



**CONSULTATIVE PAPER**

**Corporate Governance Issues in Compensation Agreements**

**A. Background:**

1. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) were notified on September 02, 2015 and came into effect from December 01, 2015. The Regulations provide a regulatory framework for continuous disclosures and other obligations related to listed entities, which inter alia, include corporate governance, related party disclosures, etc.
2. It has come to the notice of SEBI that certain Private Equity (PE) firms have entered into side agreements with top personnel and key managerial personnel (KMPs) of a listed entity by which such PE firms ( who were allotted shares on a preferential basis) would share a certain portion of the gains above a certain threshold limit made by them at the time of selling the shares and also subject to the conditions that the company achieves certain performance criteria and the employee continues with the company for a certain period.

**B. Need for Review:**

3. It is not unusual for private equity funds to incentivize promoters/ MDs/ CEOs of investee companies, based on performance of such companies. However, when such reward agreements are executed between the private equity investor and the Promoter/ MD of the listed entity without any prior approval of the shareholders, it does give rise to concerns. It could potentially lead to unfair practices.
4. It is felt that such agreements are not desirable and hence it is necessary to regulate such practices. One view is that there is no place at all for such side agreements in case of listed companies. Another view is that the focus may be on the principle of disclosure and transparency in governance of listed entities. Therefore, before key managerial personnel, directors and promoters of listed entities enter into such reward agreements, it would be mandated that such



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agreements undergo thorough scrutiny of the boards and shareholders who may vote on the resolution approving such agreements.

- The matter was placed before the Board in its meeting held on September 23, 2016. The Board approved the proposal for initiation of public consultation process on corporate governance issues in compensation agreements in case of listed companies.

### C. Proposal

- The consultation paper proposes to seek public comments on the possible amendments to Listing Regulations, as detailed below:

**6.1.** A new sub-regulation (6) may be added to Regulation 26 (which pertains to obligations with respect to directors and senior management) to provide on the following lines:

*"No employee, including key managerial personnel, director or promoter of a listed entity shall enter into any agreement with any individual shareholder(s) or any other third party with regard to compensation or profit sharing unless prior approval has been obtained from the Board as well as shareholders by way of an ordinary resolution".*

*"**Provided** that all such existing agreements entered into prior to the date of notification and which may continue beyond such date shall be informed to the stock exchanges for public dissemination and approval obtained from shareholders by way of an ordinary resolution in the forthcoming general meeting. **Provided further** that in case approval from shareholders is not received, all such agreements shall be discontinued".*

### D. Public Comments:

- In light of the above, public comments are invited on the proposals contained in the consultation paper. Comments/ suggestions may be provided as below:

Name of The Entity/ Person/ Organization		
Sl. No.	Suggestion	Rationale



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8. Comments may be forwarded by email to [cfid@sebi.gov.in](mailto:cfid@sebi.gov.in) or may be sent by post to the following address latest by October 18, 2016.

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