

Note on Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009

- *Anushree Agarwal and Payel Jain*
Vinod Kothari & Company,
anushree@credit-deriv.com
payel@vinodkothari.com

On 10th day of June 2009, Securities and Exchange Board of India, the watch-dog of Securities market, has notified Regulations for delisting of equity shares to be known as **Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009** doing away with the SEBI (Delisting of Securities) Guidelines, 2003. This Regulation charts down the path to be followed for delisting the equity shares of a company from the stock exchange.

Guidelines Vs Regulations

The new regulation is a fresh breeze and a more mature look to the old guidelines. As against the existing guidelines the new regulations now allow public shareholders to have a meaningful say in approving the special resolution required for delisting. The requirement of two times the vote in favour of as against that cast against the resolution by the non-promoter shareholders provides a stronger foothold for the minority shareholders and this would reduce unethical and farcical methods of promoter shareholders.

The new norms provide that the delisting would be effective only if promoters hike their stake to 90% or purchase 50% through purchase offer. Besides, the Securities and Exchange Board of India (SEBI) has framed conditions for stock exchanges in the cases of compulsory delisting, and has made special provisions for cases related to delisting of small companies and those necessitated due to factors like winding up and derecognition. A new development provided clearly in the regulations is complete ban on the use of company's funds, directly or indirectly, for the purpose of delisting.

The earlier guidelines "SEBI (Delisting of securities) Guidelines 2003" was wide in its application including within its ambit delisting of all securities of a company. Securities, in itself, is a very wide terms and has been defined under the Securities Contracts (Regulations) Act, 1956 to include shares, stocks, bonds, debentures or other marketable security, derivative, units issued by CIS etc. In contrast, the new regulations known by "SEBI (Delisting of Equity Shares) Regulations, 2009" only apply to delisting of equity shares of a company. Does that lead to restricting the scope of the new regulations? In such a case, what shall be the governing law for delisting of debt securities? The issues are yet to be addressed by the SEBI.

Delisting of securities means permanent removal of securities of a listed company from a stock exchange and as a consequence of which the securities of that company would no longer be traded at that stock exchange. **Two** modes of delisting provided for in the Regulations are:

VOLUNTARY DELISTING



NO EXIT OPPORTUNITY TO PUBLIC SHAREHOLDERS

- After delisting if continues to remain listed on any recognized stock exchange having nation-wide trading terminal

PROCEDURE FOR DELISTING

- Board Resolution
- Public notice in newspaper
- Application to stock exchange for delisting
- Disclosure of delisting in the 1st Annual Report of the Company prepared subsequent to delisting

Application to be disposed by SE within 30 days from receipt.

EXIT OPPORTUNITY TO PUBLIC SHAREHOLDERS

- Delists its equity shares from all recognized stock exchanges.
- After delisting does not continue to remain listed on any recognized stock exchange having nation-wide trading terminal

PROCEDURE FOR DELISTING

- Board Resolution
- Shareholders approval by **POSTAL BALLOT**
 - Number of votes cast by “public shareholders” in FAVOUR to be at least TWO times the votes AGAINST it.
- In-principle approval of the stock exchange
- Make application for delisting within ONE year of passing resolution.

Application for In-principle approval to be disposed by SE within 30days from receipt.

Application for in-principle approval to be supported by:

- Auditors report as required under SEBI (Depositories and Participants) Regulations, 1996 in respect of delisted securities

Final Application to SE to be supported by proof of having given the Exit opportunity

MODE OF EXIT OPPORTUNITY:

After In-principle approval from stock exchange promoters shall:

- Open Escrow Account and deposit therein full estimated amount of consideration calculated on the basis of floor price.
- Appoint Merchant Banker and such other intermediary as necessary
- Make public announcement which shall specify a date to be called ‘specified date’ which shall not be not later than 30 days of public announcement for determining the name of shareholders to whom letter of offer shall be sent.
- Escrow Account shall consist of
 - Cash deposited with bank

- Bank guarantee in favour of Merchant Banker
- Combination of both.
- After payment in full, balance in escrow to be released to the promoters
- Letter of offer to be dispatched to the shareholders not later than 45 days from public announcement to reach shareholders at least 5 working days before opening of bidding process.
- Opening of bidding process not later than 55 days from public announcement.
- Offer to remain open for minimum 3 and maximum 5 days
- Offer price shall be determined through book-building process
- Floor price where equity shares are frequently traded not to be less than the higher of the following:
 - average of the weekly high and low of the closing prices of the equity shares of the company **during** the twenty six weeks
 - OR
 - Two weeks before the date of notification of delisting proposal
- Floor price where the shares are infrequently traded to be determined by the Promoters and Merchant Banker taking into account the following:
 - Highest price paid by promoter twenty six weeks before it was notified of Board meeting upto the date of public announcement.
 - Return on net worth,
 - Book value of the shares of the company,
 - Earning per share,
 - Price earning multiple vis-à-vis the industry average

PROMOTER NOT BOUND TO ACCEPT THE OFFER PRICE

- Promoter shall not be bound to accept the equity shares at the price determined by the book building mechanism
- If the price is not acceptable, promoter shall not move ahead with the delisting procedure
- Promoters to ensure minimum level of public shareholding

SUCCESSFUL OPEN OFFER:

- When the shareholding of the promoter combined with the shares accepted through eligible bids crosses higher of
 - 90% of the total shares issued of that class
 - Aggregate percentage of pre offer promoter shareholding and fifty percent of offer size.
- Within 8 working days of closure of offer promoter and the merchant banker to make public announcement in the same newspaper.
- Open a special account with banker to issue and transfer consideration from Escrow Account.
- Make final payment to genuine shareholders within 10 days of closure of offer.

NON-SUCCESSFUL OPEN OFFER:

- If offer rejected then return equity shares deposited/pledged by a shareholder within 10 working days of close of bidding process.
- No final application to Stock Exchange
- Escrow Account to be closed.

RIGHT OF REMAINING SHAREHOLDERS:

- Remaining public shareholder holding such equity shares may tender his shares to the promoter upto a period of at least one year from the date of delisting
- The promoter shall pay the same final price at which the earlier acceptance of shares was made.
- Balance released after full payment.

COMPULSORY DELISTING

- On any ground prescribed in the rules made under section 21A of the Securities Contracts (Regulation) Act, 1956 (42 of 1956)
- Before making order SE to make public notice giving at least 15 days for any representations from aggrieved person
- On passing order make public notice disclosing:
 - name and address of the company,
 - fair value of the delisted equity shares
 - names and addresses of the promoters of the company
- Inform all other stock exchanges where the equity shares of the company are listed
- Stock exchange shall appoint an independent valuer who shall determine the fair value of the delisted equity shares.
- The promoter of the company shall acquire delisted equity shares from the public shareholders by paying them the value determined by the valuer, subject to their option of retaining their shares.

RESTRICTIONS ON DELISTING: Delisting not permitted in the following cases:

- Pursuant to buy back of shares
- Pursuant to Preferential allotment made by the company
- If three years not elapsed since listing of that class of shares.
- Convertible securities cannot be delisted.

SPECIAL PROVISIONS FOR SMALL COMPANIES AND DELISTING BY OPERATION OF LAW – NEWLY ADDED ATTRACTION

Small Companies:

- a company which has paid up capital upto one crore rupees and its equity shares were not traded in any recognized stock exchange in the one year immediately preceding the date of decision

- a company which has three hundred or fewer public shareholders and where the paid up value of the shares held by such public shareholders in such company is not more than one crore rupees
 - In the above cases equity shares may be delisted from all the recognised stock exchanges where they are listed without being required to comply with the requirement of making public announcement and book building process.

Following conditions to be complied in case of small companies in addition to Regulation 8:

- promoter appoints a merchant banker and decides an exit price
- exit price not be less than the price arrived at in consultation with the merchant banker
- Inform all shareholders individually of delisting of equity shares.
- At least **ninety per cent** of such public shareholders give their positive consent in writing to the proposal for delisting, and have consented either to sell their equity shares at the price offered by the promoter or to remain holders of the equity shares even if they are delisted;
- The promoter completes the entire process of delisting within 75 working days of first communication.
- Payment should be made within 15 from the expiry of 75 working days.

While the new regulations attempted to provide relief to the small companies from following the lengthy procedure of going through the public announcement and the book building mechanism, by retaining the requirement of appointing merchant bankers has made the process complicated and expensive for the small companies. Further the requirement of obtaining positive consent from ninety percent of public shareholders also does not seem practical. The net effect is the so-called relief provided to the small companies is more of an eye-wash.

Subsequent listing of delisted equity shares:

- VOLUNTARY DELISTING: No application for listing for a period of FIVE years from the delisting
- COMPULSORY DELISTING: Reinstatement of delisted shares not permitted for TEN years
- In case of delisting due to winding up of the company listing would not be permitted for five years.
- An application for listing may be entertained on recommendation of BIFR under SICA Act, 1985.

Thus, the new regulation addresses some core aspects and also emphasizes on incremental improvements to the earlier guidelines. However, there are certain issues still left to be addressed by SEBI for delisting mechanism. The new

regulations also provide for transitional provisions for replacing the earlier guidelines in a phased manner.

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