting equity shares of the NOFHC.***

**A.** Companies belonging to the Promoter Group in which the public shareholding is not less than 51 per cent must hold not less than 51 per cent of the voting equity shares of the NOFHC. These companies can be listed or unlisted, but in either case, 'public

shareholding' requires that no person along with his relatives (as defined in Section 6 of the Companies Act, 1956) and entities in which he and/or his relatives hold not less than 50 per cent of the voting equity shares, or acting in concert with other shareholders exercises 'significant influence' or 'control' (as defined in Accounting Standard 23) over the company. [Paragraph 2(C)(ii)(b) of the guidelines]

***Q.274. Can an entity (currently carrying out regulated financial services activity) which commits to discontinue its regulated financial services activities post receipt of banking licence, be kept outside the purview of NOFHC?***

**A.** The requirement is that the NOFHC shall hold the bank as well as all the other existing regulated financial services entities of the Group in which the Promoter Group has 'significant influence' or 'control' (as defined in Accounting Standard 23). [Paragraph 2(C)(iii) & (vii) of the guidelines]. If the entity in the Promoter Group carrying out regulated financial services activity discontinues such activity it will have to be necessarily outside the purview of the NOFHC. However, it has to discontinue the regulated financial sector activity within a period of 18 months from the date of grant of in-principle approval to set up the bank or before the date of issue of licence, whichever is earlier.

***Q.275. Please clarify that prohibition on NOFHC setting-up a new financial services entity does not include:***

***i) setting up a foreign subsidiary by a financial services entity already under the NOFHC framework, for carrying out its business activity in a foreign jurisdiction;***

***ii) the formation of a new entity under NOFHC as part of a group restructuring to comply with the RBI Banking Guidelines;***

***iii) the formation of any new financial services entity required to be established after the commencement of business of the NOFHC by a specific regulatory requirement.***

**A.** (i)A foreign subsidiary can be set up by a financial services entity already under the NOFHC framework provided the setting up of such an entity is necessary under the regulation in that foreign jurisdiction.

(ii) The setting up of a new entity under the NOFHC as a part of the restructuring of the business of the Promoter group would be permitted subject to compliance with the guidelines at paragraph 2C (vii) of the guidelines.

(iii) A new financial services entity can be set up under the NOFHC if required by a specific regulatory requirement.

Prior permission of the RBI will be necessary for setting up of such new entities, under the NOFHC.

***Q.276. Will RBI approval be required for gross acquisitions exceeding 5% voting equity of NOFHC or for net shareholding (net of dilutions / sales) crossing 5% of voting equity capital?***

**A.** Shares of the NOFHC shall not be transferred to any entity outside the Promoter Group. Any change in shareholding (by the Promoter Group) within the NOFHC as a result of which a shareholder acquires 5 per cent or more of the voting equity capital of the NOFHC shall be with the prior approval of RBI. [Paragraph 2 (C) (ix) of the guidelines]

RBI approval will be required for any acquisitions / transfers of voting equity capital resulting in shareholding of 5 per cent or above by an individual / entity / group / Persons acting in concert.

***Q.277. Would shareholding in any Promoter Group entity holding shares in NOFHC be treated as 'indirect' shareholding in the bank?***

***Q.278. If yes, how would such 'indirect' shareholding in the bank be calculated for the purpose of 10% limit?***

**A. (277&278)** No. Shareholding in Promoter Group entity holding shares in NOFHC will not be treated as 'indirect' shareholding in the bank. It may be mentioned here that the Promoters / Promoter Group entities / individuals associated with Promoter Group shall hold equity investment in the bank and other financial entities held by the NOFHC, only through the NOFHC [Paragraph 2 (C) (viii) of the guidelines]

***Q.279. We presume that only domestic financial entities of the Group are required to be brought under NOFHC. Accordingly, overseas financial entities belonging to promoter group would be outside of NOFHC. Please confirm.***

**A.** All regulated financial sector entities in which a Promoter Group has significant influence or control (as defined in Accounting Standard 23) will be held under the NOFHC, including the overseas financial entities. However, this would not preclude the bank or any other financial services entity held under the NOFHC from having a subsidiary or joint venture or associate where it is legally required or specifically permitted by RBI and other financial sector regulators. [Paragraph 2 (C) (iii) of the guidelines]

***Q.280. In case of listed NBFC desiring to promote the bank, it would be economically disadvantageous to have the two layered structure of the listed NBFC taking stake in the Banking entity through a wholly owned NOFHC. Hence, please let us know whether the listed NBFC can itself be considered / converted as the NOFHC and hence be permitted to directly promote the banking entity. In such a case, due to the fact of the NBFC being a listed entity, there is a need to provide exemption to the NOFHC being a wholly owned entity.***

**A.** The requirement is that the NOFHC has to be wholly owned by the Promoters/Promoter Group. [Paragraph 2 (C) (i) of the guidelines] Further, at least 51

percent of the voting equity shares of the NOFHC have to be held by companies in the Promoter Group in which public hold not less than 51 percent of the voting equity of those companies. [Paragraph 2(C)(i) & (ii) of the guidelines]

Therefore, the listed NBFC cannot be converted into an NOFHC and promote the bank. No exemption can be granted for the purpose.

***Q.281. Most banks and NBFCs have a staffing subsidiary. The employees in this company perform transactional activities for the bank / NBFC. Since such staffing subsidiaries are integral in nature to the banking business we presume that the banks/NOFHC would be continued to be allowed to hold such subsidiaries. Please confirm.***

**A.** The NOFHC will be required to hold only regulated financial services entities. The bank will be permitted to have a subsidiary or joint venture or associate, only where it is legally required or specifically permitted by RBI [Paragraph 2(C)(vi) of the guidelines]. Banks however, are not permitted to have staffing subsidiaries.

***Q.282. A Financial Institution is set up under an Act of Parliament and its equity is held by public sector banks and insurance companies, owned or controlled by Government of India. Given this background, would it be a limiting factor for these promoters of the FI for carrying out their ongoing financial services?***

**A.** The Promoters/ Promoter Group would be permitted to set up a bank only through a wholly owned NOFHC as per the corporate structure envisaged in paragraph 2(C) of the guidelines. The NOFHC shall hold the bank as well as all the other financial services entities of the Group regulated by RBI or other financial sector regulators in which the Promoters/ Promoter Group have 'significant influence' or 'control' (as defined in Accounting Standard 23) [Paragraph 2(C)(iii) of the guidelines]. Further, the general principle is that no financial services entity held by the NOFHC would be allowed to engage in any activity that a bank is permitted to undertake departmentally [Paragraph 2(C)(iv) of the guidelines]. It is clarified that all lending activities in the group must be conducted from inside the bank.

***Q.283. Whether FI would be under the obligation to transfer its shareholdings in its associates, subsidiaries and joint ventures (rating company, venture capital company, asset reconstruction company, etc) to the NOFHC? It may be added that some of these subsidiaries amongst themselves have cross holdings with each other.***

***Q.284. Can the FI still continue to do refinance activity along with other developmental activities like cluster development programme, entrepreneurship development programme. It is submitted that these being specialized activities permitted by the statute to specified institutions, may not be construed as normal financial services activity for the purpose of the above definition.***

***Q.285. Can the venture capital company, presently a wholly owned subsidiary of the FI, be allowed as a separate arm under the NOFHC, in line with guidelines permitting infrastructure debt funds to be carried out by a separate subsidiary under NOFHC? Or can it be allowed to carry on the activity outside the NOFHC as wholly owned subsidiary of FI ?***

***Q.286. The FI is presently extending direct finance to eligible entities (which are in the priority sector category) as permitted by the statute, to supplement efforts of the banks by introducing new and innovating products for adoption by other lenders in due course. In addition, the FI also extends equity/quasi equity assistance to the eligible entities as permitted by the statute and supported by the Government through special dispensation, also approved by the regulator. These being permitted activities under statute, can the same be continued by the FI?***

**A (283 to 286).** If the FI is a private sector entity, then it has to comply with the corporate structure prescribed at paragraph 2(C)(ii) of the guidelines. If the FI is a public sector entity, provisions of the paragraph 2(C)(ii) of the guidelines will not be applicable, though the entity has to set up a NOFHC for holding the bank. In either case, the activities that can be conducted by a bank have to be transferred to the bank and the regulated financial services activities which a bank cannot undertake have to be transferred to a separate subsidiary or subsidiaries under the NOFHC.[para 2 (C) (iii) of the guidelines]

***Q.287. Where shares of a NOFHC are held by public charitable trusts, whose trustees are the promoters of financial services companies, whether the shareholding of such public charitable trusts be considered as meeting the condition 2(C)(ii)(b)?***

***Q.288. Where shares of a NOFHC are held by employee welfare trust, whether the shareholding of such trust be considered as meeting the condition 2(C)(ii)(b)?***

***Q.289. Will RBI consider employee welfare trusts as being held by public, in order to comply with NOFHC requirements for promoter group?***

**A. (287 to 289)** The shares of NOFHC can be held by individuals, corporate entities and companies belonging to the Promoter Group. A trust does not fall under either of these categories. Therefore, a public charitable trust or an employee welfare trust cannot hold voting equity shares directly in the NOFHC but can hold indirectly through a company which holds equity shares of the NOFHC. If the Promoters have control over the trust, the trusts will not be treated as 'public' for the purpose of computing 'public shareholding' in companies which would hold not less than 51 per cent of the voting equity of the NOFHC. [Paragraph 2(C)(ii)(b) of the guidelines]

***Q.290. Where a group is engaged in financial services sector and has investments in various companies / SPVs/ joint ventures through holding company which is typically Core Investment Company (CIC) or Systemically important non-deposit***

***taking CICs (CIC-ND-SI), will they have to undergo the rigour of dismantling the CIC / CIC-ND-SI structure in view of new concept of NOFHC?***

***Q.291. Can the CIC registered with RBI be eligible to act as NOFHC?***

**A.(290& 291)** A CIC of the Promoter Group will be eligible to hold the voting equity shares of NOFHC. Alternately, a CIC of the Promoter Group may also become a NOFHC. However, under both the options, the corporate structure of the NOFHC must comply with requirements at para 2 (C) of the guidelines, and the new bank and the regulated financial sector entities in which Promoter Groups have 'significant influence' and 'control' (as defined in Accounting Standard 23) have to be held under the NOFHC. [Paragraph 2(C)(iii) & (vii) of the guidelines]

***Q.292. Post setting up the bank, if the promoters wish to enter into new financial businesses such as insurance, asset management, do they set up a new subsidiary under the NOFHC or under the bank?***

**A.** Post setting up the bank, if the promoters wish to enter into new financial business such as insurance, asset management, they have to set up new subsidiaries under the NOFHC; not under the bank. This would not preclude the bank from setting up a subsidiary, if there is a legal requirement or requirement of the concerned financial sector regulator, subject to RBI approval. However, the NOFHC shall not be permitted to set up any new financial services entity for at least three years from the date of commencement of its business. [para 2(C)(vi) of the guidelines]

***Q.293. Existing guidelines for Infrastructure Debt Funds (IDFs), cap the ownership stake of potential bank sponsors of an IDF (NBFC structure) to a maximum of 30 percent, and that of potential IFC-NBFC sponsor at 49 percent. Could the NOFHC holding the bank also have an ownership share of more than 49 percent in a separate IDF subsidiary?***

**A.** The NOFHC shall hold the bank as well as other financial services entities of the Promoter Group regulated by RBI or other financial sector regulators [para 2(C)(iii) of the guidelines]. Accordingly, the NOFHC will replace bank/NBFC as sponsor of IDF and contribute a minimum equity of 30 percent and maximum equity of 49 percent of the IDF-NBFC. (Please refer RBI circulars DBOD.FSD BC No 57/24.01.006 dated November 21, 2011 and DNBS. PD. CC. No 249/03.02.089 dated November 21, 2011).

***Q.294. Company A, a 50:50 Joint Venture between Company S & Company B (non resident), is an NBFC classified as an Asset Finance Company. Company A is engaged in the business of equipment financing. Investment in Company A (50%) is proposed (i) to be transferred to Non Operative Financial Holding Company ("NOFHC") (a newly incorporated WOS of Company S) by Company S or (ii) to be transferred to NOFHC by Company S and then to Bank (a newly incorporated WOS of NOFHC) by NOFHC.***

***a) Whether investment in Company A (50%) can be held by bank?***

***b) If answer to the question (a) is negative, whether investment in Company A can be held by NOFHC?***

**A.** (a & b) Since the NOFHC shall hold the bank as well as other financial services entities of the Promoter Group, regulated by RBI or other financial sector regulators [Paragraph 2 (C) (iii) of the guidelines], the bank held under NOFHC will not be permitted to hold the equity shares of an Asset Finance Company (AFC) held under the same NOFHC. Therefore, the bank cannot have 50 per cent equity investment in Company A, unless required by law or specially permitted by RBI and concerned financial sector regulator. Subject to the above, the investment in Company A has to be held by the NOFHC.

***Q.295. Will it be mandatory to transfer any financial services activity which is currently not regulated but which will be regulated by the sectoral regulators in future, under the NOFHC?***

**A.** Yes, all regulated financial services activities, in which a Promoter Group has 'significant influence' or 'control' (as defined in Accounting Standard 23), whether presently regulated or regulated in the future, will need to be under the NOFHC, when so regulated. [Paragraph 2(C)(vii) of the guidelines]

***Q.296. If an existing NBFC is converted into a bank or an existing business is transferred to the bank to be carried out by it "departmentally", then will the same be permitted to be valued at fair value for the purpose of issuance of voting capital?***

**A.** The assets and liabilities for the purpose of transfer from one entity to another under restructuring of the existing business may be valued as per the relevant provisions of the applicable laws.

***Q.297. Will this mean that any restructuring of existing businesses held by NOFHC which may give rise to forming new entities or transfer of existing business to new entities by way of merger, demerger, internal restructuring etc. is also prevented for a period of 3 years from the commencement of business of NOFHC? If the sector regulator says SEBI or IRDA are to specify new norms regulating sector specific entities entailing setting up of new entities, will this require prior approval of RBI?***

**A.** No. The restriction on setting up of new financial services entity within the first three years would not apply to restructuring of the existing business / demergers or any other restructuring of existing business mandated by the sectoral regulators. This will have to be undertaken with RBI's approval.

***Q.298. Can the shareholders of a listed company (which is a promoter of NOFHC and the bank) become shareholders of the bank?***

**A.** The public shareholders (i.e. other than the Promoters/Promoter Group entities/individuals associated with the Promoter Group) of the company promoting the NOFHC are permitted to hold equity investments in the bank and other financial entities held by the NOFHC directly. [Paragraph 2(C)(viii) of the guidelines]

***Q.299. Please clarify whether % voting equity shares of NOFHC would be calculated on a fully diluted basis (i.e. including outstanding convertible instruments and warrants)***

***Q.300. Is the percentage shareholding to be computed on fully diluted basis (taking into account any issue of convertible instruments and assuming complete conversion)?***

**A. (299&300)** For the purpose of ensuring that minimum 51 per cent voting equity shareholding in the NOFHC are held by the companies in which public hold not less than 51 per cent, any convertible instruments held by the promoters, whether compulsorily or optionally convertible into voting equity shares, will be considered as voting equity shares.

***Q.301. How will Non-Voting Capital be treated in the context of shareholding pattern of NOFHC and Bank for the purpose of meeting prudential norms as well as for calculation of promoter shareholding?***

**A.** Non-voting capital will not be reckoned for the purposes of calculation of promoter shareholding in the NOFHC. The non-voting capital in the NOFHC will be counted towards meeting prudential norms if it meets the eligibility criteria for inclusion in the regulatory capital as laid down in the guidelines on Basel III Capital Regulation issued vide circular DBOD.No.BP.BC.98/21/06.201/2011-12 dated May 2, 2012. [Paragraph 2 (D) of the guidelines]

***Q.302. What is the minimum capital / networth required for NOFHC?***

**A.** The minimum capital required for the bank is ` 5 billion, and the NOFHC is initially required to have atleast 40 per cent shareholding in the bank. The minimum capital of the NOFHC should be such as to meet the above requirements as well as the requirement of holding prescribed capital in other financial sector entities held by the NOFHC as per the norms laid down by the financial sector regulators.[Paragraph 2(D) of the guidelines]

***Q.303. Can more funds be infused into the bank, over and above the business plan submitted to the RBI? Would any specific approval be required for this?***

**A.** As stated in Paragraph 2 (D) (i), the initial minimum paid up voting equity capital for a bank shall be ` 5 billion. Any additional voting equity capital to be brought in will depend on the business plan of the Promoters. They can bring in any amount of capital over and above the minimum required to support the business plan and the capital raising programmes would be subject to approvals as indicated in RBI circular dated April 20,

2010 on issue and pricing of shares by private sector banks. Further, the capital raising programmes should be in compliance with stipulations mentioned in Paragraphs 2 (D) (ii) to (v), 2 (F), 2 (K) (ii), (iii) and (x) of the guidelines.

***Q.304. If the voting equity shares of the bank are issued at a premium, can the ` 500 crore threshold be achieved via Networth instead of paid up capital?***

**A.** No. The initial minimum capitalization of the bank should be paid-up voting equity capital of ` 5 billion.

***Q.305. Apart from public issue and private placement, would any other methodologies be available to the bank / NOFHC to effect dilution in the bank.***

**A.** Yes, apart from public issue and private placement, other methodologies, such as sale of shares can also be resorted to for achieving dilution of shareholding in the bank. [Paragraph 2 (D) of the guidelines]

***Q.306. Will the NOFHC require RBI permission for infusing funds / capital in any financial services entity which is regulated by other sectoral regulators and which is held by the NOFHC?***

**A.** The capital requirements for the regulated financial services entities held by the NOFHC shall be as prescribed by the respective sectoral regulators. Prior permission from RBI would be required for the NOFHC to infuse funds/capital in any financial services entity held under it, which is regulated by any other financial sectoral regulator. The objective of such approval from RBI would be to ensure that all the entities including the bank on stand-alone basis as well as the consolidated bank meet the minimum capital adequacy requirement.

***Q.307. Whether secondary sale of NOFHC shareholding in the bank will be permissible? If yes, would it require RBI permission?***

**A.** Yes, subject to compliance with paragraph 2(D)(iii) and (iv) of the guidelines. However, sale of NOFHC shares in the bank resulting in the acquisition of shares at 5 per cent or more of the bank by any person directly or indirectly would require prior approval of RBI.

***Q.308. Can shares of the bank be offered as ESOPs to employees of NOFHC?***

**A.** Yes, provided the minimum shareholding by the NOFHC in the bank as prescribed is maintained at all times.

***Q.309. To what extent ESOPs can be provided to the employees of the bank?***

**A.** The bank may issue ESOPs to its employees as per its own policy and in compliance with guidelines issued by SEBI.

***Q.310. In the context of listing, we understand that the capital market regulator has taken a stance that non-voting capital is not permissible but capital with differential voting right is permissible. Given this background, how will RBI's requirement be met in this regard?***

***Q.311. Is shareholding by way of non-voting equity shares in the bank envisaged or permitted?***

**A.(310&311)** Non-voting shares are outside the purview of the guidelines, but subject to relevant laws and SEBI regulations wherever applicable.

***Q.312. Please specify the timeline for issuance of separate directions for NOFHC.***

***Q.313. Please clarify whether such directions would also contain guidance on the exact structuring of the NOFHC (minimum capital, permissible capital (equity v/s preference) etc.)?***

***Q.314. The NOFHC will be registered as a non-banking financial company (NBFC) with the RBI and will be governed by a separate set of directions issued by RBI. What are the proposed financial criteria (e.g. networth, paid up capital, etc.) applicable to NOFHC?***

***Q.315. When are the guidelines for NOFHC likely to be issued by RBI?***

***Q.316. When the direction for NOFHC to be issued by RBI is expected?***

***Q.317. Since NOHFC will be governed by a separate set of directions to be issued by RBI, in order for us to understand the full implications, we would request that these guidelines be issued immediately.***

**A. (312&317)** The NOFHC guidelines will be issued shortly.

***Q.318. Please elaborate and clarify on the meaning of 'indirect' shareholding of a non-resident shareholder in the Bank.***

**A.** Indirect shareholding would be as defined in Department of Industrial Policy and Promotion (DIPP) Press Note 2, 3 and 4 of 2009 / FEMA Regulations as amended from time to time. [Paragraph 2 (F) of the guidelines]

***Q.319. Where an existing company in which non-resident shareholding is more than 50 per cent promotes a NOFHC, will RBI allow any transition time for the non-resident shareholding to go below 50 per cent to meet the condition 2(A) (i)?***

**A.** At the time of making applications, the Promoters/Promoter Group will have to furnish a road map and methodologies they would adopt to comply with all the requirements of

the corporate structure indicated in para 2 (A) (B) and (C) (iii) of the guidelines within a period of 18 months.

***Q.320. Para 2 (F) limits the aggregate non-resident holding at 49%. We believe that only direct shareholding will be taken into consideration for computing the foreign shareholding. Please confirm.***

**A.** The foreign shareholding in the bank will be calculated as per the Department of Industrial Policy and Promotion (DIPP) Press Notes 2, 3 and 4 of 2009 / FEMA Regulations as amended from time to time. Therefore, the indirect foreign shareholding will be calculated as per the methodology enumerated in DIPP Press Notes 2, 3 and 4 of 2009 / FEMA Regulations as amended from time to time. [Paragraph 2(F) of the guidelines]. As the Promoter Group companies that would set up the NOFHC would be 'owned and controlled by residents', their downstream investment in the NOFHC and further in the bank will not be counted towards foreign indirect investment.

***Q.321. Whether any foreign company, which is controlled by foreign bank or foreign bank have significant influence in such company, shall be allowed to hold shares in the private Indian bank? Further, whether there would be any difference in opinion if such foreign bank also has its branches in India?***

**A.** Yes. A foreign company, which is controlled by a foreign bank or a foreign bank having significant influence in such a company, can hold shares in a private Indian bank. Further, there would be no difference, if such foreign bank also has its branches in India. However, no non-resident shareholder, directly or indirectly, individually or in groups, or through subsidiary, associate or joint venture will be permitted to hold 5 per cent or more of the paid-up voting equity capital of the bank for a period of 5 years from the date of commencement of business of the bank (Paragraph 2(F) of the guidelines). The equity holding of the foreign bank in the new bank would also be subject to extant guidelines on cross-holding among banks.

***Q.322. Under clause 2(F) of the guidelines, no non-resident shareholder directly or indirectly will be permitted to hold 5 percent or more of the paid up voting equity capital of bank. In computing the threshold of 5%, whether proportionate theory needs to be adopted (similar to the basis followed for insurance sector) or would it be governed by extant FDI policy?***

**A.** No non-resident shareholder, directly or indirectly, individually or in groups, or through subsidiary, associate or joint venture will be permitted to hold 5 percent or more of the paid-up voting equity capital of the bank for a period of 5 years from the date of commencement of the business of the bank. For the purpose of computing this limit, proportionate theory will not be adopted. [Paragraph 2(F) of the guidelines]

***Q.323. As per clause (A)(i) of the Guidelines, eligible promoters must be entities/ groups in the private sector that are owned and controlled by residents as per DIPP guidelines. As per the DIPP guidelines, once an entity is 'owned and controlled by***

***a resident, any foreign holdings in such entity are not required to be counted for the purposes of computing FDI in an investee company. Further, as per clause (F) of the Guidelines, FDI in a banking company must be determined after considering both direct and indirect ownership. Would it be correct to read the above provisions to mean that the NOFHC's ownership in the new bank will be considered as being held by residents and any FDI/ FII investment in the Promoter Group entities (especially where such entities are listed entities) which meet with the owned and controlled test as per DIPP guidelines, will not be considered in computing the overall 49% FDI / FII limits for the new bank.***

***Q.324. We understand that since the Promoter Group entities would be 'owned and controlled by residents' as per DIPP guidelines, any FDI/ FII investment in the Promoter Group entities will not be considered in computing the overall 49 percent FDI/ FII limit for the new bank. Should our understanding be incorrect, would the indirect foreign investment in the bank, be counted on a proportionate basis mentioned above?***

**A. (323&324)** As the NOFHC will be wholly owned by entities/Groups that are 'owned and controlled by residents' [as defined in the Department of Industrial Policy and Promotion (DIPP) Press Notes 2, 3 and 4 of 2009/FEMA Regulations as emended from time to time], the foreign investment through these companies would not be considered for computation of foreign investment in the bank held under the NOFHC. [Paragraph 2(F) of the guidelines]

***Q.325. Is NRI investment under schedule 4 of FEMA 20 (on a non-repatriation basis) counted towards the 49 per cent cap?***

**A.** Yes. NRI investment under schedule 4 of FEMA 20 (on a non-repatriation basis) is counted towards the 49 per cent cap.

***Q.326. Can the NOFHC and bank Board consist of eligible individuals who are non resident Indians or foreign nationals?***

**A.** There is no bar on having eligible individuals who are non resident Indians or foreign nationals on the Boards of the NOFHC and the bank. [Paragraph 2 (G) (vii) of the guidelines]

***Q.327. Can NOFHC be managed by a person who is a director in any entity which is the Promoter / Shareholder of NOFHC?***

***Q.328. Please clarify whether this provision will be applicable to Promoter groups which are promoted by financial sector professionals and where such professionals are the owners as well as managers of various financial services entities by virtue of their past experience and expertise.***

**A. (327&328)** The NOFHC has to be managed by a person who is in whole-time employment and he / she cannot be a director in any other company (other than the bank or a subsidiary of the NOFHC or a Section 25 company) and is not engaged in any other business or vocation. [Paragraph 2(G)(ii)(a) and (b) of the guidelines]. Ownership and management shall be separate and distinct in the NOFHC, the bank and entities regulated by RBI. [Paragraph 2(G) (vii) of the guidelines]

***Q.329. Can the NOFHC and bank management (Chairman, Vice Chairman, MD/CEO, COO, CFO, CRO, etc.) be non resident Indians or foreign nationals?***

**A.** There is no bar on having eligible individuals who are non resident Indians or foreign nationals as executives of the NOFHC and the bank. However, executives such as MD / CEO, COO, CFO & CRO, etc. who are full time employees will have to be resident in India. Appointment of Chairman and MD/CEO of the bank will have to be with the prior approval of RBI as per section 35B of the Banking Regulation Act, 1949. [Paragraph 2 (G) (vii) of the guidelines] and RBI Press Release 2005-2006/142 dated August 2, 2005.

***Q.330. As per para 2(G) (ii), no NOFHC shall be managed by any person,***

***(a) who is a Director in any other company not being***

i. ***a subsidiary of the NOFHC or***
ii. ***a company registered under Section 25 of the Companies Act, 1956 (1 of 1956) or***

***(b) who is engaged in any other business or vocation.***

***Whether these restrictions would apply to Key Managerial Person (as defined in proposed Companies Bill 2012)?***

***Q.331. Para 2 (G) (ii) of the guidelines indicate that –***

***No NOFHC shall be <u>managed</u> by any person-***

***(a) who is a Director in any other company not being***

i. ***a subsidiary of the NOFHC or***
ii. ***a company registered under Section 25 of the Companies Act, 1956 (1 of 1956) or***

***(b) who is engaged in any other business or vocation***

***RBI may clarify that these restrictions would apply to Key Managerial Person (as proposed in the Companies Bill 2012).***

**A. (330 & 331)** Person in this clause refers to a person who is the Chief Executive Officer or whatever name called, of the NOFHC, who manages the NOFHC on a whole time basis and is not a director in any other company (other than the bank or a subsidiary of

the NOFHC or a Section 25 company) and is not engaged in any other business or vocation.

***Q.332. Currently, various sectoral regulators have a simple formula for capital requirement. Is there a distinct formula / mechanism followed by RBI for computation of risk weighted assets in financial services entities regulated by other regulators?***

**A.** NOFHC should maintain capital adequacy and other requirements on a consolidated basis based on the prudential guidelines on Capital Adequacy and Market Discipline – New Capital Adequacy Framework (NCAF) issued under Basel II framework and Guidelines on Implementation of Basel III Capital Regulations in India [Paragraph 2(H)(iii) (a) of the guidelines].

***Q.333. Can the borrowings/ leverage of NOFHC be sourced from entities other than the promoter group?***

**A.** Yes. Subject to a leverage of 1.25 times of paid up equity capital and free reserves, NOFHC can have borrowings from entities both within the Promoter Group and outside the Group [Paragraph 2(H)(i)(g) of the guidelines] .

***Q.334. What is the nature of the business plan submission (excel model / word file / any other format)?***

**A.** The business plan can be submitted in any format. [Paragraph 2 (J) of the guidelines]

***Q.335. Further, will the approval be required when a shareholder of NOFHC crosses 5% holding threshold for the first time or will it be required every time such shareholder crosses 5% threshold? This scenario could arise when a shareholder holding less than 5% acquires shares to cross 5% in 1st round, gets diluted to less than 5% in 2nd round of capitalisation and again acquires shares to cross 5% in 3rd round of capitalization.***

**A.** RBI approval will be required for acquisitions / transfers every time the shareholding reaches 5 per cent threshold or above. [Paragraph 2 (K) (ii) of the guidelines]

***Q.336. In clause 2(K)(ii) of the guidelines, would 'acquisition of shares' mean 'direct' acquisition of shares of Bank or does it also include acquisition of shares of any entity above the Bank which will effectively / indirectly result in acquisition of 5% or more of voting equity of the Bank?***

***Q.337. If yes, how would such 'indirect' acquisition of shareholding in the Bank be calculated for the purpose of 5% limit?***

***Q.338. Please elaborate and clarify on the meaning of 'indirect' shareholding of an entity in the Bank referred to in 2(K)(iii).***

**A. (336 to 338)** No. For the purpose of paragraphs 2(K)(ii) and 2 (K)(iii) of the guidelines, both direct and indirect shareholding will be considered. The indirect shareholding would mean the shareholding in the bank through entities in which a person holds 'significant influence' or 'control' as defined in Accounting Standard 23.

***Q.339. Please specify the information / details to be submitted for persons/entities who would subscribe to the voting equity of NOFHC and Bank.***

***Q.340. Please clarify whether the information prescribed in this clause needs to be provided for all entities in the Promoter Group or only those promoter group entities which would subscribe to the voting equity of NOFHC.***

**A. (339 & 340)** The entities/individuals belonging to the Promoters/Promoter Groups, which would participate in the voting equity shares of the NOFHC, would have to provide the Memorandum and Articles of Association, financial statements for past ten years and Income Tax returns for last three years, as appropriate, at the time of submission of their application. The last available financial statements in respect of other Group entities, which do not participate in the voting equity shares of the NOFHC will also have to be furnished. The details of the Promoters' direct and indirect interest in various entities/companies/industries and details of credit/other facilities availed by the Promoters/Promoter Group would be required of all entities. [Paragraph 3 of Annex II to the guidelines]. Information as above would also be required to be furnished by an individual / entity / group proposing to acquire, in aggregate, 5 per cent or more of the paid-up voting equity capital of the bank, while seeking prior approval of RBI. [Paragraph 2 (K) (ii) of the guidelines]

***Q.341. Please provide clarity on the criteria for maintaining 25% of branches in unbanked rural centres :***

- ***Whether it is on the conversion of Tier 1 centre branches?***
- ***Whether it is on the opening of new branches?***
- ***Or whether it is on the entire NBFC branches that are sought to be converted?***

**A.** The bank would be required to open at least25 per cent of its branches in unbanked rural centres [Paragraph 2 (K) (vii) of the guidelines]. This would mean that out of the total number of branches, the bank opens in the first year of operation by setting up new branches and by converting the existing branches of NBFCs into bank branches as permitted by RBI [paragraph 2 (L) of the guidelines], 25 per cent of branches have to be in unbanked rural centres. This rule would apply in every subsequent year.

***Q.342. No single entity or group of related entities, other than the NOFHC, shall have shareholding or control, directly or indirectly, in excess of 10 per cent of the paid-up voting equity capital of the bank. As per the Banking Laws (Amendment) Act 2012 passed by the Parliament, RBI has been empowered to increase ceiling of voting rights from 10 per cent to 26 per cent. In view of the legislation change, the 10 per cent ceiling for new banks may be enhanced to 26 per cent.***

***Q.343. As per the Banking Laws (Amendment) Act 2012 passed by the Parliament, RBI has been empowered to increase ceiling of voting rights from 10% to 26%. In view of the legislation change, the 10% ceiling for new banks may be enhanced to 26%.***

**A. (342 & 343)** It is clarified that as per the extant policy no single entity or group of related entities, other than the NOFHC, shall have shareholding or control, directly or indirectly, in excess of 10 per cent of the paid-up voting equity capital of the bank. In the context of the amendments to the Banking Regulation Act, 1949, the issue of raising the voting rights from 10 per cent to 26 per cent in phases will be considered as and when necessary and will be notified separately. [Paragraph 2 (K) (iii) of the guidelines]

***Q.344. Can a Business Correspondent (BC) model for delivery of banking services be carried out by the bank's own staff?***

***Q.345. Can the BC model for delivery of banking services be carried out by the Bank's own staff?***

**A. (344 & 345)** No. The Business Correspondents (BCs) by definition are banks' agents, and not their employees.

***Q.346. If an applicant wants to focus on door to door banking, will large scale door to door banking model be acceptable considering existing guidelines on BC issued by RBI?***

***Q.347. If a particular applicant wants to focus on door to door banking, will the RBI have an issue with a large scale door to door banking model being used by an applicant?***

**A. (346 & 347)** The Promoters/Promoter Groups of banks may draw up their plan for financial inclusion, by adopting BC/ICT model, in addition to the branches. The new bank may undertake door step banking to the extent and in the manner provided in the guidelines issued vide RBI circulars DBOD. No.BL.BC.59/22/22.01.010/2006-207 dated February 21, 2007 and DBOD. No. BL. BC.99/22.01.010/2006-07 dated May 24, 2007.

***Q.348. Will clauses applicable to Housing Finance Company (governed by NHB) be same as applicable for NBFC when applying for licence?***

**A.** Yes. The Promoters/Promoter Group of a housing finance company(HFC) regulated by NHB desiring to promote a bank or convert the HFC into a bank will have to comply with the additional conditions stipulated at paragraph 2(L) of the guidelines.

***Q.349. Where bank is formed by transfer of assets / loan portfolio etc. from NBFC, the consideration may be settled by issue of shares at premium. It may be clarified that securities premium would be considered for computing the capitalization of the bank.***

***Q.350. With regard to the initial capital requirement for a bank, is it net worth of ` 5 billion or the paid up equity capital of ` 5 billion as per condition 2D(i) and 2L(b)?***

***Q.351. Where bank is formed by transfer of assets / loan portfolio etc. from NBFC, the consideration would be settled by issue of shares, which could happen by issue of shares at premium. RBI may clarify that securities premium would be considered for computing the capitalization of the bank.***

**A.(349 to 351)** The bank shall have initial voting equity shares of ` 5 billion. For this purpose, the amount in the share/securities premium account will not be counted. However, in case of conversion of an NBFC into a bank, the bank shall have at all times a minimum networth of ` 5 billion. [Paragraph 2(D)(i) and 2(L)(b)&(c) of the guidelines]

***Q.352. Can RBI provide a range/estimate on the minimum and maximum number of licenses that it is planning to issue?***

**A.** There is no predetermined number. RBI will be very selective while considering the applications for new bank licences. It will look for very high quality applications. It may, therefore, not be possible to issue licence to all the applicants meeting the eligibility criteria. [Paragraph 4(ii) of the guidelines]

***Q.353. What is the timeline for granting in-principle approvals? Will all approvals be granted at one-go or over a period of time?***

**A.** As indicated in the guidelines, applications for licences will be received upto July 1, 2013. Thereafter, a detailed due diligence process has to be undertaken, and after completion of all processes mentioned at paragraph 4(iii) to (v) of the guidelines, in-principle approvals will be granted. It will not be possible to indicate the timeline for grant of in-principle approvals at this stage.

***Q.354. Whether bank is only required to be incorporated within 1 yr of granting in-principle approval or shall also be required to commence the banking business (i.e. accepting deposits, giving loans, etc), obtaining necessary registration & opens at least 25 per cent of its branches in unbanked rural centres?***

**A.** After the in-principle approval is accorded by RBI for setting up of a bank, the Promoters/Promoter Group have to set up the NOFHC and the bank within 18 months from the date of in-principle approval and the bank has to commence banking business within this period after obtaining the banking licence from RBI under Section 22 of the Banking Regulation Act, and letter of authorization for opening branches, under Section 23 of the Act, ibid.

***Q.355. Whether key managerial personnel of any entity of the Promoter Group will be treated as part of the Promoter Group?***

**A.** The definition of Promoter / Promoter Group is given in Annex I to the guidelines. Accordingly, key managerial personnel of any entity of the Promoter Group will not be treated as part of the Promoter Group, unless they fit in the definition as at Annex 1 of the guidelines.

***Q.356. The term 'individuals associated with Promoter Group' needs specific definition. Will people who are employees / directors / shareholders of the Promoter / Promoter Group entities be treated as 'individuals associated with Promoter Group'?***

**A.** The definition of the term 'individuals associated with the Promoter Group' referred to in para 2(I)(iii) of the guidelines will be guided by the principles underlying the provisions of Section 20 of the Banking Regulation Act, 1949.

***Q.357. Promoter means, the person who together with his relatives (as defined in Section 6 of the Companies Act, 1956), by virtue of his ownership of voting equity shares, is in effective control of the NOFHC, and includes, wherever applicable, all entities which form part of the Promoter Group. The term "effective control" may be clarified.***

***Q.358. The term "effective control" may please be clarified.***

**A. (357 & 358)** The term 'effective control' means any arrangement whether in the form of shareholding or agreement or otherwise, which enables exercise of control.

***Q.359. Request you to kindly elaborate the details required to be submitted to RBI for verification of source of funds.***

**A.** The applicants should furnish detailed information about the persons/entities, who would subscribe to the voting equity capital (shareholding pattern) of the proposed NOFHC and the bank, including foreign equity participation in the proposed bank. Applications should be supported by detailed information on the background of Promoters, their expertise, track record of business and financial worth, Memorandum and Articles of Association and latest financial statements of the Promoter entities for the past ten years, income tax returns for last three years, details of Promoters' direct and indirect interests in various entities/companies/industries, details of credit/other facilities availed by the Promoters/ Promoter entity(ies)/ other group entity(ies) alongwith details of the bank's/ financial institution's branches where such facilities were / are availed. The Promoters may furnish any other relevant information and documents supporting the applications. Further, the RBI may call for any other additional information, as may be required, in due course. [Paragraph 2 to 4 of Annex II to the guidelines].

**Queries relating to regulatory forbearance and transition issues** *(Q No.360 to 422)*

***Q.360. The transfer of the large quantum of NBFC balance sheets to the banking sector in one go can create systemic risks for the new bank and financial services sector more broadly. The incremental capital requirement purely to allow for the New Bank to cover for the NBFC book related SLR differential and Priority Sector Lending Limit increases, can create a sizable credit challenge for the banking sector. As an illustration, assume ten of the leading NBFCs in India would convert to a bank, this would mean a book conversion of ` 2,50,000 crores. This would mean an additional SLR requirement of around ` 70,000 crore and a PSL requirement ranging between ` 70,000 to ` 80,000 crore (assuming some coverage PSL from the existing book). This would mean around ` 1,50,000 core additional capital requirements, which would have significant systemic implications. Separately pre-mature termination of this loan book by NBFC to draw down the book size will come at a significant cost. This will put at a significant advantage, any NBFC wishing to apply for a New Bank. Additionally the capital resources available for the growth of the bank may suffer considerably.***

***Q.361. In order to avoid an immediate destabilizing effect of such an NBFC book transfer, we would recommend a two year period from the start of bank operations for a phased write down or transfer of assets and liabilities of the NBFC book. To ensure transparency, we recommend that this be applicable to only the original book of NBFC business pre-transfer and any new business would be booked in the books of the new bank.***

***Q.362. Process of restructuring the existing financial entities in Promoter Group to comply with guidelines involves substantial unintended costs including by way of stamp duty, income tax etc (e.g MAT implication for NOFHC as NOFHC would be non-operating entity having no offset available under MAT), Hence, appropriate changes to various legislations would be required to avoid this burden. We request that appropriate transition period is provided till the relevant legislations are so amended.***

***Q.363. If it is possible to convert only a few existing NBFC branches to a bank branch (based on the criteria of 25 per cent branches in unbanked rural centre), please clarify whether the other branches can carry on business until they convert to a bank branch? Transition period of 7-10 years be provided for conversion of 75 per cent branches of NBFCs to a bank branch. There should be co-existence of both NBFC and bank branches for a certain period. In this transition period, we request that the SLR and CRR requirement will apply only on the balance sheet of the bank.***

***Q.364. NBFC (with existing loan assets and borrowings) opting for conversion into bank may not be able to meet with Exposure Norms on Day 1 (of converting into bank). Phase wise implementation of the norms especially with regard to priority sector lending, CRR, SLR etc. may be specified. Alternatively, it may be specified that exposure norms be made applicable to new lending / borrowing / exposure of the bank***

***Q.365. In case of conversion of NBFC int bank, will the priority sector lending targets apply only to new loans issued after commencement of banking operations? Or will they also apply to existing portfolio? In such case, will they get a time window to meet the priority sector targets?***

***Q.366. If a new bank is formed by transferring to the existing business being undertaken by one or more financial entities in a Group, will the RBI provide some length of time for the new bank to comply with:***

***(i) Priority sector lending targets and sub-targets?***
***(ii) Capital market exposure norms?***
***(iii) Single and Group borrower limits?***
***(iv) Intra-Group exposure limits?***
***(v) CRR and SLR requirements***
***(vi) Provisioning norms?***

***Q.367. Large existing NBFCs applying for a banking license that, as per the Guidelines, will need to transfer their assets to the Bank will find it very difficult to meet PSL requirements immediately from the date of commencement of operations of the Bank. Could a bank that commences operations with a large asset book transferred from the sponsoring NBFC entity be granted forbearance for up to a period of say five years to be fully compliant with PSL requirements? Please clarify.***

***Q.368. NBFC applicants for a bank license that have large existing borrowings in the form of Bonds/ ECBs may not be compliant with extant banking guidelines. If such an NBFC were allowed to convert into a bank or transfer its assets and liabilities into a new Bank, could the legacy borrowings of the NBFC be grandfathered till maturity in the Bank? Please clarify.***

***Q.369. What would be the status of activities that are permitted in the bank with restrictions (such as loans against shares) or not permitted (such as promoter financing, loans for purchase of land)? Can such activities continue to be conducted in a group NBFC?***

***Q.370. Similarly for businesses likely to cause asset liability mismatches (infrastructure, large asset book), is there any exception? Will extra time be given for complying with CRR/SLR requirement? Will PSL be applied on the basis of existing book to be migrated from the NBFC or on the basis of the new assets?***

***Q.371. Since NOFHC shall only hold investments in financial services entities in the group, it may breach exposure limits for such entities. RBI may clarify that these limits shall not be applicable to investments by the NOFHC in financial services entities that belong to the Promoter Group.***

***Q.372. In case of the transfer of the existing activities (which can be undertaken departmentally by the bank) of the NBFC, will the RBI permit the conversion of all***

***the existing Tier 1 branches / locations to bank branches. What will happen to the Tier 1 branches which are not allowed to be converted to bank branches?***

***Q.373. Is the new bank required to meet priority sector lending ('PSL') targets on its entire opening loan assets portfolio from the year of commencement of operations?***

***Q.374. Does the RBI intend to grant a time bound programme to adhere to PSL target on the stock of loan asset portfolio acquired by the bank from the NBFC?***

***Q.375. Would NOFHC get some time to comply with the capital adequacy norms at consolidated level?***

***Q.376. Would financial services entities held by the NOFHC get some time to comply with the capital adequacy norms, on a standalone basis?***

***Q.377. If the foreign shareholding in an operational NBFC currently exceeds 49 per cent within the currently allowed limit of 74 per cent, we would assume that it will be given a forbearance window for bringing this down below the stipulated 49 per cent?***

***Q.378. If there are functioning branches of the NBFC at the time of application and grant of in-principle license, and if the NBFC complies with the 25 per cent rural branches rule by the time it receives a certificate of commencement of business, can we presume all existing NBFC branches will get automatic approval for conversion to Bank branches?***

***Q.379. As a result of the current business model, if an NBFC has more lending to certain priority sector categories like low-cost housing, micro & small enterprises, educational loans and loans to economically weaker sections, do we presume that the RBI would consider forbearance on agricultural lending for a specified period (e.g. 3-5 years)?***

***Q.380. Certain NBFCs which are more specific to truck or small retail/MSME, have brought in similar interest and specific Private Equity investors. There could be issues in transforming the full current business model completely different from what they had envisaged and invested. The current volume is also very large, that it will not be commercially prudent to downsize these. Hence, current NBFCs should be allowed to continue alongside.***

***Q.381. Given the challenges of achieving financial inclusion, such as higher risk appetite, capital requirements etc, is there going to be any forbearance from RBI towards the new banks, to meet their financial inclusion requirements, (e.g technological support, longer timeframe for meeting 25 per cent branch requirement.***

***Q.382. As the Guidelines contemplate transfer / merger of existing businesses into the bank, there may be requirement of structuring involving more than one company. These will have potential tax and other regulatory implications. We would like to know if there would be a onetime dispensation / relaxation from such regulatory / taxation requirements as any such structuring would only be in line with the Guidelines and / or directions that may be issued.***

***Q.383. In case of NBFCs converting in to bank, since RBI is going to insist on transferring all the existing assets and liabilities of the company on the balance sheet of the new bank, RBI should give a transition time to achieve the Priority sector lending (PSL), CRR, and SLR targets. Alternatively, if these targets are to be applied from the day one (as the guidelines propose), then such targets would be applicable to the fresh and incremental assets and deposits. In respect of the existing portfolio, there has to be sufficient transition time, as it will be impossible to meet these targets on the day one on the existing book. NBFC (with existing loan assets and borrowings) opting for conversion into bank may not be able to meet with Prudential Norms on Day 1 (of converting into bank).***

***RBI may kindly specify phase wise implementation of the norms especially with regard to priority sector lending, CRR, SLR etc. Alternatively, RBI may please specify that these norms will be made applicable to all new lending / borrowing / exposure of the bank.***

***Q.384. A listed company permitted to promote a bank may not find it possible to complete all restructuring required before promoting a bank, including permissions from regulators/government authorities, within one year of receipt of in-principle approval. Therefore, would RBI consider granting extension of time on a case-to-case basis for operationalising the bank?***

***Q.385. There be a time window to bring down the individual foreign shareholding to 5 per cent or less, in the event of conversion of an existing NBFC into the bank where there are currently foreign shareholders in line with the existing norms applicable to NBFCs?***

***Q.386. What is the time period to transfer the business that can be done departmentally to the bank, given that the bank may not be able to meet PSL norms ab initio given the size of existing NBFC book?***

***Q.387. What is the time period to transfer the business that cannot be done by the bank (e.g. capital market finance), out of the bank?***

***Q.388. What is time period given to bring down term borrowings from other banks (given wholesale funding nature of existing NBFC)?***

***Q.389. . Where the Promoter Group is required to make changes to its existing organization/ investment structure, would the RBI consider a transition period,***

***during which regulations would be waived on a case by case basis so that the existing entity is afforded an easy transition without impacting the stakeholders and for ease of operations?***

***Q.390. Where the Promoter has to convert an existing NBFC into the bank, would the RBI consider a transition period, during which such regulations would be waived on a case by case basis so that the existing entity is afforded an easy transition without impacting the stakeholders and for ease of operations?***

***Q.391. Further, we understand that where an existing NBFC proposing to convert into a bank has branches in Tier 1 cities, a transition period would be provided to such NBFCs to wind down operations of such branches, should an approval for continuing such branches not be granted by the RBI. Please confirm/ clarify.***

***Q.392. If an NBFC converts into a bank, whether there would be any transition period given to them to comply with requirements of SLR, Priority sector and Exposure norms?***

***Q.393. Whether the prescribed priority sector advances prescription shall be applicable only in respect of fresh advances from the commencement of its operation as a bank?***

***Q.394. Whether the said NBFC upon conversion into a bank is eligible for complete dispensation in respect of its existing advances portfolio from priority sector advances prescriptions***

***Q.395. If not, whether the said NBFC upon conversion, will be provided a reasonable period of 5 to 10 year time frame to comply with the said requirements in respect of its existing advances portfolio at the time of conversion.***

***Q.396. Whether NBFCs converting themselves into banks will be given transition time in respect of CRR/SLR & PSL compliances for their existing portfolio to enable them to fold the existing NBFC book into the newly created bank.***

***Q.397. In case NBFCs convert into a bank, would RBI give some time to the new bank for meeting the capital market exposure norms as applicable to banks, on the existing capital market exposure of the NBFC.***

***Q.398. There are certain activities which have prudential limitations to a bank on a standalone basis but not on an NBFC. Will such an activity, loans against shares, be allowed to be carried through an existing NBFC under the NOFHC, subject to meeting the consolidated CME of 40 per cent of net worth?***

***Q.399. In case of conversion of NBFC into a bank, will the bank be allowed to take over the existing non-convertible debentures (NCDs) of the NBFC?***

***Q.400. In the case of an NBFC, especially one with a rural focus, there are instances of many of the branches located in Tier 1 centres, but serving substantially to a rural population / customers. Considering these branches as Tier 1 for the purpose of branch licensing would be detrimental to rural public / rural customers / employees of such branches. Hence, our request would be to consider these branches, serving substantially rural customers, for automatic conversion. In the alternative, to atleast provide transition period of 7-10 years for these branches to avoid unnecessary hardships to the rural customers and employees.***

***Q.401. The guideline states that no foreign shareholder will be permitted to hold more than 5 per cent of the paid up voting equity capital. In the case of conversion from a NBFC to a bank, we presume that in case if an existing shareholder has more 5 per cent equity stake, they will be permitted to continue. Please confirm.***

**Q.402. In case the FI's direct finance business [mainly in non-rural areas] is transferred to the newly floated bank, will the regulator allow some time for build-up of other priority sector lending activities, keeping in view the fact that the FI's branches would function as branches of the proposed new bank (mostly in urban and semi urban centres) and it may take some time to open new rural branches as one year is allowed to open the new rural branches.**

***Q.403. In the event the NBFCs are to be compulsorily converted / merged into banks, what will be the position if the shareholding of non-residents in the NBFC exceeds 49 per cent? Will such excess shareholding above 49 per cent be permitted to continue in the bank after such conversion? It may be noted that 100 per cent Foreign Holding is permitted in the automatic route for NBFCs carrying activities permitted in the regulations. Also, currently, 74 per cent FDI is allowed in existing private sector banks as per the present FDI policy.***

***Q.404. Para 2(I) (iii)(g) of the Guidelines states that investment in equity by the bank in the entities engaged in financial and non-financial activities, outside the Promoter Group would be subject to a limit of 10 per cent of investee entity's paid up share capital or 10 percent of the bank's paid-up share capital ... and the aggregate of all such investments …. We seek clarification on the treatment of existing equity investments held by NBFC entities applying for a bank license.***

***a)Could existing equity investments in which the sponsoring NBFC holds a stake of more than 10 percent but less than 30 percent of the investee company be transferred to the bank and grandfathered until exit from those investments? Please clarify.***

***b) Alternatively, could existing equity investments in which the sponsoring NBFC holds a stake of more than 10 per cent but less than 30 per cent of the investee company be held in an NBFC as a subsidiary of the NOFHC, separate from the bank? Please clarify.***

***Q.405. Where in an existing NBFC, a non-resident shareholder holds more than 5% equity, and such NBFC is converted into bank, will RBI allow any transition time for such non-resident shareholder to reduce to 5% as per condition 2F?***

***Q.406. In case of existing NBFCs, whether the applicability of this clause (CAR, NPA classification) would be operational from Day 1 or whether it can be complied gradually?***

***Q.407. The bank shall open at least 25 per cent of its branches in unbanked rural centres (population up to 9,999 as per the latest census) to avoid over concentration of their branches in metropolitan areas and cities which are already having adequate banking presence. What are the timelines for achieving the mandate of 25 per cent branches in rural areas? How many branch licences would be afforded at the time of inception?***

***Q.408. RBI will consider allowing the bank to take over and convert the existing NBFC branches into bank branches only in the Tier 2 to 6 centres. Existing branches of the NBFC in Tier 1 centres may be allowed to convert into bank branches only with the prior approval of RBI. For the branches of NBFC converted into bank, in Tier 1 cities which don't get approval, can they continue to operate and sell non-banking financial services products such as insurance, asset management etc?***

***Q.409. Will RBI allow existing branches of NBFC's in Tier 2-6 cities to convert into bank branches without approval? Will this also imply, existing branches of NBFC's in North Eastern states and Sikkim, can be converted directly into bank branch as there are no metropolitan areas in these regions?***

***Q.410. An existing NBFC may have a large number of branches in rural and unbanked areas. Will there be any ceiling on the number of such branches that would be converted into bank branches / ultra-small branches?***

***Q.411. In case of conversion of NBFC into a bank, will the bank be allowed to take over the existing non-convertible debentures (NCDs) of the NBFC?***

***Q.412. Company S is an Infrastructure Finance Joint venture Company registered with RBI. Amongst others, Company S is engaged in Project Finance business, which provides debt, equity & mezzanine capital for various infrastructure projects ("Transferable business"). Company S proposes to securitize the existing project finance business (i.e. loan assets) to SPV and would repay the existing debt. To exit completely from the project finance business, Company S would take substantial time (likely to be more than 1 year). In the meanwhile, any new business, which a bank can undertake, shall be undertaken by Bank only.***

***Clarification required***

***a) The proposed restructuring of Transferable Business is likely to take time (more than 1 year). Detailed application shall be filed along with the business plan with RBI for seeking banking license. Whether transfer of Transferable Business, through securitization, can be completed after filing application with RBI?***

***b) Further, is there any time frame, within which such business restructuring needs to be completed?***

***Q.413. Whether Business/Corporate Restructuring is required to be completed before making application for banking license with RBI or Application for banking license can be made with RBI with the proposal of such business/corporate restructuring. Further, if restructuring is allowed to be undertaken post filing of application with RBI, what would be the timelines within which such restructuring needs to be completed?***

***Q.414. Para 2L(a) of the Guidelines states that, "….activities undertaken by the NBFC which banks are allowed to undertake departmentally, will have to be transferred to the new bank …". Since in this context the transfer of assets from the sponsoring NBFC to the Bank would be undertaken to meet regulatory requirements, would such asset transfers be exempt from normally applicable stamp duty and other taxes? Please clarify.***

***Q.415. (a) Can the existing branches of NBFC's in North Eastern states and Sikkim be converted directly into bank branch as there are no metropolitan areas in these regions?***

***(b) Does the RBI have an upper limit on the number of branch licences it will be willing to issue to an existing NBFC, which is becoming a bank. An existing NBFC may have a large number of branches in rural and unbanked areas, which It would want to convert into bank branches, at the start of operations, either as full fledged branch or as ultra small branch – whether there is any upper limit in the number of USB, which can be opened at the time of conversion to a Bank.***

***(c) For the branches in Tier 1 which don't get approved, can they continue to operate and sell non-banking financial services products such as insurance, asset management etc.***

***Q.416. If allowed licence by RBI, XYZ in its present form has to be converted into a bank, requiring about a large number of branch licences at the very beginning, located mainly in rural and unbanked centres. The remaining branches will be converted to BC points / USBs. Whether applying for such large number of branch licenses will be acceptable to RBI ?***

**Q.417. In case an applicant, in order to comply with the NOFHC requirements, needs to convert a small public company into a listed one, will any relaxation be provided for the timelines to comply to the takeover code?**

***Q.418. Broadly, we have assumed that the sequence to operationalize the bank will be as follows:***

a. ***Applications are presented to RBI by July 1, 2013***
b. ***RBI reviews the application and grants an 'in-principle' approval for license to a set of candidates. The 'in-principle' approval will also include a set of 'conditions-precedent' that the recipient of the license will have to fulfil within a year before actually commencing the banking operations.***
c. ***After assuring that all the conditions-precedent have been fulfilled, the RBI will issue a letter of 'commencement of banking operations' which shall specify the exact date from which the new bank will become operational.***

***Q.419. Where in an existing NBFC, a non-resident / multilateral agency shareholder holds more than 5% equity, and such NBFC is converted into Bank, will RBI allow any transition time for such non-resident shareholder to reduce to 5% as per condition 2F?***

***Q.420. Whether the applicability of this clause (CAR, NPA classification) would be operational from Day 1 or whether it can be complied gradually?***

***Q.421. NBFC (with existing loan assets and borrowings) opting for conversion into bank may not be able to meet with Exposure Norms on Day 1 (of converting into bank). Phase wise implementation of the norms especially with regard to priority sector lending, CRR, SLR etc. may be specified. Alternatively, it may be specified that exposure norms be made applicable to new lending / borrowing / exposure of the bank.***

***Q.422. What are the timelines for achieving the mandate of 25% branches in rural areas? How many branch licenses would be afforded at the time of inception?***

Clarifications on queries relating to regulatory forbearance and transition issues (360-422)

**a) CRR and SLR requirements**

No forbearance for maintenance of CRR and SLR will be granted by RBI, as these are statutory requirement for the banks.

**b) Priority Sector Lending (PSL)**

As per the current guidelines, the PSL targets (40 per cent of adjusted net bank credit) for the current year (April-March) are computed based on the adjusted net bank credit (ANBC) or credit equivalent of off-balance sheet exposures (OBSE) of 31st March of the preceding year (April-March), whichever is higher, and the achievements under the targets are reckoned on the position as on 31st of the succeeding year.

The new banks have to comply with the PSL requirements- targets and sub-targets. For the new banks converted from NBFCs and for new banks that would acquire the loan book from the Group entities (NBFCs), the PSL targets and sub-targets and achievements thereunder would be counted on the entire portfolio after the commencement of business as per the existing instructions. The newly set up banks will have time from the date of grant of in-principle approval to achieve the PSL target. The amount of time would depend upon the date of commencement of their banking business.

For example, if 'in-principle' approval is granted in February 2014, the bank has to commence banking business latest by August, 2015. In that case, the bank has to maintain PSL by March 31, 2017 on the ANBC base as of March 31, 2016 (the reference date). In such a scenario about 37 months would be available to the Promoters/Promoter Groups to achieve the PSL target. In an alternate scenario, if 'in-principle' approval for setting up of a bank is granted sometime in April, 2014, the bank has to commence banking business latest by October 2015. If the bank commences banking business by October 2015, the ANBC base for computation of PSL targets gets shifted to March 31, 2016 (the reference date), and the bank has to achieve the targets by March 31, 2017 ( i.e. 35 months from the date of issue of 'in-principle' approval). In a third scenario, if 'in-principle' approval is granted in June 2014, the bank has to commence banking business latest by December 2015. In that case, the bank has to maintain PSL by March 31, 2017 on the ANBC base as of March 31, 2016 (the reference date). In such a scenario about 33 months would be available to the Promoters/Promoter Groups to achieve the PSL target on the existing loan book carried over to the new banks.

**c) Prudential/Exposure Norms**

No regulatory forbearance would be granted to the new banks in respect of prudential/ exposure norms.

**d) Branch Authorization Norms**

The guidelines [para 2(L)] lay down the requirement very clearly.

The conversion of existing NBFC branches into bank branches would be automatically permitted for Tier 2 to 6 centres. The number of ultra small branches (USB) and number of branches in Tier 2 to 6 centres, would be as per the business plans of the Promoters/Promoter Group and requirement of the new bank. In the case of Tier 1 centres, conversion would only be allowed with the specific prior approval of the RBI and subject to the existing rules/ methodology applicable to domestic banks regarding opening of branches in these centres, and also subject to maintaining a minimum 25 per cent of the bank branches in unbanked rural centres (population up to 9,999 as per the latest census) required of all banks as specified in 2(K) of the guidelines. For this purpose, RBI would issue a letter of authorization under Section 23 of the Banking Regulation Act, 1949.

In cases of excess NBFC branches in Tier 1 centres, all such branches which would carry out banking business may, with prior RBI approval, be converted into bank branches. The excess over the entitled number of Tier 1 branches would be adjusted against the future entitlements of the new bank within a maximum period of 3 years from the date of commencement of business by the bank. The remaining Tier 1 branches will have to be closed down at the end of three years. The Promoters/Promoter Group have to provide a roadmap in this regard.

**e) FDI in the new banks**

The aggregate FDI limit of 49 per cent and individual non-resident shareholding of 5 per cent will be applicable for the first five years. The Promoters/Promoter Group have to comply with the requirement before the commencement of the banking business. No additional time will be given for compliance with the FDI limits applicable to the new banks.

**f) Transfer of ECB and term borrowings/bonds from other entities to banks**

As transfer of assets and liabilities would be a part of the re-organization of the business of the group entities to comply with the provision of our guidelines, more particularly to comply with the NOFHC structure, the new bank would be permitted to grandfather such liabilities till maturity, subject to the following conditions:

i. The ECB/FCCB liabilities for the purpose of transfer to the new bank should be frozen as on the date of in-principle approval for setting up a new bank;
ii. The liabilities under ECB/FCCB that would be transferred to the new bank together with other forex borrowing should not exceed 50 per cent of its Tier I capital;
iii. In case these borrowings exceed the limit of 50 per cent of Tier I capital due to grandfathering of ECB/FCCB, no further borrowing would be permitted till the aggregate borrowings are brought within the regulatory limit.
iv. In order to protect the interests of the depositors of the new bank, while allowing grandfathering of term borrowings and other secured liabilities taken over from NBFCs, RBI will impose additional capital charge on the new bank, where it would allow creation/ continuation of floating charges on the assets of the new bank.

**g) Capital adequacy for the NOFHC**

RBI would not provide any time window to comply with the capital requirement at the consolidated level. No regulatory forbearance would be granted in this regard.

**h) Tax issues**

The matter falls outside the purview of RBI. The tax laws as prescribed by the tax authorities would have to be adhered to.

**i) Delay in grant of approvals**

In genuine cases of delay in granting approval by regulators / Government, RBI may consider granting extension of time for operationalising the bank.

**j) Reorganization of business and transfer of assets and liabilities to the new banks**

The receipt of applications for the new bank licence will close on July 1, 2013. At the time of making applications, the Promoters/Promoter Groups will have to furnish a road map and methodologies they would adopt to comply with all the requirements of the corporate structure indicated in para 2 (C)(ii) and (iii) of the guidelines and realign the business between the entities to be held under the NOFHC (para 2(C)(iv) within a period of 18 months. After the 'in-principle approval' is accorded by RBI for setting up of a bank, the proposed bank has to start operations within this period. The actual setting up of NOFHC and the bank, re-organization of the Promoter Group entities to bring the regulated financial services entities under the NOFHC as well as realignment of business among the entities under the NOFHC have to be completed during this period. The Promoters/Promoter Group would be issued the banking licence under Section 22 of the Banking Regulation Act, 1949 for carrying out of banking business by the Reserve Bank of India upon compliance with the terms and conditions stipulated in the 'in-principle approval' for setting up of a bank and on completion of the process as mentioned above within the stipulated time frame of 18 months from the date of in-principle approval.