

EY Alert

Regulatory update - SEBI Board meeting held on November 19, 2014

Executive summary

Securities and Exchange Board of India ('SEBI'/ 'Board') in its meeting held on November 19, 2014 approved some significant amendments in 'Prohibition of insider trading regulations', 'Listing agreement', 'Delisting of Equity Shares Regulations', 'Mutual Funds regulations' etc.

Amendments to respective regulations are yet to be notified/ released. The complete implications could be ascertained once the amendments are released.

This Alert summarizes key amendments approved by SEBI in its meeting based on the press release of November 19, 2014.

Delisting of Equity Shares Regulations, 2009

- ▶ SEBI had issued 'Discussion paper on review of Delisting regulations' on May 09, 2014 for public comments and received various suggestions. Now SEBI has approved certain amendments in 'SEBI (Delisting of Equity Shares) Regulations, 2009' ('Delisting Regulations') in its meeting. Few key amendments approved are as under:
- ▶ **Change in the threshold limit for successful delisting** - Under the Delisting Regulations, delisting was considered successful when promoters shareholding (along with the persons acting in concert) reached higher of 90% of the total issued shares of a particular class or aggregate of pre offer promoter shareholding and 50% of the offer size. Now, Delisting Regulations have been amended to consider delisting successful when promoters reach:
 - ▶ 90% of the total share capital of the company; and
 - ▶ atleast 25% of the number of public shareholders (holding shares in dematerialized mode as on date of Board of Directors meeting approving such delisting proposal) tender their shares.
- ▶ **Determination of offer price** - Under the Delisting Regulations, the offer price was determined through Reverse Book Building ('RBB') process (ie price at which maximum number of public shareholders tendered their shares). SEBI has now approved RBB process with modification, according to which, offer price would be a price at which shareholding of promoter reaches the prescribed threshold limit of 90%.
- ▶ **Joint framework with SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('Takeover Regulations')** - An option has been granted to acquirer pursuant to triggering Takeover Regulations to delist the shares of company directly through Delisting Regulations. However, in case of a failed delisting attempt, promoters are required to carry out mandatory open offer process as per the Takeover Regulations and pay an interest @ 10% per annum for the delayed open offer.
- ▶ **Use of stock exchange platform** - Under the Delisting Regulations, offer for tendering of shares was carried out through off market transactions. However, Board has approved the transfer of shares pursuant to delisting proposal to be done on the platform of stock exchange.
- ▶ **Appointment of Merchant Banker** - Under the Delisting Regulations, the responsibility of appointing merchant banker was on the promoters, however, now Board of Directors of the company will be required to appoint merchant banker.
- ▶ **Prohibition on making a delisting proposal** - Promoter/ promoter group will be now prohibited from making a delisting offer if any promoter/ promoter group entity has sold shares during 6 months prior to the date of the Board of Directors meeting approving the delisting proposal.
- ▶ **Timeline** - Delisting timeline has been reduced from 137 calendar days (around 117 working days) to 76 working days. The change in process which results in reduction of timelines has not yet been disclosed.
- ▶ **Exemption from RBB process** - Earlier companies with paid up capital of Rs 1 crore (with no trading in its shares since past one year) were exempted from carrying out RBB process. However, now this clause has been amended to exempt companies with paid up capital not exceeding Rs 10 crores and net worth not exceeding Rs 25 crores subject to compliance of certain conditions.
- ▶ **Additional powers to SEBI** - SEBI has been empowered to relax any strict enforcement/ compliance with the provisions of the Delisting Regulations.

Prohibition of Insider Trading Regulations, 2014

- ▶ SEBI in 2013 had set up a high level committee to review the SEBI (Prohibition of Insider Trading) Regulations, 1992 ('Insider Trading Regulations'). Committee submitted its report on December 07, 2013.
- ▶ In a move to align the Insider Trading Regulations in India with international practices and to strengthen the legal and enforcement framework, SEBI has approved to bring new SEBI (Prohibition of Insider Trading) Regulations, 2014 with the following key features:
- ▶ **Enhanced coverage of Insider** - Definition of 'Insider' has been widened to include any person with access to unpublished price sensitive information ('UPSI') including persons connected on the basis of contractual, fiduciary or employment relationship;

- ▶ UPSI defined as information not generally available and which may impact the price
- ▶ **Connected persons** - Immediate relatives now to be presumed as connected persons and onus of establishing that they did not possess UPSI shall be on such connected persons.
- ▶ **Wider disclosure requirements:**
 - ▶ Company is now required to disclose UPSI at least 2 days prior to trading by officials
 - ▶ Officials with access to UPSI all-round the year to formulate their pre-determined trading plans and discloses the same to stock exchanges
 - ▶ However, for legitimate business deals, UPSI can be communicated with certain safeguards
- ▶ **Prohibition on directors and key management personnel to trade in derivatives of the securities of the company**
- This is in line with Companies Act, 2013.

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2014

- ▶ SEBI on May 5, 2014 had issued an approach paper on draft SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2014 for convergence of listing conditions and disclosure requirements for different types of securities into single listing regulations.
- ▶ Consequentially, SEBI has approved the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2014.

Foreign Venture Capital Investors ('FVCI') Regulations, 2000

- ▶ SEBI recently issued a consultative paper on 'Proposed amendments in FVCI Regulations' on November 05, 2013.
- ▶ Consequentially, in order to encourage investments in infrastructure, Board has approved amendments in FVCI Regulations allowing FVCI's investment in NBFC - CIC (Core Investment Companies) - Currently FVCI's are allowed to invest in Equipment Leasing and Hire Purchase Companies.

Other proposals for initiating public consultation approved

- ▶ Proposal on re-classification of promoters.
- ▶ Proposal on issuance of partly paid shares and warrants by Indian companies.
- ▶ Proposal in respect of a wilful defaulter raising funds from the market.
- ▶ Proposal to frame regulations for raising funds through e-IPO (secondary market infrastructure for public issuance).

In addition, there are other amendments approved in connection with settlement of certain administrative and civil proceedings, mutual funds, supervision of market intermediaries, depository system etc.

Comments

The SEBI board meeting has approved various amendments to the extant securities laws as a measure to improve corporate governance.

Compulsory tender by minimum number of shareholders will address the concern of a few numbers of shareholders influencing the delisting price. For the said purpose, Discussion paper had proposed threshold as 50% of total number of public shareholders, while the SEBI in its meeting has approved the same at 25% of total number of public shareholders. This requirement of 25% may pose a significant challenge in implementing delisting process where large numbers of public shareholders hold nominal shares or significant stake is concentrated in few hands. This aspect may be evaluated on case to case basis.

Permitting use of stock exchange for delisting offers, buyback, takeover code places delisting at par with shares traded on stock exchange with favourable tax treatment.

Condition that 'Board of Directors shall approve the proposal for delisting only after satisfying itself that delisting is in the interest of shareholders' appears bit strange especially when the delisting process will be carried out at a price determined by the public shareholders.

There is an attempt to align Takeover and delisting regulations, by opening a window of direct delisting. This is a welcome step.

The amendments to the regulations are now awaited. Review of such amendments to regulations, whenever notified, is expected to bring in clarity to various issues/ open areas as approved by SEBI in its Board meeting.

Our offices

Ahmedabad

2nd floor, Shivalik Ishaan
Near. C.N Vidhyalaya
Ambawadi,
Ahmedabad - 380 015
Tel: + 91 79 6608 3800
Fax: + 91 79 6608 3900

Bengaluru

12th & 13th floor
"U B City" Canberra Block
No.24, Vittal Mallya Road
Bengaluru - 560 001
Tel: + 91 80 4027 5000
+ 91 80 6727 5000
Fax: + 91 80 2210 6000
+ 91 80 2224 0695

Prestige Emerald, No. 4,
1st Floor, Madras Bank Road,
Lavelle Road Junction,
Bangalore - 560001

Chandigarh

1st Floor
SCO: 166-167
Sector 9-C, Madhya Marg
Chandigarh - 160 009
Tel: + 91 172 671 7800
Fax: + 91 172 671 7888

Chennai

Tidel Park,
6th & 7th Floor
A Block (Module 601,701-702)
No.4, Rajiv Gandhi Salai
Taramani
Chennai - 600 113
Tel: + 91 44 6654 8100
Fax: + 91 44 2254 0120

Hyderabad

Oval Office
18, iLabs Centre,
Hitech City, Madhapur,
Hyderabad - 500 081
Tel: + 91 40 6736 2000
Fax: + 91 40 6736 2200

Kochi

9th Floor "ABAD Nucleus"
NH-49, Maradu PO,
Kochi - 682 304
Tel: + 91 484 304 4000
Fax: + 91 484 270 5393

Kolkata

22, Camac Street
3rd Floor, Block C"
Kolkata - 700 016
Tel: + 91 33 6615 3400
Fax: + 91 33 2281 7750

Mumbai

14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (west)
Mumbai - 400 028
Tel + 91 22 6192 0000
Fax + 91 22 6192 1000

5th Floor Block B-2,
Nirlon Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: + 91 22 6192 0000
Fax: + 91 22 6192 3000

NCR

Golf View Corporate
Tower - B
Near DLF Golf Course,
Sector 42
Gurgaon - 122 002
Tel: + 91 124 464 4000
Fax: + 91 124 464 4050

6th floor, HT House

18-20 Kasturba Gandhi Marg
New Delhi - 110 001
Tel: + 91 11 4363 3000
Fax: + 91 11 4363 3200

4th & 5th Floor, Plot No 2B,
Tower 2, Sector 126,
Noida - 201 304
Gautam Budh Nagar, U.P. India
Tel: + 91 120 671 7000
Fax: + 91 120 671 7171

Pune

C-401, 4th floor
Panchshil Tech Park
Yerwada (Near Don Bosco School)
Pune - 411 006
Tel: + 91 20 6603 6000
Fax: + 91 20 6601 5900

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