



Regulatory Alert Tracking change

SEBI (Delisting of Equity Shares) (Amendment) Regulations 2015

Issue no: RA/2/2015

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Background

SEBI has on 24 March 2015, amended the SEBI (Delisting of Equity Shares) Regulations, 2009 ('Delisting Regulations'). This was to implement the SEBI decision of 19 November 2014. The SEBI (Delisting of Equity Shares) (Amendment) Regulations 2015 ('Delisting Amendment Regulations') are effective from 24 March 2015. This alert contains highlights of the amendments to the Delisting Regulations.

Highlights of the Amendments

Voluntary Delisting – Minimum number of equity shares to be acquired

- A voluntary delisting offer shall now be considered successful only if both the following conditions are satisfied:
 - a. the post offer promoter shareholding (along with the persons acting in concert) taken together with the shares accepted through eligible bids at the final offer price, reaches 90% of the total issued shares of that class excluding the shares which are held by a custodian and against which depository receipts have been issued overseas; and
 - b. At least 25% of the public shareholders holding shares in the demat mode as on date of the board meeting approving the proposal for delisting had participated in the Book Building Process.

Condition (b) above will not be applicable if the acquirer and the merchant banker can demonstrate to the stock exchanges that they have delivered the letter of offer to all the public shareholders in the manner in the Delisting Amendment Regulations.

Delisting offer by an acquirer pursuant to trigger of Takeover open offer

- An option has now been provided to the acquirer to delist the shares of the target company through Delisting Regulations in the event the acquirer triggers an open offer under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('Takeover Regulations').
- In case an acquirer has made a public announcement of an open offer for acquiring shares of a target company in terms of the Takeovers Regulations, he may also delist the target

company subject to the Delisting Regulations. In such a case, the threshold limit of 90% for successful delisting offer shall be calculated taking into account post delisting offer shareholding of the acquirer taken together with his existing shareholding in the target company, shares to be acquired which attracted the obligation to make takeover offer and shares accepted through eligible bids under delisting offer at the final offer price determined under the Delisting Regulations.

Restriction on Promoter/Promoter Group/Acquirer

- A promoter/ promoter group is prohibited from making a voluntary delisting offer if any entity belonging to the promoter or promoter group has sold equity shares of the company during a period of 6 months prior to the date of the board meeting in which the delisting proposal was approved.
- No entity belonging to the acquirer, promoter and promoter group of the company can sell shares of the company during the period from the date of the board meeting in which the delisting proposal was approved till the completion of the delisting process.

Use of stock exchange platform for delisting offer

- The acquirer or promoter making the delisting offer shall facilitate tendering of shares by the shareholders and settlement of the same through stock exchange mechanism as maybe specified by SEBI.

Delisting offer price

- The Reverse Book Building process for discovering the offer price of shares for delisting offer has been retained. However, the floor price is to be determined as per the mechanics provided in the Takeover Regulations.

Delisting by Small Companies

- Companies having paid up capital of not more than Rs 100 million, and net-worth that does not exceed Rs 250 million, as on the last day of the previous financial year would be exempted from following the Reverse Book Building process for determining delisting offer price.
- The exemption would be available only if there was no trading in the shares of the company in any recognised stock exchange in the last 1 year preceding the date of the board

resolution approving the delisting, and trading of shares of the company has not been suspended by any of the recognized stock exchange for any non-compliance during the preceding 1 year.

Obligation / onus on the Board of Directors

- In addition to compliance with existing conditions, the board of directors are obliged to also comply with the following prior to approval of delisting:
 - Make disclosure to recognised stock exchanges that the promoters / acquirers have proposed to delist the company;
 - Appoint a merchant banker to carry out due-diligence and make a disclosure to this effect to the recognised stock exchanges;
 - obtain details of trading in shares of the company for a period of 2 years prior to the date of board meeting by top 25 shareholders as on the date of the board meeting convened to consider the proposal for delisting, from the stock exchanges and details of off-market transactions of such shareholders for a period of 2 years, and furnish the information to the merchant banker for carrying out due-diligence.
- After taking into account the due diligence report of the merchant banker, the company's board would have to certify that the company is in compliance with applicable securities law and that the delisting is in the interest of shareholders.

Timelines

Overall timeline for completing the delisting process has been substantially reduced.

SEBI empowered to exempt strict enforcement

SEBI has been authorised to entertain an application for exemption from strict enforcement of any of the requirements of the Delisting Regulations, if it is satisfied that the relaxation is in the interests of investors in securities and the securities market.

Conclusion

The changes are aimed at making the existing regulatory framework on delisting more efficient and investor friendly. Allowing an acquirer triggering the open offer obligations under the Takeover Regulations to directly make a delisting offer is a significant step as it will facilitate M&A deals involving listed Indian companies. It will reduce the overall time taken for completing the delisting process. Empowering SEBI to grant relaxation is a welcome measure which will ease doing business in India for deserving cases.

Source: Notifications dated 24 March 2015 - SEBI (Delisting of Equity Shares) (Amendment) Regulations 2015 read with SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2015

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