Delisting of small companies- Amendments to SEBI (Delisting of Equity Shares) Regulations, 2009

1.0. OBJECTIVE

1.1. This memorandum seeks approval of the Board for amending SEBI (Delisting of Equity Shares) Regulations, 2009 (hereinafter referred to as the "Delisting Regulations") to review one of the pre-conditions in case of small companies as specified in the Regulations.

2.0. REGULATORY FRAMEWORK

2.1. In terms of Chapter IV of Delisting Regulations, acquirers / promoters are required to make a public announcement, open an escrow account, send letter of offers to shareholders and provide shareholders the right to participate in the book building process for determination of exit price. However, Chapter VII provides for simplified procedure for small companies and exempt them from the requirements of Chapter IV subject to certain conditions. In such cases, the exit price is determined by the promoter in consultation with merchant banker. The promoter is required to write individually to all public shareholders informing them their intention to delist, indicating the exit price together with the justification thereof. The justification for the offer price shall be with particular reference to the applicable financial parameters. Further, at least ninety percent of the shareholders have to give their positive consent in writing for the delisting of such companies.

2.2. Regulation 27(1) of Delisting Regulations which prescribes the conditions for delisting of such small companies states as under:

"*Equity shares of a company may be delisted from all the recognised stock exchanges where they are listed, without following the procedure in Chapter IV, if,-*

a) the company has a paid up capital not exceeding ten crore rupees and net worth not exceeding twenty five crore rupees as on the last date of preceding financial year;

b) the equity shares of the company were not traded in any recognised stock exchange for a period of one year immediately preceding the date of board meeting referred to in sub-regulation (1B) of regulation 8; and

c) the company has not been suspended by any of the recognized stock exchanges having nation-wide trading terminals for any non-compliance in the preceding one year;"

3.0. NEED FOR REVIEW

3.1. SEBI is in receipt of request from Investor Association stating that the condition specified in clause (b) of regulation 27(1) of Delisting Regulations pertaining to no trading in any recognized stock exchange for a period of one year is cumbersome. The benefit for such an exemption would be available to only defunct or non-operating companies since it is highly improbable for any operating company not to have any of its shares traded on the recognized stock exchange for one full year.

3.2. In order to ensure that small companies proposing to delist their equity shares from the recognized stock exchanges are not put to undue hardship due to the condition of no trading, it is proposed that a certain cap based on the trading history may be considered.

3.3. In order to consider the appropriate cap based on the trading history, it is observed that SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, state that the shares of the target company are considered as frequently traded if the trading turnover in last 12 months is 10 percent or more of the total shares of the company. Accordingly, the relevant data was

Trading statistics of no. of companies during the period 01/10/2014 to 31/10/2015 (excluding companies which have been suspended for non-compliance)

Particulars	No. of scrips	Total number of companies having Paid-up capital <Rs 10 Cr & Net worth <25 Cr
Trading – nil	241	186
Trading less than 1%	307	236
Trading less than 2%	334	259
Trading less than 5%	389	305
Trading less than 10%	465	359

Source: BSE

called from the stock exchanges the details of which are as under:

If we allow less than 10 percent trading, 359 companies will become eligible to follow simplified delisting procedure as against 186 companies.

4.0. PROPOSED AMENDMENT

4.1 In light of the above, it is proposed that the condition of no trading for one year may be replaced with trading of equity shares during the twelve calendar months preceding the date of board meeting is less than 10% of the total number of shares of such company. Further, in the interest of investors it is also proposed that the exit price determined by the promoter in consultation with merchant banker shall not be less than the floor price determined for the purpose of Reverse Book Building for not frequently traded shares in terms of Delisting Regulations read with SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

5.0. PROPOSAL FOR CONSIDERATION AND APPROVAL

5.1 The Board is requested to consider and approve the proposal under paragraph 4.1 and authorize the Chairman to take consequential and incidental steps to give effect to the decisions of the Board.