



Consultation papers issued by SEBI and changes proposed therein

INSIGHTS

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SEBI has proposed series of changes in relation to the following vide its consultation papers and has sought public comments thereon:

- A. [Review of conditions for re-classification of any person as promoter/ public and disclosure of names of promoter group entities in the shareholding pattern;](#)
- B. [Enhancing disclosures, refining of delisting process, rationalizing timelines for obtaining approval from stock exchange for delisting and other changes to the SEBI \(Delisting of Equity Shares\) Regulations, 2009 \(Delisting Regulations\);](#)
- C. [Review of requirement of minimum public offer to large issuers in terms of Securities Contracts \(Regulation\) Rules, 1957 \(SCRR\);](#)
- D. [Disclosures pertaining to analyst meets, investor meets and conference calls.](#)

Summary of the proposals are provided below:

A. RE-CLASSIFICATION OF PERSON AS PROMOTER/PUBLIC | DISCLOSURE OF PROMOTER GROUP ENTITIES IN SHAREHOLDING PATTERN

In order to streamline the process for re-classification of any person as promoter/ public, SEBI has issued a consultative paper for public comment (Consultative Paper) proposing following changes to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations):

Condition pertaining to minimum threshold of voting rights	The exiting threshold of 10% to be increased and the promoter(s) seeking re-classification and persons related to the promoter(s) seeking re-classification should not together hold 15% or more of the total voting rights in the listed entity.
Time period between board and shareholders meeting	The current time gap of at least three months between the date of board meeting and the shareholder's meeting considering the request of the promoter(s) seeking re-classification to be reduced to at least one month.
Reclassification pursuant to an order/ direction of Government / regulator	The exemption from regulations 31A(3), 31A(4) and 31A(8)(a) & (b) of LODR Regulations, as extended in case of re-classification of promoter, pursuant to resolution plan, approved under Section 31 of the Insolvency and Bankruptcy Code, 2016, to be extended to re-classification pursuant to an order/direction of the Government/ regulator and/or as a consequence of operation of law, subject to the condition that such promoter(s) seeking re-classification shall not remain in control of the listed entity.
Reclassification of existing promoter pursuant to open offer	<ul style="list-style-type: none"> ▪ Exemption from the procedure for re-classification may be granted, in cases where re-classification is pursuant to an open offer made in accordance with the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, subject to such conditions as specified. ▪ Exemption from the procedure for re-classification, may be granted in cases where, pursuant to an open offer, a listed entity intends to re-classify erstwhile promoter(s)/promoter group entities but the 'promoters/ promoter group entities' are not traceable or are not co-operative, subject to such conditions as prescribed.
Time period for listed companies to place the reclassification request before SEBI	The Listed entity to place the reclassification request before its board within one month of receiving the reclassification request from its promoter(s)/ promoter group entities.
Disclosure of names of promoter group entities in the shareholding pattern	SEBI has proposed that all entities falling under promoter and promoter group to be disclosed separately even in case of 'Nil' shareholding. Listed entities to obtain a declaration on a quarterly basis, from their promoters on the entities/persons that form part of the 'promoter group'.

The details of the changes proposed along with rationale are provided under the Consultative Paper dated November 23, 2020 ([available here](#)). SEBI has sought comments from the public on the paper, which can be given by December 24, 2020.

B. CHANGES PROPOSED IN THE DELISTING REGULATIONS

To further streamline and strengthen the delisting process/regulations, a comprehensive review of the delisting regulations, SEBI has issued a consultation paper (**Consultation Paper**) proposing following changes:

<p>Enhancing disclosures Public announcement by promoter/acquirer Board of Directors approval Role of Independent Directors</p>	<ul style="list-style-type: none"> ▪ The Promoter/Acquirer to make the public announcement of their intention to voluntarily delist the company to all the Stock Exchanges on which the company is listed, on the same day, when their said intention is intimated to the company. ▪ Approval of board of Directors to be obtained within 21 working days from the date of receipt of delisting proposal to consider and approve the delisting proposal. ▪ The Board of Directors while communicating their decision of granting approval of delisting shall also disclose to the Stock Exchanges the Merchant Banker's due - diligence report and the audit report. ▪ The committee of independent directors to provide their reasoned recommendations on the proposal for delisting in line with the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Regulations). ▪ Voting pattern of the Committee of the Independent Directors shall also be disclosed, while giving reasoned recommendations on the proposal of delisting. Similar disclosures should also be provided for in the Takeover Regulations. ▪ Expenses relating to seeking expert opinion by the committee of independent directors can be borne by the company.
<p>Shareholders' approval through postal ballot/ e-voting Indicative price above the floor price Deposit of money in escrow account Timeline for declaration of outcome of RBB</p>	<ul style="list-style-type: none"> ▪ Shareholder's approval through special resolution may be obtained either through postal ballot or through e-voting as per the provisions of the Companies Act, 2013 and the rules made thereunder. ▪ Promoter(s)/Acquirer(s) to be allowed to specify an indicative price which shall not be less than the floor price calculated in terms of Regulation 8 of Takeover Regulations. ▪ The timeline for opening of escrow account to be revised. Promoter(s)/acquirer(s) to open an escrow a/c with in seven working days of the shareholder's approval and deposit therein an amount equivalent to 25% of the total consideration, calculated on the basis of the floor price/indicative price. The remaining amount may be deposited as per the existing provisions contained in Regulation 11(1). ▪ The outcome of Reverse Book Building (RBB) in terms of its success or failure shall be announced within two hours of the closure of the tendering period. Unconfirmed bids/order shall not be displayed in the stock exchange reverse book building window.
<p>Rationalization of timelines for approval of stock exchange Payment to shareholders Approval by stock exchange Lien on shares Payment of consideration Public announcement for counter offer</p>	<ul style="list-style-type: none"> ▪ A timeline of fifteen working days from the passing of special resolution to be stipulated for the company to file application for in-principle approval by stock exchanges; and ▪ A timeline of five working days from the date of making payment to the shareholders may be stipulated for the company to make the final application to the stock exchanges. ▪ The time-period for granting in-principle approval by the stock exchanges may be extended from the present five working days to fifteen working

	<p>days.</p> <ul style="list-style-type: none"> ▪ Shares in dematerialized form shall be tendered by way of marking a lien in favor of the special depositories account, opened for voluntary delisting. In case (a) RBB's threshold of 90% is not met; or (b) promoter decides not to accept the discovered price, the shares tendered by way of creating lien shall be released on the same day. In respect of physical shares, it is proposed that requisite documents along with share certificate shall be sent to Registrar and Share Transfer Agent (RTA) of the company before last date of tendering period. RTA shall complete the verification on the same day. ▪ Timeline for payment of consideration for dematerialized shares upon acceptance of the discovered price to be as follows: Upon acceptance of the price discovered through RBB: <ul style="list-style-type: none"> – If the discovered price is same as the floor price, payment with respect to dematerialized shares shall be made through the secondary market settlement mechanism; – If the discovered price is more than the floor price, payment with respect to dematerialized shares shall be made within five working days. ▪ Public announcement for giving either counteroffer or accepting or rejecting the discovered price, to be made within two working days of the closure of the tendering period.
<p>Role of merchant banker</p>	<ul style="list-style-type: none"> ▪ Detailed qualification norms to be provided; ▪ Since the Delisting Regulations do not specify the role and responsibilities of the Manager, detailed roles to be specified in the Delisting Regulations.
<p>Exit to remaining shareholders</p>	<ul style="list-style-type: none"> ▪ The Acquirer/Promoter/Merchant Banker to take following additional further steps to provide the exit to remaining shareholders: <ul style="list-style-type: none"> – Acquirer/Promoter Merchant Banker shall file the quarterly progress report to the stock exchanges, which shall be disseminated thereafter, disclosing the following: <ul style="list-style-type: none"> ○ Nos. of remaining shareholders at the beginning and end of the quarter. ○ Shareholders who availed the exit opportunity during the quarter. – Acquirer/Promoter/Merchant Banker shall send follow up communications to the remaining shareholders on quarterly basis. – Acquirer/Promoter shall publish, advertisement inviting remaining shareholders to avail the exit opportunity, on quarterly basis, during the one-year exit window. ▪ Stock exchanges shall monitor the compliance of aforesaid requirements.
<p>Definition of public shareholders Issues relating to inactive shareholders</p>	<ul style="list-style-type: none"> ▪ The definition of public shareholders to be aligned with the Securities Contract (Regulation) Rules, 1957. ▪ For companies having shareholders viz. (a) vanishing companies; (b) struck off companies; (c) whose shares have been transferred to IEPF account, the minimum acquisition threshold under RBB shall be calculated after deducting the shareholding held by such shareholders.
<p>Book value Acceptance of price by promoter Delisting expenses Relisting post delisting Cooling off period after buy-back and preferential allotment Parallel delisting of depository receipts issued overseas Cooling off</p>	<ul style="list-style-type: none"> ▪ The book value may be considered on the basis of both consolidated and standalone basis, whichever is higher, as per the latest quarterly financial results filed by the company on the stock exchanges, as on the date of public announcement for counteroffer. ▪ In the event the price discovered through RBB is equal to the floor price,

<p>period between two delisting attempts</p>	<p>the promoter to be bound to accept the delisting price and the promoter shall not have the option of rejecting the delisting. The expenses relating to delisting to be borne by the acquirer/promoter, in case of failure of delisting.</p> <ul style="list-style-type: none"> ▪ The cooling off period for relisting post delisting to be reduced to three years. ▪ Voluntary delisting not to be permitted pursuant to buy-back and preferential allotment, unless a period of six months has elapsed from completion of the last buy-back or preferential allotment. ▪ After delisting of shares in the home jurisdiction, the company to delist all of its depository receipts issued overseas (Subject to consultation with Government of India). ▪ There shall be a cooling off period of six months between two delisting offers and same acquirer(s)/promoter(s) cannot make another delisting offer during the cooling-off period.
<p>Updating reference to legislations / Companies Act, 2013</p>	<p>Since Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) has been replaced with Insolvency and Bankruptcy Code, 2016 and the Companies Act, 2013, Regulation 3(2) of the Delisting Regulations which provided for exemption from compliance with Delisting Regulations in case a company was to be delisted under SICA.</p>

The details of the changes proposed are provided under the Consultation Paper dated November 20, 2020 ([available here](#)). SEBI has sought comments from the public on the report, which can be given by December 21, 2020.

C. MINIMUM PUBLIC OFFER REQUIREMENT

SEBI has issued a consultation paper (**Consultation Paper**) proposing to reduce minimum offer to public requirement (**post issue MCap**) for large issuers to 5% of post issue market capital exceeding Rs. 10,000 Crores as under:

Minimum offer to public		
Post issue market capital (in crores)	Existing provision	Proposal
MCap ≤ 1600	25%	Same as existing
1600 < MCap ≤ 4000	Such % equivalent to 400	
4000 < MCap ≤ 10000	10%	
MCap > 10000	10%	1000 + 5% of MCap exceeding 10,000

Further, the timelines for compliance are proposed to be revised as follows:

Post issue market capital (in crores)	Existing provision	Proposal
MCap ≤ 1600	Minimum offer of 25% to public	Same as existing
1600 < MCap ≤ 4,000	Minimum Public Shareholding (MPS) of 25% to be achieved in three years from date of listing	

4000 < MCap ≤ 10,000	MPS of 25% to be achieved in three years from date of listing	
10,000 < MCap ≤ 1,00,000	MPS of 25% to be achieved in three years from date of listing	MPS of 10% to be achieved in 18 months and 25% within 3 years from the date of listing
MCap > 1,00,000	MPS of 25% to be achieved in three years from date of listing	MPS of 10% to be achieved in 2 years and 25% within 5 years from the date of listing

The aforesaid changes have been proposed under the Consultation Paper dated November 20, 2020 ([available here](#)). SEBI has sought comments from the public on the report, which can be given by December 7, 2020.

D. DISCLOSURES PERTAINING TO ANALYST MEETS, INVESTOR MEETS AND CONFERENCE CALLS

In order to address the issue of information asymmetry between various classes of investors arising out of limited disclosures in respect of analyst meets/institutional investors meet/conference calls, SEBI has issued a report for public comments (**SEBI Report**) proposing following insertions to be made to the SEBI LODR Regulation:

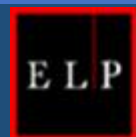
- **Uploading of meeting recordings on the website of the company:** Audio/video recordings to be made available on the website of the listed entity and respective stock exchanges immediately after the post-earnings conference call/quarterly call, before the next trading day or within twenty-four hours from the occurrence of event or information, as required under the Regulation 30 of LODR Regulations, whichever is earlier.
- **Uploading of written transcript on the website of the company:** Written transcripts of the calls to be made available on the website of the listed entity and respective stock exchanges within five (5) working days after the earning call.
- **Time period to maintain the disclosures:** Listed company to make available audio/video recordings and the written transcripts on their websites for a period of at least eight (8) years in addition to the details disseminated on respective stock exchanges.
- **Public participation:** Listed companies can decide as to whether conference calls are open to everyone to attend or limit such calls to their existing shareholders.
- **Reporting to stock exchanges as part of corporate governance report:** Listed companies to provide number of one-to-one meetings with select investors as part of corporate governance report submitted by them to stock exchanges on a quarterly basis along with affirmation that no unpublished price sensitive information (UPSI) was shared by any official of the company in such meetings. Company to maintain a record of all such one-to-one meetings, as the same could be required for future reference. The data should be preserved for a period of at least eight (8) years.

Aforementioned changes are proposed to be made applicable in a phased manner and the requirements be initially recommendatory for a period of one (1) year and mandatory thereafter for all listed companies.

The details of the changes proposed are provided under the SEBI Report dated November 20, 2020 ([available here](#)). SEBI has sought comments from the public on the report, which can be given by December 21, 2020.

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com

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