Update

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SEBI Allows Promoters of Listed Companies to Sell Shares through Stock Exchange Mechanism

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Update

The Stock Market regulator, Securities Exchange Board of India ("SEBI") has, vide its circular no. CIR/MRD/DP/ 05/2012 dated February 01, 2012 come out with a guideline - **"offer for sale of shares by promoters through the stock exchange mechanism" (the "Guidelines").** This circular aims to propagate transparency for sale of shares by promoters by opening a separate window provided by the stock exchange.

The Guidelines are applicable for sale of shares by the promoters of a **listed company** only subject to eligibility as given below:

a. Only promoters eligible to trade and required to increase minimum level of public shareholding in terms of Rule 19(2)(b) and Rule 19A of the of Securities Contracts (Regulation) Rules, 1957 read with Clause 40A (ii)(c) of the Listing Agreement.

   Further, Rule 19(2)(b) prescribes requirements for listing of shares on any recognized stock exchange and Rule 19A requires every listed company to have minimum public shareholding of 25%.

b. Promoter/ promoter group entities of top 100 companies based on average capitilisation of the last completed quarter.

With this circular, SEBI has provided a welcome route to the promoters of listed companies to ensure minimum 25% of public shareholding. Further, with a dedicated separate window exclusively for sale of shares by the promoters/promoter group entities, the process can also be conducted faster. Promoters will save on cost and hassles by avoiding public offerings.

The Guidelines have prohibited sale of shares between the promoter/ promoter group entities, which is obvious considering the reason behind issuing this circular.

Although with this Guideline, the promoters have the option of speeding the process of increasing minimum public shareholding in the company, SEBI has also taken care to ensure that promoters do not resort to rampant trading of the shares of listed company and has accordingly laid down the following **safeguard**:

The promoter/ promoter group entities to ensure that they have not traded in the shares of the company in the 12 weeks preceding the offer and also undertake that they will not trade in the 12 weeks after the offer is made.

Size of offer for sale of shares:

SEBI has prescribed two situations for size of offer for sale of shares:

a. The size of the offer shall be at least 1% of the paid-up capital of the company, subject to a minimum of Rs. 25 crores.
b. Where 1% of the paid-up capital at closing price on the specified date is less than Rs 25 crores, dilution would be at least 10% of the paid-up capital or such lesser percentage so as to achieve minimum public shareholding in a single tranche.

Advertisement and offer expenses:

Advertisements about the offer for sale of shares through stock exchange(s) shall be made after the announcement/ notice of the offer for sale of shares has been made to the stock exchanges and the expenses shall be borne solely by the seller.

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Operational requirements:

SEBI has also prescribed certain operational requirements which are summarized below:

1. **Appointment of brokers** who can also undertake transaction on behalf of the buyers.
2. **Announcement/ Notice of the Offer for sale of shares:** Sellers to announce their intention of sale at least one clear trading day prior to the opening of offer along with details:
    a. Name of the seller and the company. Also number of shares being offered for sale.
    b. Name of the exchange(s) where the shares are proposed to be sold and in case orders are to be placed on both BSE and NSE , then either one will shall be declared as the Designated Stock Exchange(DSE)
    c. Date and time of the opening and closing of the offer.
    d. Allocation methodology
    e. Name of the broker
    f. Floor price, if the seller announces it to the market or a declaration that the floor price shall be conveyed to the stock exchange in a sealed envelope which shall be declared post closure of the offer.
3. **Floor price** which is basically the minimum price at which the seller intends to sell the shares.
4. The **duration of the trading** shall be only one trading day and the placing of orders by the prospective buyers shall be only during the trading hours.
5. **Order Placement:**
    a. Modification/ Cancellation of orders/ bids will be allowed during the period of the offer. However, this shall not be allowed during the last 30 minutes of the offer.
    b. No price bands shall be applicable for the orders/ bids placed in the offer for sale.
    c. In case of shares under offer for sale, the trading in the normal market shall also continue.
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    e. Only limit orders/ bids shall be permitted

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6. **Risk Management:**
    a. Stock Exchange shall collect 100% of the order value in cash, at the order level for every buy order/ bid. The fund shall not be utilized against any other obligation of the trading member.
    b. In case of order/bid modification/cancellation, such funds shall be released/collected on a real time basis by the stock exchange.
    c. The seller to deposit the entire quantity of shares on offer with the DSE before the commencement of offer. No other margin to be charged on the seller.
7. **Allocation:**
SEBI has prescribed to set aside a minimum of 25% of the total number of shares on offer for mutual funds and insurance companies. Any unsubscribed portion shall be allowed to be allotted to other bidders, although such an allotment to not exceed 25% of the size of offer for sale.
8. **Settlement:**
    a. The settlement shall take place similar to trade for trade basis and latest by T+2 day. The allocation and obligation thereof to be intimated to the broker not later than T+1 day.
    b. The broker to not net any settlement.
    c. The direct credit of shares shall be given to the demat account of the successful bidder provided it is indicated by the broker/bidder.
9. **Issuance of credit notes:** The broker to issue credit notes based on the allotment price and quantity in terms of conditions specified by the exchange.
10. **Withdrawal of offer:** The offer for sale may be withdrawn prior to its proposed opening. In such a case there will be a cooling off period of 10 trading days from the date of withdrawal before an offer is made once again.
11. **Cancellation of offer:** Cancellation of offer shall not be permitted during the bidding period. If the seller(s) fails to get sufficient demand at or above the floor price, he may choose to either conclude the offer or cancel it in full.

The onus is now on the Stock Exchanges to ensure that the Guidelines so issued are implemented and necessary amendments are made in the existing bye-laws, rules and regulations.

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Our Analysis

This facility of offer for sale through stock exchanges would be available on NSE and BSE for the time being and only to promoters of top 100 companies by average market capitalization in the preceding quarter. It is also pertinent to note that promoters should not have bought or sold their shares 12 weeks prior to and should not buy or sell 12 weeks after the offer period as per SEBI.

The Guidelines have not prescribed for issuance of any deemed prospectus as is required u/s 64 of the Companies Act, 1956. In the absence of any clarification from SEBI, we are not able to comment if the omission of such a requirement is intentional and is done to speed the process. We are also not sure about compliance with the provisions of Section 64 if at all there is an open offer for sale. A clarification from SEBI on the same lines would help clear doubts regarding the same.

The Guidelines have also, not prescribed any time limit within which the stock exchanges should take steps to put the Guidelines in use. But with the issuance of such a Guideline it is expected that the errant listed companies can voluntarily take steps to increase the public shareholding and avoid any violation of the Listing Agreement. It is to be seen what steps the stock exchanges will initiate to ensure that the Guidelines becomes a success.