

SEBI's press release PR No. 20/2018 dated June 21, 2018 ([available here](#)) sets out certain decisions taken in its Board meeting on the same date. The key decisions have been summarized hereunder:

1. **Amendments to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("Takeover Code")**

Upward revision of open offer price: The upward revision of the open offer price can be done till 1 working day before the commencement of the tendering period. Earlier, it was permitted upto 3 working days before commencement of tendering period.

2. **SEBI (Buy-back of Securities) Regulations, 2018 to replace existing Regulations**

The SEBI (Buy-back of Securities) Regulations, 2018 have been approved, and shall replace the extant SEBI (Buy-back of Securities) Regulations, 1998. Some of the changes are summarised below:

Inclusion of Companies Act, 2013 provisions: Sections 68 and 70 of the Companies Act, 2013 shall be incorporated in the new Regulation, consolidating all buyback provisions in one place.

Buy back period: The term 'buyback period' shall be defined in the new Regulations, as the period between the board resolution/date of declaration of results for the special resolution authorizing the buyback, and the date on which consideration is paid to the shareholders.

With respect to paragraphs 1 and 2 above, SEBI had previously sought public comments for reviewing the Takeover Code and the existing buy-back regulations by way of discussion papers issued on March 28, 2018. The press release states that the Board has approved amendments to these Regulations mainly for simplifying language, removing redundant provisions and inconsistencies, updating references to the Companies Act, 2013/ other new SEBI Regulations, and incorporating the relevant circulars, frequently asked questions and informal guidance in these Regulations.

3. **SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 to replace existing Regulations**

The Board has approved the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, taking into consideration the recommendations of the Primary Market Advisory Committee and the public comments in response to its Consultation Paper issued on May 4, 2018. The new Regulations shall replace the existing SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009. Some of the key changes are:

Announcement of price band: The price band for an issue would be announced 2 working days before the opening of the issue, instead of 5 working days before as is currently the case.

Financial disclosures: The following changes have been approved in respect of financial disclosures made in case of public issues/ rights issues:

- (i) *Term:* Financial disclosures are required to be made for 3 years as against the present duration of 5 years.
- (ii) *Financial disclosure on consolidated basis:* The restated and audited financial disclosures in the offer document shall have to be made basis the consolidated financial statements of the issuer.
- (iii) *Standalone financial statements disclosed on website:* The audited standalone financials of the issuer and its material subsidiaries are required to be disclosed on the website of the issuer.
- (iv) *Accounting principles:* The new Regulations incorporate the principles governing disclosures of Indian Accounting Standards on Indian GAAP Financials.

Increase of threshold for rights issue filings: Presently, for any rights issue where the aggregate value of the securities offered is Rs. 50 lakh or more, the issuer is required to submit the draft offer document for SEBI's review, and carry out modifications suggested by SEBI. Under the new Regulations, for rights issues where the aggregate value of the securities offered is less than Rs. 10 crore, the issuer shall be exempt from the requirement

to submit the draft offer letter.

Shortfall in minimum promoter' contribution: In case the promoters of an issuer fails to contribute the minimum promoters' contribution mandated under the existing Regulations, institutional investors shall be permitted to meet the shortfall upto a limit of 10% of the minimum promoters' contribution. Institutional Investors includes foreign venture capital investors, scheduled commercial banks, public financial institutions and insurance companies registered with Insurance Regulatory and Development Authority of India, in addition to Alternative Investment Funds. Importantly, the institutional investors would not be identified as 'Promoters' of the issuer by virtue of this contribution.

Fast track rights issue: A company should not have any audit qualifications or adverse opinion to be eligible to make a fast track rights issue.

Deletion of some provisions: The following provisions have been deleted and shall not form part of the new Regulations:

- (i) Chapter on Institutional Placement Programme; and
- (ii) provisions pertaining to safety net (an arrangement provided by the issuer under which a person offers to purchase specified securities from the original resident retail individual allottees at the issue price);
- (iii) provisions for IPO grading.

Anchor Investor: Some of the changes approved are as follows:

- (i) The minimum application value for anchor investors to the IPO of a Small and Medium Enterprise (SME) has been reduced from Rs. 10 Crore to Rs. 2 Crore.
- (ii) Anchor investors now also includes: (a) Insurance Companies and Foreign Portfolio Investors (except for Category III), promoted by entities related to the lead manager; and (ii) mutual funds promoted by the lead managers.

Revised definition of "Promoter Group":

- (i) If the promoter is a body corporate, then: (i) any body corporate in which the promoter holds twenty percent or more of the equity share capital; and (ii) any body corporate which holds twenty percent or more of the equity share capital of the promoter, shall be considered part of the same promoter group. Please note that the threshold for identifying the promoter group has been revised from 10% to 20%.
- (ii) Also, in case the promoter is a body corporate, any body corporate in which a group of individuals or companies or combinations thereof, which holds twenty percent or more of the equity share capital in that body corporate, also holds 20 percent or more of the issuer, can be classified as promoter group only if they are acting in concert.

Definition of group companies: The term "group companies" of an issuer shall be revised to specifically include:

- (iii) companies (other than promoters and subsidiaries) which had related party transactions with the issuer during the three year period for which financial information is disclosed in the offer document; and
- (iv) companies considered material by the board of directors of the issuer.

Underwriting obligations: In a Main Board IPO, (an IPO taking place on a recognised stock exchange other than the SME Exchange, having nationwide trading terminals), if 90% of the fresh issue has been subscribed to, then the underwriting obligation will be restricted to that portion only. The requirement to underwrite 100% of the issue without regard to the minimum subscription requirements has been deleted.

Other Changes:

- (i) The Regulations have been reorganised, with chapters categorized with regard to the type of offering, placement of procedural requirements in Schedules, and rearranging of the provisions systematically.

- (ii) The new Regulations would suitably incorporate various provisions of the Companies Act, 1956 (wherever applicable), Companies Act, 2013, the Takeover Code, the SEBI (Share Based Employee Benefits) Regulations, 2014, various informal guidance, interpretative letters, frequently asked questions and circulars issued by SEBI from time to time.

4. Regulations pertaining to Stock Exchanges, Clearing Corporations and Depositories (“Market Infrastructure Institutions” or “MII”)

SEBI has approved certain changes pertaining to MIIs based on the recommendations of the Gandhi Committee constituted by SEBI for ‘*Review of regulation and relevant circulars pertaining to MIIs*’. Some of these changes have been summarised hereunder:

Parity across MIIs: The shareholding limits for certain domestic and foreign entities in MIIs has been made uniform across MIIs, that is, upto 15% of the paid-up equity capital. In the extant Regulations governing MIIs, different shareholding limits have been prescribed for each type of MII.

Further, multilateral and bilateral financial institutions notified by the Government have also been permitted to hold upto 15% of the paid-up equity capital of an MII.

No Sponsor for Depositories: With respect to Depositories, the concept of a sponsor has been done away with. Existing regulations identified a sponsor as any person or persons who propose to establish a depository and undertakes to perform the obligations of a sponsor under these regulations; or any person(s) who (either alone or with others) hold not less than 51 per cent of the share capital of the depository and undertakes to perform the obligations.

Existing sponsors of Depositories have been given 5 years to reduce their respective shareholding to 15%.

Norms regarding PIDs and MDs: The norms relating to the tenure and directorships of Public Interest Directors (“PID”) and the Managing Director of an MII have been modified and made more stringent, taking into consideration the special role these directors play in the governance of an MII.

Composition of the Governing Board and regulatory committees of MIIs: The composition of the Governing Board and regulatory committees of MIIs shall be modified with the intent to achieve a balance between the number of PIDs, who serve the interest of public at large, and the number of shareholder directors.

Disclosures: To achieve greater transparency in the utilisation of resources, MIIs shall be required to disclose resources committed towards regulatory functions and to ensure regulatory compliance, backed by activity-based accounting. The charges and fees levied by an MII shall be placed for review before its Oversight Committee.

Disclosure of compensation of Key Management Personnel (“KMP”): The modified definition of KMP includes, any person who directly reports to the CEO or director of the Governing Board of the MII, or any person upto two levels below MD/CEO, or as identified by the Nomination and Remuneration Committee.

MIIs shall be required to disclose the ratio of compensation paid to KMPs vis-vis median of compensation paid to all the employees of the MII.

Committees of MIIs: The Board has approved reduction of the number of committees for MIIs from 15 to 7, by merging and restructuring committees which had inter-related and overlapping work.

Net-worth requirement for Clearing Corporations: Instead of a high minimum net worth of Rs. 300 crore, a risk-based approach towards computation of the net worth of a Clearing Corporation shall be adopted. The new net worth requirement for Clearing Corporations shall be Rs. 100 crore, or other amount as required to cover for risks notified by SEBI from time to time.

5. Removal of ‘Sub-broker’ role

SEBI has decided to discontinue the category of ‘*Sub-Brokers*’ as market intermediaries. The press release states that no fresh sub-broker registration shall be granted. Registered sub-brokers shall migrate to ‘*Authorised Persons*’ or ‘*Trading Members*’ and those who do not choose to migrate, shall be deemed to have surrendered their registration as a sub-broker. The press release states that suitable time shall be permitted to facilitate this

transition.

6. Consultation Paper for the Amendment of various SEBI Regulations in respect of entities undertaking third party assignment under securities laws.

Certain fiduciaries such as practicing Chartered Accountants, practicing Company Secretaries, Cost Accountants, Valuers, Monitoring Agencies who undertake third party fiduciary duty from companies or intermediaries as required under various SEBI Regulations, are currently not registered with SEBI. SEBI shall issue a consultation paper to amend various regulations in respect of such entities in respect of any company, pooled investment vehicles, intermediaries, market infrastructure entities.

7. Establishment of National Centre for Financial Education (NCFE)

SEBI approved the establishment of National Centre for Financial Education (NCFE) as a Company under Section 8 of the Companies Act, 2013 limited by shares. NCFE is mandated to undertake financial education activities.

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