

Corpsec Hotline

November 28, 2006

CHANGES TO DELISTING GUIDELINES PROPOSED

The Securities and Exchange Board of India ("SEBI") has on November 23, 2006 issued a concept paper on the proposed SEBI (Delisting of Securities) Regulations, 2006 ("Regulations") with a view to give a statutory force to the extant SEBI (Delisting of Securities) Guidelines, 2003 ("Guidelines") and to amend certain provisions relating to computation of offer price, minimum public float, time lines *etc.*

Background

The Guidelines, which are currently in force, lay down the norms and procedures for delisting of securities of companies listed on the recognized stock exchanges. However, because of the fact that the existing framework is in the form of guidelines which do not have statutory force, SEBI has proposed to formalize the framework in the form of regulations, which have the sanction of the legislature and consequently are more effective for enforcement.

Additionally, there are some aspects of the Guidelines that are sought to be amended in the proposed Regulations in order to eliminate any practical difficulties from enforcing the regulations as well as to iron out any inconsistencies with other SEBI regulations.

Key Changes

The key changes proposed to be made in the Regulations are set out below:

Existing framework

- Offer price to be discovered through book building process in which, price is to be determined at the rate at which maximum number of shares are tendered and in case of infrequently traded shares in terms of Regulation 20 of SEBI Takeover Code. The book building process shall have a floor price which will be the average of 26 weeks traded price quoted on stock exchange where shares of the company are most frequently traded preceding 26 week from the date of public announcement and without any ceiling on the maximum price.
- Success of exit offer is linked to the reduction of the public shareholding below the continuous listing requirement threshold, i.e. 25% or 10%, as applicable.
- Only the public shareholders holding shares in dematerialized/electronic mode can participate in the exit offer.
- Exit offer to be open for a period of 6 months after the closure and acceptance of the offer.

Proposed changes

- Offer price to be higher of (a) floor price plus a premium of 25% and the floor price would be determined in terms of Regulation 20 of SEBI Takeover Code, and (b) fair value determined by an accredited rating agency plus a premium of 25%. The reference date for calculating the floor price would be the date on which the stock exchanges are notified of the Board meeting in which the delisting proposal was considered.
- Success of exit offer linked to the promoters shareholding (together with persons acting in concert) exceeding 90% or 96% of the outstanding shares where the applicable minimum public float (required under the listing agreement) is 25% or 10% respectively.
- Public shareholders holding securities in dematerialized form or in physical form can participate in the exit offer.
- Exit offer to remain open for a period of 20 days during which the public shareholders may tender their securities without any follow on period to keep the exit offer open to the shareholders who have not tendered their shares during the offer period.

Conclusion.

Most of the changes proposed in the Regulations try to address the lacunae in the Guidelines not just from investor protection point of view but also seek to streamline the exit offer process and lend some amount of certainty therein. Many existing provisions under the SEBI Takeover Code relating to computation of fair price, procedures and time lines for the consummation of the exit offer are now brought in to the Regulations. By virtue of enacting the Regulations the provisions there under have a binding and statutory force, thereby facilitating ease in the prosecution process in case of default as compared to Guidelines. As the Regulations are in the form of a concept paper, SEBI is currently inviting comments from the public and hence the final form of the Regulations remains to be seen.

- Suneet Barve

You can direct your queries or comments to the authors

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