

SEBI Amends Delisting Norms - little loose light tight

The year 2014 is going into the history of the Indian Corporate laws as the year of changes. The beginning of the year saw the advent of the Companies Act, 2013 (CA 2013) coming into effect and the midst of it there were changes in the Listing Agreement to align the latter with the CA 2013. In the latter part of the ensuing financial year there were changes in the regulatory framework for the Non-Banking Financial Banking Companies (NBFC) and ESOP and this has been followed with yesterdays Securities Exchange Board of India (SEBI) board meeting wherein see saw changes have been brought into place. The key decisions which took place can be grouped as following –

- New Insider Trading Code
- Consolidated Listing Agreement for Securities
- Amendment to Delisting of Equity Shares Regulations
- Amendments to Mutual Funds Regulations
- Risk Based supervision of Market Intermediaries
- Granting single Registration to Depository participants
- Recommendation of the Depository System Review Committee
- Notice for settlement of certain administration and civil proceedings
- Reclassification of Promoters
- Issuance of Partly paid shares and warrants by Indian Companies
- Use of Secondary Market Infrastructure for Public Issuance
- Imposing restrictions on willful defaulters
- Amendment in SEBI Foreign Venture Capital Investors Regulations

Through this information document we are analysing the delisting regulations and the key changes brought in such regulations are discussed herein below on the basis of SEBI Press release dated November 19, 2014 and once the entire set of new regulations are out we shall be analysing and accordingly updating the same in detail in coming days.

The changes proposed by the SEBI Board make de-listing both tougher and easier at the same time. The biggest complexity in delisting is the reverse book building price SEBI's own discussion paper points to market opinion that says 'discovered price through Reverse Book Building (RBB) process has been unduly influenced by a set of investors who are mainly speculators' and that 'Retail investors find it difficult to comprehend the RBB process resulting in lack of participation by the retail investors'. Yet the same paper goes on to suggest that 'the RBB process provides the public shareholders an opportunity to determine the price, it may be continued but with some checks and balances to address the aforesaid concerns.' The key changes include –

- The delisting shall be considered successful only when (A) the shareholding of the acquirer together with the shares tendered by public shareholders reaches 90% of the total share capital of the company and (B) if atleast 25% of the number of public shareholders, holding shares in dematerialised mode as on the date of the Board meeting which approves the delisting proposal, tender in the reverse book building process.

- The offer price determined through Reverse Book Building shall be the price at which the shareholding of the promoter, after including the shareholding of the public shareholders who have tendered their shares, reaches the threshold limit of 90%.
- The promoter/ promoter group shall be prohibited from making a delisting offer if any entity belonging to the said group has sold shares of the company during a period of six months prior to the date of the Board meeting which approves the delisting proposal.
- Use of Stock Exchange platform for offers made under Delisting, Buy Back and Takeover Regulations.
- The Board of the company shall approve the proposal for delisting only after satisfying itself that delisting is in the interest of shareholders and that the company is in compliance with applicable securities laws. The Board of the company shall appoint a Merchant Banker on behalf of the company and the promoter for the said purpose and for compliance with the Delisting Regulations.
- Companies whose paid up capital does not exceed Rs.10 crores and net worth does not exceed Rs.25 crores as on the last day of the previous financial year are exempted from following the Reverse Book Building process. The exemption would be available only if (a) there was no trading in the shares of the company in the last one year from the date of the board resolution authorizing the company to go for delisting and (b) trading of shares of the company has not been suspended for any non-compliance during the same period.
- Timelines for completing the delisting process has been reduced from 137 calendar days (approx 117 working days) to 76 working days.
- Option to the acquirer to delist the shares of the company directly through Delisting Regulations pursuant to triggering Takeover Regulations has been provided. However, if the delisting attempt fails, the acquirer would be required to complete the mandatory open offer process under the Takeover Regulations and pay interest @ 10% p.a. for the delayed open offer.
- SEBI may, for reasons recorded in writing, relax the strict enforcement of any requirement of the provisions of the Delisting Regulations or exempt from compliance, in line with the provisions existing in ICDR and Takeover Regulations.

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