भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

Review of SEBI (Delisting of Equity Shares) Regulations, 2009

A. Background:

SEBI vide notification dated June 10, 2009 notified the SEBI (Delisting of Equity Shares) Regulations, 2009 ("Delisting Regulations"), thereby superseding the earlier SEBI (Delisting of Securities) Guidelines, 2003.

Since then, several amendments have been carried out in the Delisting Regulations according to the changing needs and developments in the securities market.

To further streamline and strengthen the delisting process / regulations, a comprehensive review of the delisting regulations is proposed with the following key objectives:

- Enhance disclosures to help investors to take informed investment decisions
- Refine process
- Rationalize the existing timelines, so as to complete the delisting in time bound manner.
- Streamline the delisting regulations to make it robust, efficient, transparent and investor's friendly.
- Plug gaps
- Update references to the Companies Act, 2013 and other securities laws.

B. Proposals:

Enhancing disclosures

1. Promoter's / Acquirer's intention to voluntarily delist the company and its disclosure

Extant regulatory framework

"Regulation 8(1A) Prior to granting approval under clause (a) of sub-regulation (1), the board of directors of the company shall,-
(i) make a disclosure to the recognized stock exchanges on which the equity shares of the company are listed that the promoters/acquirers have proposed to delist the company"

1.1. Currently, promoter / acquirer's proposal to voluntarily delist the company, is disclosed to the recognized stock exchanges by the company's board of directors.

Issue

1.2. It is observed that

i. Obligation to disclose the intention to voluntarily delist the company to public is not cast on the promoter / acquirer;

ii. The aforesaid information is not disseminated to the public on immediate basis, thus leaving the scope for information asymmetry.

Concerns

1.1. The words promoter and acquirer are used interchangeably under the delisting regulations. Under the takeover regulation, the day acquirer acquires or agrees to acquire becomes the trigger date and the public announcement is required to be made on the same day.

1.2. Promoter's intention to voluntarily delist the company is a crucial and price sensitive information, and should be disseminated in the public domain in a real time manner.

1.3. Given the above, it is considered appropriate to align this provision with the corresponding provisions of the Takeover Regulations.

Proposal

1.4. It **is proposed that:**

i. The Promoter / Acquirer shall make the public announcement, (to be called as "Initial Public announcement / **IPA**") of their intention to voluntarily delist the company to all the Stock Exchanges on which the company is listed, on the same day, when their said intention is intimated to the company.

ii. The IPA shall be made by the acquirer / promoter through the manager to the delisting offer.

iii. The IPA shall inter-alia contain the information, viz. (a) reasons for delisting; (b) compliance with the provisions of Regulations 4(1A), 4(4) and 4(5) of the Delisting Regulations;

2. Approval by Board of Directors.

Extant regulatory framework

"Regulation 8. (1) Any company desirous of delisting its equity shares under the provisions of Chapter III shall, except in a case falling under clause (a) of regulation 6, -
(a) obtain the prior approval of the board of directors of the company in its meeting;
……..
(1A) ……..
(ii) appoint a merchant banker to carry out due-diligence and make a disclosure to this effect to the recognized stock exchanges on which the equity shares of the company are listed;
……..
(iv) obtain further details in terms of sub-regulation (1D) of regulation 8 and furnish the information to the merchant banker.
(1B) The board of directors of the company while approving the proposal for delisting shall certify that
(i) the company is in compliance with the applicable provisions of securities laws;
(ii) the acquirer or promoter or promoter group or their related entities, are in compliance with sub-regulation (5) of regulation 4;
(iii) the delisting is in the interest of the shareholders.
(2) An application seeking in-principle approval for delisting under clause (c) of sub-regulation(1) shall be accompanied by an audit report as required under regulation 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 in respect of the equity shares sought to be delisted, covering a period of six months prior to the date of the application".

2.1. Regulation 8(1) of the Delisting Regulations provides that the delisting proposal has to be approved by the Board of directors of the company.

2.2. Upon receipt of the delisting proposal from the promoter / acquirer, the company forwards it to the company's Board of Directors and takes steps to conduct the meeting of the Board of Directors to consider and approve the same.

2.3. Further, Regulation 8(1A) and (1B) of the Delisting Regulations, inter-alia casts several responsibilities on the Board of Directors of the company before granting delisting approval. This includes appointment of the Merchant Banker ("**MB**") for carrying out due diligence and giving certification, relying on the MB due – diligence report, as per regulation 8(1B).

2.4. Regulation 8(2) provides, an audit report under regulation [1]55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 in respect of the equity shares sought to be delisted, covering a period of six months prior to the

[1] Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 has been substituted by the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 and Reg. 76 is the corresponding regulation.

date of the application, to be submitted to stock exchange while seeking in principal approval. However, it is not disseminated to the public by the stock exchanges.

Issue

2.5. It is observed that

i. Timeline for obtaining Board of Directors' approval is not specified; and

ii. The Board of directors neither disclose the MB's due-diligence report nor the audit report.

2.6. For ensuring that the delisting exercise is concluded in a time bound matter, it is imperative to specify the timeline for obtaining Board of Director's approval for voluntary delisting.

2.7. The MB's due-diligence report and the audit report should also be disclosed through stock exchanges, as the same may be relevant for the shareholders to arrive at informed investment decision.

Proposal

2.8. **It is proposed that:**

i. Upon receipt of the delisting proposal, the company shall convene the Board meeting within 21 working days from the date of receipt of delisting proposal to consider and approve the delisting proposal;

ii. The Board of Directors while communicating their decision of granting approval of delisting shall also disclose to the Stock Exchanges the MB's due - diligence report and the audit report;

3. Refining the Role of Board of Directors / Independent Directors

Extant regulatory framework

Regulation 8(1A) and 8(1B) of the Delisting Regulations provide for protecting the interest of public shareholders in the delisting process and the role of Board of Directors in this regard. Regulation 8(1B) of Delisting Regulations reads as follows:

"(1B) The board of directors of the company while approving the proposal for delisting shall certify that:

i. the company is in compliance with the applicable provisions of securities laws;

ii. the acquirer or promoter or promoter group or their related entities, are in compliance with sub-regulation (5) of regulation 4;

iii. the delisting is in the interest of the shareholders."

3.1. It has been represented that presently the board only certifies that the delisting is in the interest of the shareholders, without providing any justification. In this respect it has been represented that:

a) mere statement may not be of value to the shareholders, unless supplemented by explanation/rationale justifying that the delisting is in the interest of the shareholders.

b) On the lines of the requirements related to open offer under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("Takeover Regulations"), reasoned recommendations of independent directors could also be made in voluntary delisting for the benefit of the public shareholders to take informed investment decision.

3.2. Regulation 26 of the Takeover Regulations inter-alia provides that upon receipt of the detailed public statement, the Board of Directors of the target company shall constitute a committee of independent directors to provide its written reasoned recommendations on the open offer to the shareholders of the target company. The committee shall be entitled to seek external professional advice at the expense of the target company. Such recommendations shall also be published in the same newspapers where the public announcement of the open offer was published and a copy of the same shall be sent to: (i) SEBI; (ii) all the stock exchanges on which the shares of the target company are listed for dissemination to the public; and (iii) to the manager to the open offer.

3.3. Further, it has been represented that the voting pattern of the board of directors -ie only the number and not the name of the directors who voted in favour or against such resolution should be disclosed.

Proposals

3.4. In view of the foregoing, the following is proposed:

a) The committee of independent directors in line with the SAST provisions may be required to provide their reasoned recommendations on the proposal for delisting.

b) Voting pattern of the Committee of the Independent Directors shall also be disclosed, while giving reasoned recommendations on the proposal of delisting. Similar disclosures should also be provided for in the SAST regulations.

c) Expenses relating to seeking expert opinion by the committee of independent directors can be borne by the company.

Refining Process

4. Shareholders' approval by way of Special Resolution

Extant regulatory framework

"Regulation 8. (1) Any company desirous of delisting its equity shares under the provisions of Chapter III shall, except in a case falling under clause (a) of regulation 6, -

……

(b) obtain the prior approval of shareholders of the company by special resolution passed through postal ballot, after disclosure of all material facts in the explanatory statement sent to the shareholders in relation to such resolution….."

4.1. Regulation 8(1)(b) of the delisting regulations provides that the special resolution be passed through postal ballot.

4.2. Rule 22 of Companies (Management and Administration) Rules, 2014 provides timeline of thirty days from the date of dispatch of the notice of postal ballot. However, in case of e-voting a minimum timeline of 3 days is required to be given.

4.3. E-voting is an efficient method for shareholders to participate in the decision making process and reduces the time taken significantly.

Proposal:

4.4. It is proposed that the shareholder's approval through special resolution may be obtained either through postal ballot or through e-voting as per the provisions of the Companies Act, 2013 and the rules made thereunder.

5. Indicative price

Extant regulatory framework - *No specific provision*

5.1. In some delisting offers, it is observed that acquirer(s) / promoter(s) also mentioned indicative price, over and above the floor price (calculated in terms of Regulation 8 of Takeover Regulations), which shows promoter inclination to pay more. However, Delisting regulations do not contain any provision to enable this. Indicative price may actually help the investors to gauge the inclination of the promoters and his willingness to pay such price. Thus, promoters / acquirer may be allowed to specify an indicative price which shall not be less than the floor price calculated in terms of Regulation 8 of Takeover Regulations.

5.2. **Proposal:**

i. Promoter(s) / Acquirer(s) may be allowed to specify an indicative price which shall not be less than the floor price calculated in terms of Regulation 8 of Takeover Regulations.

6. Escrow Account

Extant regulatory framework

"Regulation 11. (1) Before making the public announcement under regulation 10, the [acquirer or] promoter shall open an escrow account and deposit therein the total estimated amount of consideration calculated on the basis of floor price and number of equity shares outstanding with public shareholders".

6.1. Currently, the Acquirer / promoter is required to open an escrow a/c before making the public announcement (PA) and deposit an amount equivalent to total consideration calculated at the floor price. PA is required to be made within one working day from the receipt of in-principal approval from the Stock Exchange.

Issue

6.2. It is noted that there can be significant gap between making the delisting proposal to the company and obtaining the in-principal approval from the stock exchange.

6.3. In order to demonstrate seriousness and preparedness in the delisting offer and ensuring financial capability of the acquirer/promoter, it is warranted that some portion of the total consideration may be deposited in an interest bearing escrow account after obtaining the approval from the Board of the directors of the company.

6.4. Further, the modalities of the escrow account are not outlined in the delisting regulations. Thus, to bring in clarity it would be appropriate to provide the conditions relating to the operation of the escrow account.

Proposal

6.5. It is proposed that:

i. Promoter(s) / acquirer(s) shall open an escrow a/c with in seven working days of the shareholder's approval and deposit therein an amount equivalent to 25% of the total consideration, calculated on the basis of the floor price / indicative price. The remaining amount may be deposited as per the existing provisions contained in Regulation 11(1).

ii. The promoter / acquirer shall enter into tripartite agreement between the Manager to the offer and the bank for the purpose of opening the escrow account and shall empower the Manager to the offer to operate the account as per the requirement of the delisting regulations.

iii. In case of failure of the delisting offer, 99% amount lying in escrow account shall be released within one working day of public announcement of the failure of the voluntary delisting and the remaining 1% shall be released post returning the shares/revoking the lien as per the timelines and ensuring the compliance thereof by the MB.

7. Reverse Book Building ("RBB")

Extant regulatory framework

Regulation 13 (2) The offer shall remain open for a period of five working days, during which the public shareholders may tender their bids.

7.1. The delisting offer remains open for a period of five working days, during which the public shareholders may tender their bids.

Issue

7.2. It is noted that presently there is no regulation mandating the disclosures regarding the fate of the reverse book building process (i.e. meeting the target of 90% shareholding) in a specified timeframe.

7.3. It is also observed that during the tendering process, the display bids of the stock exchange reverse book building window inter-alia shows the unconfirmed bids. Displaying the unconfirmed bids gives false indication.

Proposal

7.4. **It is proposed that:**

i. The outcome of RBB in terms of its success or failure shall be announced within two hours of the closure of the tendering period.

ii. Unconfirmed bids / order shall not be displayed in the stock exchange reverse book building window.

Rationalizing Timelines

8. Timeline for filing applications for in-principle approval and final approval by the company

Extant regulatory framework

Regulation 8(1) of the Delisting Regulations reads as follows:

"(1) Any company desirous of delisting its equity shares under the provisions of Chapter III shall, except in a case falling under clause (a) of regulation 6, -

(a) obtain the prior approval of the board of directors of the company in its meeting;

(b) obtain the prior approval of shareholders of the company by special resolution passed through postal ballot, after disclosure of all material facts in the explanatory statement sent to the shareholders in relation to such resolution:

(c) make an application to the concerned recognised stock exchange for in-principle approval of the proposed delisting in the form specified by the recognised stock exchange; and

(d) within one year of passing the special resolution, make the final application to the concerned recognised stock exchange in the form specified by the recognised stock exchange: Provided that in pursuance of special resolution as referred to in clause (b), passed before the commencement of these regulations, final application shall be made within a period of one year from the date of passing of special resolution or six months from the commencement of these regulations, whichever is later."

Issue

8.1. There is no specific timeline provided in the Delisting Regulations with regard to the following two steps for the company:

a) Filing of application to the concerned stock exchanges for in-principle approval;

b) While there is a timeline of 1 year from passing of the special resolution for the company to make the final application to the concerned recognised stock exchange, there is no specific timeline between making payment to shareholders and making the final application to the stock exchanges.

8.2. Representations have been received to review the one-year time period for filing the final application for delisting. Further, it has inter alia been represented that (a) there is no time limit for filing application for in principle approval for delisting to exchanges after shareholders' approval of special resolution; and (b) that the companies take their own time in filing application with the stock exchanges, which may not be in the interest of the investors.

8.3. It is felt that one year time period for filing the final application is a fairly long period, especially after the shareholders have approved the resolution for delisting. Present position compels a shareholder to wait for upto a year for the delisting process to complete. With the passage of one year time from the approval of the resolution of the shareholders, circumstances may undergo lot of changes both external and internal to the company, which may adversely affect the shareholders. Thus there is a need to conclude the delisting as close to the shareholder resolution as possible.

Proposals

8.4. In view of the foregoing, the following is proposed:

a) A timeline of fifteen working days from the passing of special resolution may be stipulated for the company to file application for in-principle approval by stock exchanges; and

b) A timeline of five working days from the date of making payment to the shareholders may be stipulated for the company to make the final application to the stock exchanges.

9. Timeline provided for issuance of in-principle approval by stock exchanges

Extant regulatory framework

Regulation 8(3) of the Delisting Regulations reads as follows:

"(3) An application seeking in-principle approval for delisting shall be disposed of by the recognised stock exchange within a period not exceeding five working days from the date of receipt of such application complete in all respects."

Issue

9.1. Representations have been received that sufficient time has not been provided to the stock exchanges for processing delisting application.

9.2. Exchanges are the first level regulator protecting the interest of the shareholders. It may be noted that in terms of regulation 8(2)(4) of the Delisting Regulations, the stock exchanges are required to satisfy the following:

a) compliance with clause (b) of sub-regulation (1);

b) the resolution of investor grievances by the company;

c) payment of listing fees to that recognised stock exchange;

d) the compliance with any condition of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 with that recognised stock exchange having a material bearing on the interests of its equity shareholders;

e) any litigation or action pending against the company pertaining to its activities in the securities market or any other matter having a material bearing on the interests of its equity shareholders;

f) any other relevant matter as the recognised stock exchange may deem fit to verify.

9.3. Further, the exchanges may be required to analyse the surveillance alerts, if any, and/ or any significant changes in shareholding pattern prior to the delisting proposal being approved by the company.

9.4. Given the activities involved five days may not be considered as sufficient time for the exchange to process the application with examination, if any, at the exchange level.

Proposal

9.5. In view of the foregoing, it is proposed that the time-period for granting in-principle approval by the stock exchanges may be extended from the present five working days to fifteen working days.

10. Tendering of shares

Extant regulatory framework

Regulation 16 (2) Where the 51[acquirer or] promoter decides not to accept the offer price so determined,-

(a) the 52[acquirer or] promoter shall not acquire any equity shares tendered pursuant to the offer and the equity shares deposited or pledged by a shareholder pursuant to 53[clauses] 7 or 9 of Schedule II shall be returned or released to him within ten working days of closure of the bidding period;

Schedule II, Clause 7: The shareholders holding dematerialised shares desirous of availing the exit opportunity may deposit the equity shares in respect of which bids are made, with the special depositories account opened by the merchant banker for the purpose prior to placement of orders or, alternately, may mark a pledge for the same to the merchant banker in favour of the said account.

10.1. Clause 7 of Schedule II provides, shareholders holding dematerialized shares desirous of availing the exit opportunity may either deposit the equity shares in respect of which bids are made, with the special depositories account opened by the merchant banker for the purpose prior to placement of orders or, alternately, may mark a pledge/ lien for the same to the merchant banker in favour of the said account.

10.2. Regulation 16(2) provides, in case promoter decides not to accept the offer price, the equity shares deposited or pledged by a shareholder shall be returned or released to him within ten working days of closure of the bidding period.

Issue

10.3. Lien is an efficient process having feature of complete audit trail without actually transferring the shares to the beneficiary account. Lien is executed through the

depository's framework linking with the settlement mechanism of the clearing corporation.

10.4. This is an investor friendly process and instills security and assurance in the minds of the shareholders about the timely return of such shares in the event of failure of delisting.

Proposal

10.5. **It is proposed that:**

i. Shares in dematerialized form shares shall be tendered by way of marking a lien in favour of the special depositories account, opened for voluntary delisting;

ii. In case (a) RBB's threshold of 90% is not met; or (b) promoter decides not to accept the discovered price, the shares tendered by way of creating lien shall be released on the same day; and

iii. In respect of physical shares, it is proposed that requisite documents along with share certificate shall be sent to RTA of the company before last date of tendering period. RTA shall complete the verification on the same day.

11. Payment of consideration upon acceptance of the discovered price

Extant regulatory framework

Regulation 20(2) All the shareholders whose equity shares are verified to be genuine shall be paid the final price stated in the public announcement within ten working days from the closure of the offer.

11.1. Regulation 20(2) provides, in case of success of delisting offer, payment to the shareholders, who tendered shares, have to be made within 10 working days from the closure of the offer.

Issue

11.2. Ten days period is fairly long period. Investors have represented that due to availability of various payment options, it is possible to reduce the timeline required to make payment.

11.3. Further, as the shares are allowed to be tendered through stock exchange mechanism, the payment upon acceptance of the final price may be made through the secondary market settlement mechanism.

Proposal

11.4. It is proposed that:

i. Upon acceptance of the price discovered through RBB:

a. If the discovered price is same as the floor price, payment with respect to dematerialized shares shall be made through the secondary market settlement mechanism,

b. If the discovered price is more than the floor price, payment with respect to dematerialized shares shall be made within five working days.

ii. Payment with respect to physical shares shall continue to be made as per the extant mechanism.

12. Announcement of acceptance, rejection of the discovered price or counter Offer:

Extant regulatory framework

Regulation 16[(1A) If the price discovered in terms of Regulation 15 is not acceptable to the acquirer or the promoter, the acquirer or the promoter may make a counter offer to the public shareholders within two working days of the price discovered under regulation 15, in the manner specified by the Board from time to time……..

Regulation 18. Within [five] working days of [the] closure of the offer, the 67[promoter/acquirer] and the merchant banker shall make a public announcement in the same newspapers in which the public announcement under sub - regulation (1) of regulation 10 was made regarding:-

(i) the success of the offer in terms of regulation 17 Along with the final price accepted by the acquirer; or

(ii) the failure of the offer in terms of regulation 19;

12.1. As per Reg. 18, the public announcement relating to failure or success of the delisting offer has to be made within five working days of the closures of the offer. However, as per the Reg. 16(1A), the counter offer needs to be made within two working days of the closure of the offer.

Issue

12.2. The promoter(s) have five days to announce the success or failure of the offer, whereas they have only two days to make counter offer. There is need to streamline these provisions, such that all the three decisions (accept / reject / counter offer) are taken on a single day.

Proposal

12.3. It is proposed that:

i. Public announcement for giving either counter offer or accepting or rejecting the discovered price, shall be made within two working days of the closure of the tendering period.

Rationalizing Timelines

13. Role of Merchant Banker

Extant regulatory framework

Regulation 10(4) Before making the public announcement, the [acquirer or] promoter shall appoint a merchant banker registered with the Board and such other intermediaries as are considered necessary.

[Explanation. - The merchant banker conducting due diligence on behalf of the company may also act as the manager to the delisting offer.]

13.1. Presently, in the voluntary delisting offer, firstly, the Merchant Banker is required to be appointed by the company for carrying out due diligence process. Secondly, MB is appointed by the Acquirer to act as manager to the delisting offer, upon receiving the in principal approval from the stock exchanges.

13.2. Further, Regulation 10(4) provides that the merchant banker conducting due diligence on behalf of the company may also act as the manager to the delisting offer.

Issue

13.3. There is possibility of conflict of interest on the part of the merchant banker while undertaking both the assignments (i) due-dilignece; and (ii) acting as manager to the offer, which may compromise its impartiality.

13.4. Due-diligence work in case of delisting proposal is similar to the secretarial audit. To avoid any conflict of interest and ensure objectivity the due-diligence may be carried out by the practising Company Secretary.

13.5. Further, Delisting Regulations do not specify the role and responsibilities of the Manager to Delisting Offer. It is felt that manager to the offer has important role to play while undertaking the reverse book building process and ensuring compliance with the extant delisting and other applicable laws. Thus, it is warranted to provide a detailed framework on the role and responsibilities on the manager to the offer.

Proposal

13.6. It is proposed that:

i. Prior to making the IPA, the Promoter / Acquirer shall appoint a merchant banker registered with the Board, who is not an associate of the acquirer / promoter, as the manager to the delisting offer.

ii. Due – diligence shall be performed by peer reviewed practicing Company Secretary, in place of MB, not relating to MB / Acquirer / Promoter / their Associates;

iii. Role and responsibilities of the manager to the offer, may be provided in the regulations outlining the following:

a. Before making the public announcement, the manager to the delisting offer shall ensure that,— (i) the acquirer is able to implement the delisting offer; and (b)firm arrangements for funds through verifiable means have been made by the acquirer to meet the payment obligations under the delisting offer.

b. The manager to the delisting offer shall ensure that the contents of the public announcement, and the letter of offer and the post-offer advertisement are true, fair and adequate in all material aspects, are based on reliable sources, state the source wherever necessary, and are in compliance with the requirements under these regulations.

c. The manager to the delisting offer shall ensure that market intermediaries engaged for the purposes of the offer are registered with the Board.

d. The manager to the delisting offer shall exercise diligence, care and professional judgment to ensure compliance with these regulations.

e. The manager to the delisting offer shall not deal on his own account in the shares of the target company during the reverse book building offer period.

14. Measures to provide exit to remaining shareholders

Extant regulatory framework

Reg. 21 (1) Where, pursuant to acceptance of equity shares tendered in terms of these regulations, the equity shares are delisted, any remaining public shareholder holding such equity shares may tender his shares to the promoter upto a period of minimum one year from the date of delisting ……..

Issue

14.1. It is observed that pursuant to success of the delisting offer, the acquirer(s) / promoter(s) do not take active steps to give exit opportunity to the remaining shareholders. In this regard, the Acquirer / Promoter and the manager to the offer (MB) may be required to take further necessary steps in the interest of the investors.

14.2. It will benefit the retail shareholders, who could not participate during the RBB process due to any reasons. The active involvement of the MB will bring further transparency and instill confidence among the shareholders.

Proposal

14.3. It is proposed that:

i. The Acquirer / Promoter / MB shall take following additional further steps to provide the exit to remaining shareholders:

a. Acquirer / Promoter / MB shall file the quarterly progress report to the stock exchanges, which shall be disseminated thereafter, disclosing the following:

- Nos. of remaining shareholders at the beginning and end of the quarter.
- Shareholders who availed the exit opportunity during the quarter:

b. Acquirer / Promoter / MB shall send follow up communications to the remaining shareholders on quarterly basis

c. Acquirer / Promoter shall publish, advertisement inviting remaining shareholders to avail the exit opportunity, on quarterly basis, during the one year exit window.

ii. Stock exchanges shall monitor the compliance of aforesaid requirements.

15. **Revisiting public shareholder's definition**

Extant regulatory framework

Reg. 2 (1)(v) Public shareholders mean the holders of equity shares, other than the following:

i. promoters, promoter group and persons acting in concert with them;
ii. acquirer(s) and persons acting in concert with such acquirer(s); and
iii. holders of depository receipts issued overseas against equity shares held with a custodian and such custodian holding the equity shares.

Issue

15.2. The definition of the public shareholding as provided under Rule 2(e) of the Securities Contracts (Regulations) Rules, 1957 ("SCRR") was substituted on February 25, 2015.

Modified Public shareholding definition

"Public shareholding means equity shares of the company held by public including shares underlying the depository receipts if the holder of such depository receipts has the right to issue voting instruction and such depository receipts are listed on an international exchange in accordance with the Depository Receipts Scheme, 2014:

Provided that the equity shares of the company held by the trust set up for implementing employee benefit schemes under the regulations framed by the Securities and Exchange Board of India shall be excluded from public shareholding".

15.3. MoF-DEA vide gazette notification date February 25, 2015 amended Securities Contracts (Regulations) Rules, 1957 ("SCRR") and included the holders of depository receipt as public shareholders if the holders has rights to issue voting instruction and depository receipt listed in an international stock exchange. Thus, the same needs to be aligned.

Proposal

15.4. It is proposed to modify the public shareholding definition in line with the SCRR.

16. Issues relating to inactive shareholders viz. (a) vanishing companies; (b) struck off companies; and (c) whose shares have transferred to IEPF account

Extant regulatory framework – No specific provision

16.1. For successful delisting the acquirer has to acquire 90% of the total share capital of the company. It is possible that the companies may have shareholders viz. (a) vanishing companies; (b) struck off companies; (c) whose shares have been transferred to IEPF account.

16.2. In such case, the acquirer may have to acquire a higher threshold due to these inactive shareholders.

Proposal

16.3. It is proposed that:

i. For companies having shareholders viz. (a) vanishing companies; (b) struck off companies; (c) whose shares have been transferred to IEPF account, the minimum acquisition threshold under RBB shall be calculated after deducting the shareholding held by such shareholders.

Plugging Gaps

17. Book Value

Extant regulatory framework

SEBI Board at its meeting held on September 18, 2018 approved that –

"In case of voluntary delisting, if the price discovered through the reverse book building process is not accepted by the promoters, a counter offer can be given by the promoters. However, the price through the counter offer should not be less than the book value and delisting will be successful only if such counter offer is accepted by such number of public shareholders that the post offer promoter shareholding reaches at least 90%."

The amendments in this regard were introduced in the Delisting Regulations w.e.f. November 14, 2018. The following regulation sub-regulation 1A was introduced under regulation 16 of Delisting Regulations:

"If the price discovered in terms of regulation 15 is not acceptable to the acquirer or the promoter, the acquirer or the promoter may make a counter offer to the public shareholders within two working days of the price discovered under regulation 15, in the manner specified by the Board from time to time:

Provided that the counter offer price shall not be less than the book value of the company as certified by the merchant banker."

Subsequently, SEBI vide circular dated March 13, 2019 provided detailed timelines on the process relating to counter offer. It was inter alia mentioned in the circular that the public announcement of counter offer shall also disclose the book value per share of the company.

Issue

17.1. In this regard, representations have been received requesting SEBI to clarify on the following:

i. Which financial statements to be considered (standalone vis-à-vis consolidated) for book value; and

ii. Which date has to be considered for book value

17.2. The consolidated financial statements are presented by a parent (also known as holding enterprise) to provide financial information about the economic activities of its group. These statements are intended to present financial information about a parent and its subsidiaries as a single economic entity to show the economic resources controlled by the group, the obligations of the group and results the group achieves with its resources.

17.3. There is a concern that much of the activities of the subsidiaries are not available in the public domain. The consolidated financial statement allows the investors to get a complete overview of the parent company.

17.4. In case of IPOs also, the profitability and other financial statements are considered on a consolidated basis as per SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

17.5. Further, as per SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, all the listed companies having subsidiaries are required to submit quarterly /year-to-date consolidated financial results.

17.6. With regard to date of financial result, it may be noted that since delisting is a major event for the company and the investors, the book value should be recent and at the same time reviewed / audited by the auditors. The LODR Regulations require that the quarterly financial results should be either audited or be subject to limited review by the auditors.

Proposal

17.7. In view of the foregoing, the following is proposed:

i. The book value may be considered on the basis of both consolidated and standalone basis, whichever is higher, as per the latest quarterly financial results filed by the company on the stock exchanges, as on the date of public announcement for counter offer.

18. Promoters to accept delisting price, if the price discovered through RBB is same as floor price

Extant regulatory framework

In terms of the Delisting Regulations, the exit price is determined through the RBB as specified in Schedule II, after fixation of the "floor price". The floor price is computed in terms of Regulation 15(2) of the Delisting Regulations read with Regulation 8 of the Takeover Regulations.

In terms of Regulation 16(1) of Delisting Regulations, the promoters are not bound to accept the RBB price. The promoters have the right to either accept, reject or make a counter offer. Regulation 16(1) of the Delisting Regulations reads as follows:

"16. (1) The acquirer or promoter shall not be bound to accept the equity shares at the offer price determined by the book building process."

Further, Regulation 16(1) of the Delisting Regulations reads as follows:

"1A) If the price discovered in terms of regulation 15 is not acceptable to the acquirer or the promoter, the acquirer or the promoter may make a counter offer to the public shareholders within two working

days of the price discovered under regulation 15, in the manner specified by the Board from time to time:

Provided that the counter offer price shall not be less than the book value of the company as certified by the merchant banker."

Issue

18.1. Representations have been received that in the event the price discovered through RBB is equal to the floor price, the promoter should be bound to accept the price.

18.2. The floor price is already known to the promoter and the entire delisting process (including formation of escrow account, depositing of amount by promoter, bidding by public shareholders, deposit of shares by shareholders etc.) is progressed based on the floor price already known to promoters and all stakeholders.

Proposals

18.3. In view of the foregoing, the following is proposed:

a) In the event the price discovered through RBB is equal to the floor price, the promoter shall be bound to accept the delisting price and the promoter shall not have the option of rejecting the delisting.

b) The expenses relating to delisting should be borne by the acquirer/promoter, in case of failure of delisting.

19. Reducing the gap for relisting post delisting

Extant regulatory framework

Regulation 30(1)(a) of the Delisting Regulations provides that:

"30. (1) No application for listing shall be made in respect of any equity shares,

(a) which have been delisted under Chapter III or under Chapter VII (except regulation 27), for a period of five years from the delisting;"

Issue

19.1. Representations have been received from stakeholders to reduce the cooling off period for relisting of companies from the existing 5 years to 3 years. In this regard, it has been represented that the cooling off period may be reduced to 3 years for the following reasons:

a) The business environment in the country is constantly evolving and companies may require funding for new business opportunities, subsequent to delisting. 5 years is a considerably longer time period to anticipate the changes in the

business environment. There can be a possibility for fund requirement and need to access capital markets within this period and accordingly, a shorter cooling off period of 3 years can be considered for relisting the shares once delisted.

b) Delisting Regulations prescribe a minimum time gap of 3 years from initial listing of the company before making an application for delisting. The cooling off period for relisting subsequent to delisting can be synchronized to 3 years in line with this requirement.

c) In some situations, delisting decisions may be taken to pursue strategic initiatives with longer gestation period and to reduce exposure of public market investors to such projects. Such projects may require bringing on board new strategic/ financial investors to get access to requisite technical know-how and funding. On successful completion of the new initiatives and achieving the critical performance parameters, such companies may want to relist for liquidity event and access to capital markets. Permitting relisting after completion of 3 years of delisting will encourage such investments.

Proposal

19.2. It is therefore proposed that the cooling off period for relisting post delisting prescribed under regulation 30(1)(a) of the Delisting Regulations may be reduced to three years.

20. **Cooling off period after Buy-back and preferential allotment**

Extant regulatory framework

Regulation 4. (1) No company shall apply for and no recognised stock exchange shall permit delisting of equity shares of a company,-

(a) pursuant to a buyback of equity shares by the company; or

(b) pursuant to a preferential allotment made by the company; or

…….

20.1. As per Reg. 4(1) of the Delisting regulations, voluntary delisting is not permissible pursuant to buy-back and preferential allotment by the company.

Issue

The timeline for voluntary delisting subsequent to buy-back / preferential allotment is not specified. Consequently, varying practices are followed by the companies and therefore there is need to provide timelines in this respect.

***Proposal*:**

20.2. It is proposed that:

i. Voluntary delisting may not be permitted pursuant to buy-back and preferential allotment, unless a period of six months has elapsed from completion of the last buy-back or preferential allotment.

21. Parallel delisting of depository receipts issued overseas

Extant regulatory framework – No specific provision

Issue

21.1. Delisting regulations are silent on the delisting of Depository Receipt from foreign jurisdictions subsequent to the delisting of shares of company in India.

Proposal

21.2. It is proposed that after delisting of shares in the home jurisdiction the company shall delist all of its depository receipts issued overseas (Subject to consultation with Govt. of India).

22. Cooling off period between two delisting attempts

Extant regulatory framework – No specific provision

Issue

22.1. Upon failure of the voluntary delisting, the delisting Regulations do not provide any specific timeline, pursuant to which voluntary delisting may be re-attempted.

Concern

22.2. Voluntary delisting is a major event, which draws the attention of all the stakeholders. Shareholders anticipating exit opportunity in the delisting process, feel short – changed, upon failure of either Reverse book building process or rejection of discovered price by the Promoter/Acquirer. Voluntary delisting adds to the volatility in share price.

Proposal

22.3. It is proposed that:

i. There shall be a cooling off period of six months between two delisting offers and same acquirer(s) / promoter(s) cannot make another delisting offer during the cooling-off period.

Update references to the Companies Act, 2013

23. Delisting pursuant to the resolution plan approved under Section 31 of the Insolvency and Bankruptcy Code, 2016

Extant regulatory framework

Regulation (2) Nothing in these regulations shall apply to any delisting made pursuant to a scheme sanctioned by the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 or by the National Company Law Tribunal under section 424D of the Companies Act, 1956, if such scheme –

(a) lays down any specific procedure to complete the delisting; or

(b) provides an exit option to the existing public shareholders at a specified rate.

23.1. Regulation 3(2) deals with the non-applicability of Delisting Regulations on the delisting made pursuant scheme sanctioned by the BIFR under Sick Industrial Companies (Special Provisions) Act, 1985 or by NCLT under section 424D of Companies Act, 1956.

Issue

23.2. Sick Industrial Companies (Special Provisions) Act, 1985 has since been replaced with Insolvency and Bankruptcy Code, 2016 and the Companies Act, 2013 has been notified.

Proposal

23.3. It is proposed that the Reg. 3(2) may be deleted.

C. Public Comments

1. Public comments are therefore invited on the aforesaid proposals in the following format:

Name of entity/ person/ intermediary:			
Name of organization (if applicable):			
Contact details: Address, Mobile No. etc.			
Sr. No.	**Proposals**	**Proposed/ suggested changes**	**Rationale**
	Page No. Para No.		

2. The comments may be forwarded by e-mail to delistingreview2020@sebi.gov.in or sent by post at the following address latest by December 21, 2020.

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