



Consultation Paper

Review of determination of Offer Price in case of disinvestment of PSU Companies

Objective

1. The objective of this consultation paper is to seek comments from the public on the proposal to relax certain provision with regard to determination of open offer price in case of divestment of Public Sector Undertaking companies (*hereinafter referred to as "PSU"*) by the Central Government and/or State Government.

Background

2. Securities and Exchange Board of India (*hereinafter referred to as "SEBI"*) currently regulates substantial acquisition of shares and takeovers through SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (*hereinafter referred to as "Takeover Regulations"*).
3. One of the fundamental objectives of the Takeover Regulations is to provide each shareholder with an opportunity to exit his investment in the target company whenever there is a substantial acquisition of shares or takeover of a target company. The price at which the public shareholders are given exit may not be at terms lesser than what is been provided to exiting substantial shareholder.
4. The aforesaid objective is captured in Regulation 8 of Takeover Regulations which prescribes the parameters for determination of Offer Price, as follows-
 - Regulation 8(2)- *In the case of direct acquisition of shares or voting rights in, or control over the target company, and in direct acquisition of shares or voting rights in, or control over the target company where the parameters referred to in sub-regulation (2) of regulation 5 are met, the offer price shall be the highest of,—*
 - (a) *the highest negotiated price per share of the target company for any acquisition under the agreement attracting the obligation to make a public announcement of an open offer;*
 - (b) *the volume-weighted average price paid or payable for acquisitions, whether by the acquirer or by any person acting in concert with him,*

during the fifty-two weeks immediately preceding the date of the public announcement;

(c) the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during the twenty-six weeks immediately preceding the date of the public announcement;

(d) the volume-weighted average market price of such shares for a period of sixty trading days immediately preceding the date of the public announcement as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, provided such shares are frequently traded;

(e) where the shares are not frequently traded, the price determined by the acquirer and the manager to the open offer taking into account valuation parameters including, book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies; and

(f) the per share value computed under sub-regulation (5), if applicable.

- Regulation 8(3)- In the case of an indirect acquisition of shares or voting rights in, or control over the target company, where the parameter referred to in sub-regulation (2) of regulation 5 are not met, the offer price shall be the highest of,—

(a) the highest negotiated price per share, if any, of the target company for any acquisition under the agreement attracting the obligation to make a public announcement of an open offer;

(b) the volume-weighted average price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during the fifty-two weeks immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;

(c) the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during the twenty-six weeks immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the

intention or the decision to make the primary acquisition is announced in the public domain;

(d) the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, between the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, and the date of the public announcement of the open offer for shares of the target company made under these regulations;

(e) the volume- weighted average market price of the shares for a period of sixty trading days immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, provided such shares are frequently traded; and

(f) the per share value computed under sub-regulation (5).

Issue to the extant regulations and its deliberation

5. PSU's strategic disinvestment is in variance with privately executed agreements as explained below-
 - 5.1. The announcement of private transactions is made only upon execution of binding agreements and thus there is not much impact on the traded price of such target companies;
 - 5.2. Whereas in case PSU strategic disinvestment, information comes in public domain at the time of cabinet approval and subsequent announcements are also made at different stages and thus market price of the PSU concerned gets highly susceptible to such developments.
6. Given that in case of PSU disinvestment, acquirer shall be identified only after the shortlisting of bidders, which may be month(s) or year(s) late since the date when the information was first in public domain, the prospective acquirer shall be chasing a moving open offer price as the market price tends to rise pursuant to announcement of the divestment and various stages thereafter and thus its liability for open offer obligations may constantly increase till the execution of agreement of the PSU with the acquirer.

7. The above concern was deliberated by the Primary Market Advisory Committee (*hereinafter referred to as "PMAC"*) and it agreed with the following proposal-
- 7.1. In case of disinvestment of PSU companies, the requirement of 60 days' Volume weighted average market price based parameter for calculation of offer price, may be dispensed with.
- 7.2. In case such PSU companies have stake in other company(s) and due to such disinvestment an indirect acquisition is triggered, the requirement of 60 days' Volume weighted average market price based parameter for calculation of offer price for indirect acquisition, may also be dispensed with.
- 7.3. The acquirer shall disclose upfront the negotiated price for both direct acquisition as well for indirect acquisition.

Public comments

8. Public comments are solicited on the aforesaid proposal (para 7.1, 7.2 and 7.3) in the following format:

Title of the Consultation Paper:			
Name of entity/ person/ intermediary:			
Name of Organization (if applicable):			
Contact details/Email Id:			
Sr. No.	Reference to para number	Comments / Suggestions	Rationale

9. Comments/Suggestions may be sent at either dcrconsultation@sebi.gov.in or sent by post at the following address latest by April 15, 2022.

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