

Flexibility in Framework for Voluntary Delisting: Amendment to SEBI (Delisting of Equity Shares) Regulations, 2021

1. Objective

- 1.1. This memorandum seeks the approval of the Board to facilitate flexibility in Voluntary Delisting by way of amendment to the SEBI (Delisting of Equity Shares) Regulations, 2021 (hereinafter referred to as “**Delisting Regulations**”).

2. Background

- 2.1. (This has been excised for reasons of confidentiality).
- 2.2. The details with respect to extant delisting process, suggestions / representations received, recommendations of Primary Market Advisory Committee (PMAC) and issuance of consultation paper seeking public comments are placed at **Annexure-I**.

3. Key Proposals made in the consultation paper

- 3.1. The key proposals made in the consultation paper are as follows-
- 3.1.1. **Alternatives to the Reverse Book Building Process**
 - 3.1.1.1. **Fixed Price Delisting;**
 - 3.1.1.2. **Delisting of Investment Holding Companies.**
 - 3.1.2. **Review of the Counter-Offer Mechanism;**
 - 3.1.3. **Review of “Floor Price” under the Delisting Regulations;**
 - 3.1.4. **Review of Reference Date for determination of Floor Price.**
- 3.2. The existing provisions in this regard, details of the public comments received and the analysis of the same are placed at **Annexure-II**.

4. The following paragraphs describe the issues for consideration, recommendations of the PMAC, analysis of the public comments, SEBI's rationale for acceptance / non-acceptance of the recommendations and the final proposals for the consideration of the Board.

4.1. Alternatives to the Reverse Book Building Process

4.1.1. Fixed Price Delisting

4.1.1.1. Issue for consideration

- i. It is generally observed that the announcement for delisting of the equity shares of a company usually results in increased volatility and increased trading activity in the scrip of such a company as enumerated hereinafter. 40 companies have made voluntary delisting offers between January 01, 2018 till May 31, 2024. On analysis of the price-volume data of these companies for a period of 4 months prior and post announcement of delisting offer, the following is observed:
- a. On an average the prices of these companies increased by 28% with range being 101% to -14%.
 - b. On an average the trading volume in these companies increased by 148% with range being 1532% to -95%.

One of the reasons for such increase in prices and volume post the announcement could be that the delisting price is determined through reverse book building process which is vulnerable to speculative bidding. At times a group of bidders may contribute to this volatility.

4.1.1.2. Recommendation of the PMAC

- i. Given the experience of past delisting offers, PMAC recommended for introduction of fixed price delisting process as an option for those companies whose shares are frequently traded¹ as an alternative to Reverse Book Building process. Such fixed price delisting offer would be subject to the following conditions:

¹ As per Regulation 2(1)(j) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, frequently traded shares means shares of a target company, in which the traded turnover on any stock exchange during the twelve calendar months preceding the calendar month in which the public announcement is at least ten per cent of the total number of shares of such class of the target company.

Provided that where the share capital of a particular class of shares of the target company is not identical throughout such period, the weighted average number of total shares of such class of the target company shall represent the total number of shares;

- a) the fixed price offered by the acquirer shall not be lower than the floor price as determined under the Delisting Regulations; and
- b) the delisting offer shall be successful if the post-offer shareholding of the acquirer along with the shares tendered by the public shareholders, at the price offered by the acquirer, reaches 90% of the total issued shares of the company.

4.1.1.3. **Analysis of Public feedback**

- i. The break-up of the comments received to the proposals made in the consultation paper are as under. The details are provided in **Annexure-II**.

Sr. No.	Questions Asked in the Consultation Paper	Total Comments Received	No. of Comments in agreement	No. of Comments in dis-agreement	No. of Comments in partial agreement
1.	Introduction of fixed price mechanism as an alternative to RBB process	21	16	3	2
2.	Permitting fixed price mechanism only for companies having frequently traded shares	21	6	14	1

4.1.1.4. **SEBI's rationale for acceptance** – After considering the public comments and the recommendations of PMAC, the rationale for acceptance of the recommendations are as under -

- a. The fixed price route will give acquirers and the shareholders certainty with respect to pricing of the delisting offer. This would help shareholders to decide upfront whether to participate in the delisting process at the given price. This would also provide flexibility to an acquirer in arranging funds for such delisting offers as the price at which the exit offer will be made is known well in advance. Moreover, by providing a fixed price for delisting, volatility that emerges pursuant to the announcement of delisting will be minimized.
- b. Further, the Delisting Regulations already provide adequate safeguards to the public shareholders with respect to delisting offers. This is apparent from the fact that-
 - a proposal for delisting requires approval of the shareholders through a special resolution;

- the said resolution can be acted upon only if the votes cast by public shareholders in favour of the proposal are at least two times the votes cast by public shareholders against the proposal;
 - the delisting offer shall be considered successful only when the post-offer shareholding of the acquirer along with the shares tendered by the public shareholders, at the fixed price offered by the acquirer, reaches 90% of the total shares issued by the company.
- c. (This has been excised for reasons of confidentiality), data of companies that successfully delisted from January 01, 2009 till May 31, 2024 was analysed which is as under-

Total No. of Companies successfully delisted	Average premium (%) over Floor Price	Median premium (%) over Floor Price	Range of premium (%) over Floor Price
103	40%	17%	0-242%
79*	52%	33%	1-242%
*No. of companies which were delisted at premium			

From the above table, it is observed that the average and median of the premium (%) was 40% and 17% respectively over the floor price. At the same time, if we only consider companies which were delisted at premium over the floor price this number is even higher at 52% and 33% respectively.

- d. A meeting of the Sub-Group of PMAC was held on May 06, 2024 to deliberate whether a premium over the floor price may be prescribed in case of fixed price delisting. Based on the analysis of the aforesaid data, the Sub-Group observed that since the median of the premium (%) of discovered price over Floor Price is 17%, the sub-group recommended that a minimum premium of 20% over the floor price in case of fixed price delisting, may be prescribed, which was subsequently agreed by the PMAC.
- e. Accordingly, the PMAC has recommended that the fixed price offered by the acquirer should be at least 20% premium over the floor price.

4.1.1.5. **Proposal**

- i. In view of the above, it is proposed to –

- a) Introduce fixed price delisting process for those companies whose shares are frequently traded as an alternative to Reverse Book Building process.
- b) the fixed price offered by the acquirer shall be at least 20% premium over the floor price as determined under the Delisting Regulations; and the delisting offer shall be successful if the post-offer shareholding of the acquirer along with the shares tendered by the public shareholders, at the price offered by the acquirer, reaches 90% of the total issued shares of the company.

4.1.2. Delisting of Investment Holding Companies

4.1.2.1. Issue for consideration

- i. An investment holding company (“IHC”) is a company which holds investments in listed, unlisted companies and other assets (e.g., property, real estate etc.).
- ii. The equity shares of a listed IHC generally trade at a discount compared to the underlying value of its investments in listed and unlisted companies. A reason for this discount is that investments of IHCs are considered long-term in nature and the market does not expect the sale of such investments by the IHC i.e. the holdings of the IHC are considered “strategic holdings” controlled by the promoters. Hence, public shareholders do not derive full value from the underlying investments of the IHC.

4.1.2.2. Recommendation of the PMAC

- i. Upon deliberation, the PMAC recommended an alternate delisting framework for IHCs, whereby the shares of the underlying listed companies held by the IHC shall be transferred to the IHC’s public shareholders proportionately and the holding of the public shareholders in the IHC shall then stand extinguished by way of a court approved scheme of selective reduction of capital under Section 66 of the Companies Act, 2013, resulting in delisting of such an IHC. The detailed mechanism is provided **at para 1 of Annexure-III.**

4.1.2.3. Analysis of Public feedback

- i. The break-up of comments received to the proposals made in the consultation paper are as under. The details are provided in **Annexure-II**.

Sr. No.	Questions asked in the Consultation Paper	Total Comments Received	No. of Comments in agreement	No. of Comments in dis-agreement	No. of Comments in partial agreement
1.	Introducing separate mechanism for delisting of investment holding companies	24	22	1	1
2.	Proposed mechanism of delisting of IHC	22	13	2	7
3.	Requirement of IHC to have at least 75% of its overall fair value comprising investments in other listed companies.	20	11	3	6

4.1.2.4. **SEBI's rationale for acceptance** – After considering the public comments and the recommendations of PMAC, the rationale for acceptance of the recommendations are as under -

- a. Delisting Regulations currently do not prescribe a separate framework for delisting of IHCs. Such companies may also be required to be delisted in accordance with the Delisting Regulations.
- b. However, it is felt that the market price of the IHC and price determined as the floor price for delisting will not reflect the intrinsic value of investments as outlined above. Thus, the reverse book building process may not provide a fair exit price to the public shareholders.
- c. In the Board Meeting held on November 25, 2023, it was deliberated and decided that the delisting of IHC may be subject to compliance with regulations of the concerned financial sector regulator.

4.1.2.5. **Proposal**

- i. In view of the above, following is proposed -
 - a) Introducing an alternate delisting framework, whereby the shares of the underlying listed companies held by the IHC shall be transferred to the public shareholders of IHC proportionately and the holding of the public shareholders in the IHC shall be extinguished by way of a court approved scheme of selective reduction of capital under Section 66 of the Companies Act, 2013, resulting in delisting of IHC.

b) The mechanism in brief shall be as follows:

I. The fair value (net of liabilities) of the listed IHC shall be determined pursuant to a joint report by two independent registered valuers, which, inter-alia, shall include-

- value of investments of frequently traded shares of listed companies based on 60 trading days volume weighted average market price;
- fair value of investments of infrequently traded shares of listed companies and unlisted companies; and
- fair value of other assets of the listed IHC.

II. transfer of underlying shares held by a listed IHC in other listed companies (net of pro-rata liabilities) to the public shareholders of such IHC proportionate to their holding in IHC;

III. proportionate cash payments by the listed IHC to the public shareholders of such listed IHC in exchange for the underlying shares or investments made by such IHC in unlisted companies and other assets (net of pro-rata liabilities); and

IV. extinguishment of public shareholding of the listed IHC upon transfer of the underlying shares mentioned at (II) above and cash payments mentioned at (III) above pursuant to a scheme of selective reduction of capital under Section 66 of the Companies Act, 2013.

c) Pursuant to implementation of the above scheme, the remaining shareholding of the listed IHC will be held by the promoters and the promoter group and such IHC will be required to apply to the stock exchanges for delisting.

d) The proposed framework shall be subject to certain checks and balances as provided under –

I. The above mechanism will be available only to listed IHCs having at least 75% (this percentage is subject to the SEBI's review from time to time) of their overall fair value comprising direct investments in equity shares of other listed companies;

II. The shares of the IHC are listed for at least three years and shall not be in the suspended category at the time of delisting;

- III. the listed IHC will be required to obtain the approval of its board of directors and recommendation of its audit committee prior to filing of the scheme with the stock exchanges;
 - IV. the special resolution can be acted upon only if the votes cast by the public shareholders of the listed IHC in favor of the delisting resolution are at least two times the votes cast by the public shareholders against it;
 - V. material disclosures in relation to calculation of the entitlement ratio and per share consideration will be required to be included in the explanatory statement of the notice for the shareholders meeting;
 - VI. the valuation report obtained in connection with the scheme will be required to be made public;
 - VII. report to be obtained from a chartered accountant or merchant banker confirming the entitlement ratio.
 - VIII. No adverse orders of SEBI against such IHC and their promoters or promoter group in the last three years;
 - IX. restriction on relisting of shares of the IHC for a period of three years from the date of delisting.
- e) The manner of transfer of fractional shares to the public shareholders of the listed IHC, if any, pursuant to the scheme shall be dealt with in accordance with the Master Circular on Scheme of Arrangement dated June 20, 2023, as amended, from time to time.
- f) Further, delisting of IHC would be subject to compliance with regulations of the concerned financial sector regulator.

4.2. Review of the Counter-Offer Mechanism

4.2.1. Issue for consideration

- 4.2.1.1. The Delisting Regulations provide for an acquirer to make a counter-offer to the public shareholders in case the price discovered through RBB process is not acceptable to the acquirer.
- 4.2.1.2. Presently, the acquirer can make a counter-offer only if the aggregate post-offer shareholding of the acquirer along with the shares tendered by the public shareholders in the RBB process reaches 90% of the total issued shares of the company.

4.2.1.3. However, in case the aggregate post-offer shareholding of the acquirer along with the shares tendered by the public shareholders does not reach 90% of the total issued shares of the company, the current provisions do not permit acquirer to make a counter-offer. This may lead to a scenario where majority of the public shareholders have tendered their shares and are in favour of delisting, but the delisting offer cannot go ahead since the required thresholds of 90% is not met. In such a case, the acquirer does not have the option to make a counter-offer to the public shareholders.

4.2.1.4. Out of the 40 companies which made voluntary delisting offers between January 01, 2018 and May 31, 2024, 26 companies have been successfully delisted and delisting of 14 companies failed. Out of these 14 companies, the acquirer in case of 11 companies, did not have an option to make a counter-offer as the aggregate post-offer shareholding of the acquirer along with the shares tendered by the public shareholders had not reached 90% of the total issued shares of the company.

4.2.2. **Recommendations of the PMAC**

4.2.2.1. Upon deliberation, PMAC recommended that the acquirer should have an option to make a counter-offer if the bids received are higher of :

- a. the difference between the acquirer's shareholding and 75% of the total issued shares of the company; and
- b. 50% of the public shareholding.

4.2.2.2. Further, in case the acquirer chooses to make a counter-offer, the counter-offer price will be the higher of :

- a. volume weighted average price ("VWAP") of the shares tendered / offered in the Reverse Book Building process; and
- b. the initial floor price disclosed and calculated for the Reverse Book Building process, in accordance with the Delisting Regulations.

4.2.3. **Analysis of Public feedback**

- i. The break-up of the comments received to the proposals made in the consultation paper are as under. The details are provided in **Annexure-II**.

Sr. No.	Questions asked in the Consultation Paper	Total Comments Received	No. of Comments in agreement	No. of Comments in dis-agreement	No. of Comments in partial agreement
1.	Reducing the threshold of 90% for making a counter-offer.	24	17	7	NIL
2.	Thresholds for making a counter-offer	22	10	7	5
3.	Proposed method of calculating the floor price for counter-offer	21	10	7	4

- 4.2.4. **SEBI's rationale for acceptance-** After considering the public comments and the recommendations of PMAC, the rationale for acceptance of the recommendations are as under -

- 4.2.4.1. It is acknowledged that there are constraints in the current framework and accordingly, it would be appropriate to lower the threshold required to make a counter-offer. A lower counter-offer threshold would give an acquirer the opportunity to make a counter-offer that could potentially be accepted based on bids received by public shareholders. This could facilitate in the successful delisting where majority of the public shareholders are in favour of the delisting offer.
- 4.2.4.2. Further, since there is no existing guiding factor in determining the counter-offer price, it was deliberated that the determination of the counter-offer price be based on the volume weighted average price of the shares tendered/offered through the reverse book building process. This approach would reflect the general expectation of the public shareholders who tendered their shares in the reverse book building process and help the acquirer make a meaningful counter-offer that may be accepted.
- 4.2.4.3. Further, with respect to the suggestion from the public to dispense with the requirement of initial floor price as one of the parameter for determining floor price for counter-offer, it is noted that the bidding under Reverse Book Building process shall happen above the floor price only and as a result, the VWAP arrived would be above the floor price in any case. Thus, suggestion with respect to dispensing with the requirement of making initial floor price as one of the parameter for determining floor price for counter-offer may be accepted.

4.2.4.4. Further, it is also noted that there is a possibility of VWAP being arrived at, may fall between the initial floor price and the indicative price (if offered by the acquirer) and thus, the suggestion of adding indicative price, if offered by the acquirer, as one of the parameter for determining floor price for counter-offer may be accepted.

4.2.5. Proposal

4.2.5.1. In view of the above, it is proposed that-

- i. In case of delisting through reverse book building process, a counter-offer may be made by the acquirer to the public shareholders,
 - (a) if the post offer shareholding of the acquirer, along with the shares tendered / offered by public shareholders reaches at least 75%; and at least 50% of public shareholding has been tendered in the process,
- ii. The counter offer price shall not be less than higher of the following -
 - (a) the volume weighted average price (VWAP) of the shares tendered/offered, (In case post offer shareholding reaches 90% or above, VWAP shall be determined taking into account the shares tendered/offered up to 90% of total shares; or in case the post offer shareholding does not reach 90% of total shares, the VWAP shall be determined taking into account all the shares tendered/offered), and
 - (b) indicative price, if any, offered by the acquirer;

4.3. Review of “Floor Price” under the Delisting Regulations

4.3.1. Issue for consideration

4.3.1.1. Currently, the floor price under the Delisting Regulations draws reference from the definition of floor price under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“Takeover Regulations”).

4.3.1.2. PMAC was of the view that the definition of floor price under the Delisting Regulations should be reviewed since the definition of floor price under the Takeover Regulations was drafted in the context of open offer where companies would continue to remain listed.

4.3.2. **Recommendation of the PMAC**

- 4.3.2.1. Upon deliberation, the PMAC recommended certain relevant provisions based on Regulation 8 of the Takeover Regulations for determination of the floor price for delisting offers under Delisting Regulations.
- 4.3.2.2. Further, it was also proposed that an additional parameter for determination of the floor price be introduced to safeguard the interest of the shareholders i.e., “Adjusted Book Value” irrespective of whether the shares of the company are frequently traded or infrequently traded. In this regard, Rule 11UA(1)(c)(b) (Fair market value of unquoted equity shares) of Income Tax Rules, 1962 may be referred to compute the “Adjusted Book Value”.
- 4.3.2.3. Accordingly, the revised formula for computation of the floor price, as recommended by PMAC, is provided **at para 2 of Annexure-III**.

4.3.3. **Analysis of Public feedback**

- 4.3.3.1. The break-up of comments to the proposals made in the consultation paper are as under. The details are provided in **Annexure-II**.

Sr. No.	Questions asked in the Consultation Paper	Total Comments Received	No. of Comments in agreement	No. of Comments in dis-agreement	No. of Comments in partial agreement
1.	Proposal for introducing additional parameter of “adjusted book value” for determining floor price	22	11	5	6

- 4.3.4. **SEBI’s rationale for acceptance-** After considering the public comments and the recommendations of PMAC, the rationale for acceptance of the recommendations is as under -

- 4.3.4.1. There is a need to define “floor price” separately for delisting offers under the Delisting Regulations.
- 4.3.4.2. Further, it was felt that in case the companies are being delisted, there is a need to have revised parameters to ensure that the floor price accurately reflects the equity value of a company. In case of a delisting offer, since the company will eventually delist, it would be appropriate to take the fair market value of the assets of the company into consideration while determining the floor price.

4.3.5. **Proposal**

- 4.3.5.1. In view of the above, in place of the current practice of referring the floor price to Takeover Regulations, it is proposed that parameter for determining floor

price in case of delisting shall be introduced under delisting regulations and shall be as follows-

a. In case of Frequently Traded Shares, the floor price will be the highest of:

- I. volume weighted average price paid or payable for acquisitions, by the acquirer, along with persons acting in concert, during the 52 weeks immediately preceding the reference date;
- II. the highest price paid or payable for any acquisition, by the acquirer, along with persons acting in concert, during the 26 weeks immediately preceding the reference date;
- III. the volume weighted average market price for a period of 60 trading days immediately preceding the reference date, on the stock exchange where the maximum trading volume of the equity shares is recorded; and
- IV. adjusted book value (considering consolidated financials) as determined by an independent registered valuer.

b. In case of Infrequently Traded Shares, the floor price will be the highest of:

- I. volume weighted average price paid or payable for acquisitions, by the acquirer, along with persons acting in concert, during the 52 weeks immediately preceding the reference date;
- II. the highest price paid or payable for any acquisition, by the acquirer, along with persons acting in concert, during the 26 weeks immediately preceding the reference date;
- III. price determined by an independent registered valuer, taking into account valuation parameters such as the book value, comparable trading multiples, and any other customary valuation metrics for valuation of shares of companies in the same industry; and
- IV. adjusted book value (considering consolidated financials) as determined by an independent registered valuer.

c. The adjusted book-value of the company shall mean: $A+B+C+D - L$, where,

A = Book value of all the assets (other than jewellery, artistic work, shares & securities and immovable property) in the balance sheet as

reduced by any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

B = Price which jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;

C = Fair market value of unquoted/infrequently trade shares and securities as determined considering the internationally accepted valuation methods by the registered valuer. If the shares and securities are quoted and frequently traded on any recognized stock exchange, the fair market value of such shares and securities shall be the transaction value as recorded in such stock exchange as on the valuation date;

D = The value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property. In case immovable property is located outside India, market value of the property shall be determined by the independent registered valuer;

L= Book value of liabilities shown in the balance sheet, but not including the following amounts, namely:—

- the paid-up capital in respect of equity shares;
 - the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;
 - reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;
 - any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
- any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

4.4. Review of Reference Date for determination of Floor Price

4.4.1. Issue for consideration

- 4.4.1.1. Currently, Regulation 20(3) states that the reference date for computing the floor price would be the date on which the recognized stock exchange(s) was required to be notified of the board meeting in which the delisting proposal was considered and approved.
- 4.4.1.2. PMAC noted that the Regulation 8 (1) of the Delisting Regulations requires the acquirer to make an initial public announcement to all stock exchanges (on which the shares of the company are listed) on the date when the acquirer(s) decides to voluntarily delist the equity shares of the company. Subsequently, in terms of Regulation 10 (1) of the Delisting Regulations the board of directors of the company are required to approve the delisting proposal of the acquirer not later than 21 days from the date of the initial public announcement.
- 4.4.1.3. Further, Regulation 37 of the Delisting Regulations provides for delisting of equity shares of a subsidiary company pursuant to a scheme of arrangement where the listed holding company and the subsidiary company are in the same line of business. Such companies, in terms of Regulation 29 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, are required to give prior intimation to the stock exchanges of the board meeting in which the delisting proposal will be considered.
- 4.4.1.4. There is a potential risk of unusual trading activity in the shares of the company during the period between the date of the initial public announcement (or the prior intimation in case of Regulation 37) and the reference date.

4.4.2. Recommendation of the PMAC

- 4.4.2.1. In this regard, PMAC recommended modification of the reference date to be the date of the initial public announcement or the date on which the prior intimation is required to be given to the stock exchanges, as applicable.
- 4.4.2.2. Further, deliberations were also held on the timing of the initial public announcement. It was felt that if the initial public announcement is being made after close of market, the market price of that day should also be considered while determining the floor price. Accordingly, it was recommended that if the initial public announcement is made during trading hours, then the date of such

initial public announcement will be the reference date and if the initial public announcement is made after the close of market, then the next day will be the reference date. This is required as the share price on reference date is excluded from computing the floor price.

4.4.3. **Analysis of Public feedback**

- i. The break-up of comments received to the proposals made in the consultation paper are as under. The details are provided in **Annexure-II**.

Sr. No.	Question asked in the Consultation Paper	Total Comments Received	No. of Comments in agreement	No. of Comments in dis-agreement	No. of Comments in partial agreement
1.	Whether the date of the initial public announcement be made the reference date for determining the floor price?	20	17	0	3

- 4.4.4. **SEBI's rationale for acceptance-** After considering the public comments and the recommendations of PMAC, the rationale for acceptance of the recommendations is as under -

- 4.4.4.1. The potential risk of unusual trading mentioned under para 4.4.1.4 may be minimized by calculating the floor price based on an “undisturbed price”, i.e., the price as of a reference date when information relating to the proposed delisting offer is first disclosed to the public.
- 4.4.4.2. The same rationale is also being followed in case of Takeover Regulations, where the date of public announcement is considered as reference date.

4.4.5. **Proposal**

- 4.4.5.1. In view of the above, it is proposed -

- i. To modify the reference date to be the date of the initial public announcement.
- ii. In case the delisting is made in terms of Regulation 37 of Delisting Regulations, the reference date would be the date on which the prior intimation is required to be given to the stock exchanges.
- iii. Further, if the initial public announcement is made during trading hours, then the date of such initial public announcement will be the reference date

and if the initial public announcement is made after the trading hours, then the next day will be the reference date.

5. Proposal for consideration of the Board:

- 5.1. The Board is requested to consider and approve the proposals mentioned under paras 4.1.1.5, 4.1.2.5, 4.2.5, 4.3.5 and 4.4.5. The draft regulations are placed at **Annexure-IV**.
- 5.2. The proposed amendments shall come into force from the date of their publication in the official gazette and would be applicable to the delisting offers where Initial Public Announcement (IPA) for the delisting has not been made. However, in order to facilitate ease of doing business and to assist smooth transition from old regime to the new regime, acquirer can make delisting offer under the old regime till the sixtieth day from the date of publication of these amendments in the official gazette.
- 5.3. The Board is requested to consider and approve the proposals as contained in the Memorandum and authorize the Chairperson to make consequential and incidental changes and take necessary steps to give effect to the decisions of the Board.

Encls:

1. Annexure I (1 page)
 - i. Annexure-A (20 pages)
 - ii. Annexure-B (21 pages)
2. Annexure II (11 pages)
3. Annexure III (4 pages)
4. Annexure IV (10 pages)

Supplementary to Agenda

(This has been excised for reasons of confidentiality)

1. Extant delisting process, suggestions / representations received, recommendations of PMAC and issuance of consultation paper

- 1.1.** The extant Delisting Regulations, which were notified on June 10, 2021, inter-alia, provide that the equity shares of a company may be voluntarily delisted from all the recognised stock exchanges on which its equity shares are listed, after an exit opportunity has been provided by the acquirer to all the public shareholders through Reverse Book Building process (hereinafter referred to as “**RBB process**”).
- 1.2.** SEBI has been receiving several suggestions and representations from market participants, industry representatives, various stakeholders etc. to review RBB process due to increased volatility, speculation and bidding at unrealistic price levels not commensurate with the fundamentals of the company, under the extant RBB framework.
- 1.3.** As a part of SEBI’s constant endeavour to facilitate ease of doing business, align regulatory requirements with the changing market dynamics as well as to enhance efficiency of the delisting process, a need was felt to carry out a comprehensive review of voluntary delisting norms.
- 1.4.** Accordingly, an agenda for reviewing the RBB process and exploring other alternatives to determine exit price was placed before the Primary Market Advisory Committee (hereinafter referred to as “**PMAC**”). PMAC decided to constitute a sub-group under the chairmanship of Shri Keki Mistry to examine the same. The sub-group submitted its report to the PMAC, which after deliberation, recommended the same to SEBI for consideration.
- 1.5.** The consultation paper containing the report of the sub-group along with the recommendations of PMAC was subsequently published on SEBI’s website for seeking public comments. The consultation paper is placed at **Annexure- A**.
- 1.6.** In response to the various proposals in the consultation paper, 32 entities have given their comments on various proposals. The entities include stakeholders such as Industry Associations, Law Firms, Merchant Bankers, Investor Associations, Market Intermediaries, Chartered Accountant, Companies, etc. The compilation of the public comments is placed at **Annexure – B**.

Annexure-A to Annexure-I

(Consultation Paper is available on SEBI Website)

Annexure-B to Annexure-I

(This has been excised for reasons of confidentiality)

Proposal wise analysis of Public Comments along with existing provisions

1. Alternatives to the Reverse Book Building Process

1.1. Fixed Price Delisting

1.1.1.Existing Provisions- Currently, Delisting Regulations provide for RBB process in case of Voluntary Delisting. However, there is no alternate exit price mechanism for instance, delisting by way of fixed price route, which is followed globally.

1.1.2.Public Comments and SEBI's analysis on the questions asked in the consultation paper are as under-

I. Introduction of fixed price mechanism as an alternative to RBB process

• Public comments

The entities who have either dis-agreed or partially agreed with the proposal for introduction of fixed price process have contended the following-

- a) Reverse book building process allows collective wisdom of public shareholders to discover the delisting price based on their assessment of future prospects.
- b) Fixed price is susceptible to manipulations and mis-representations and will harm the small public shareholders who are often guided by the knowledge and wisdom of the institutions and mutual funds if done through RBB.
- c) Fixed price can be done at a price as low as the floor price, whereas, the RBB process ensures that floor price is the minimum price and paves way for discovery of correct price which will be higher than the floor price.
- d) Companies may intentionally violate LODR Regulations to reduce investor interest in companies and depress valuations and use this investor distrust to their advantage to delist the company offering very low premium to investors.

- **SEBI's analysis-**

Analysis of SEBI on the points raised by the entities on this issue is as under-

- a) With respect to the contention that RBB process allows collective wisdom to discover the delisting price, it is stated that in the case of the fixed price process, the same logic would apply as all the shareholders would have the option to tender at the fixed price or not. In both the cases, threshold of 90% has to be achieved.
- b) Further, with respect to argument that fixed price process may harm the small public shareholders, in the absence of guidance of wisdom of the institutions/mutual funds, it is stated that in the current RBB process, category-wise bidding details are not disseminated and thus, there is no public mechanism for the small shareholders to be guided by the knowledge and wisdom of the institutions / mutual funds etc.
- c) Further, with respect to the view that companies may intentionally violate LODR Regulations to their advantage to delist the company, it is stated that the Delisting Regulations has cast responsibility on the board of directors of the company to, inter-alia, ensure that the company is in compliance with applicable provisions of securities laws, the acquirer and its related entities are in compliance with the applicable provisions of securities laws and that the delisting, in their opinion, is in the interest of the shareholders of the company. Thus, only those companies which satisfy the aforesaid conditions can avail delisting through the proposed fixed price process or the existing RBB process. Any violation would be separately dealt with. The final control shall lie with the public shareholders on whether to tender their shares or not.

II. Permitting fixed price mechanism only for companies having frequently traded shares

- **Public comments**

The entities who have disagreed or have partially agreed with the proposal of introducing the fixed price process only for the frequently traded shares have contended that-

- a) Rationale for introducing fixed price delisting for frequently traded shares and the safeguards provided under the delisting regulations is also applicable for infrequently traded shares as well.
- b) Further, suggestions have been made that additional checks and balances in the form of complying with few additional requirements such as an independent certification by a merchant banker or peer reviewed chartered accountant as to how the floor price is arrived at, making it mandatory for Board of a company to provide its written reasoned recommendations on above. Also, the company shall publish such recommendations through stock exchanges for dissemination and such other checks as may be relevant.

- **Analysis**

Our analysis on the contention raised by the commenters on this issue is as under –

- a) With respect to contention of the entities that the fixed price process should be introduced for infrequently traded shares as well, it is stated that to start with, the fixed price process is proposed to be introduced for frequently traded shares. Basis the experience gained over period of time, the suggestion to extend the fixed price delisting to infrequently traded shares may be considered.

1.2. Delisting of Investment Holding Companies

1.2.1.Existing Provisions- Presently, there is no separate mechanism for undertaking delisting of investment holding companies and such companies are also required to follow the existing Reverse Book Building process to get delisted.

1.2.2.Public Comments and SEBI's analysis on the questions asked in the consultation paper are as under-

I. Introducing separate mechanism for delisting of investment holding companies

- **Public Comments**

The entities who have dis-agreed or partially agreed with the proposal of introducing separate optional mechanism for delisting of investment holding companies have contended the following-

- a) Process of approval of scheme through NCLT approval is long and lengthy process and delisting shall be delayed.
- b) There will be big difference in the value of the investment while scheme is approved by Board of Directors/Stock Exchange(s)/SEBI and when the actual payment will be made to the shareholders of investment holding company post NCLT approval.

- **Analysis**

Our corresponding analysis on the contentions raised by the entities on this issue is as under -

- a) With respect to the entities' argument that process of approval of scheme through NCLT may delay delisting, it is stated that the delisting through such mechanism is an optional facility in addition to the existing mechanism. Promoter of such investment holding company shall have all the freedom to decide the route it undertakes after considering relevant factors.
- b) Further, with respect to the contention that there may be a big difference in the value of the investment while scheme is approved and when the actual payment will be made, it is stated that such possibility may arise in any scheme of arrangement. Further, the consideration which is decided and is being disclosed in the scheme of arrangement shall be payable to all shareholders, irrespective of the changes in the value of investments at the later stage.

II. Proposed mechanism of delisting of IHC

- **Public Comments**

Majority of the entities, who have either dis-agreed or partially agreed with the proposal of the proposed mechanism of transferring shares of listed companies held by IHC and based on the valuation, making cash payments in lieu of other assets held by such company, have suggested following-

- a) To address the potential tax implications stemming from this arrangement, including concerns related to deemed dividends or capital gains arising for shareholders as well as IHC from such process.

b) To factor the debt/liabilities of the listed IHC for determining the share entitlement ratio while valuing the investments of the listed IHC in listed entities and unlisted entities.

- **Analysis**

Our corresponding analysis on the matter raised by the entities on this issue are provided below-

- a) With respect to the entities' suggestions regarding addressing the potential tax implications stemming from this mechanism, it is stated that the tax implications under this mechanism shall be as per the extant applicable tax laws. Moreover, it is reiterated that undertaking delisting through this mechanism is not mandatory and the promoters/IHC and the shareholders may appropriately analyse all the factors before executing or approving the scheme.
- a) Further, with respect to suggestion of factoring the debt/liabilities of the listed IHC for determining the share entitlement ratio while valuing the investments of the listed IHC in listed entities and unlisted entities, it is stated that the overall fair value of listed IHC will be required to be computed which would automatically consider all its assets and debt / liabilities.

III. Requirement of IHC to have at least 75% of its overall fair value comprising investments in other listed companies

- **Public Comments**

Majority of the entities, who have either dis-agreed or partially agreed with the proposal of requirement of Investment Holding Company having at least 75% of its overall fair value comprising investments in other listed companies for qualifying under this mechanism have suggested following-

- a) To reduce the threshold. The reasons offered for reducing the thresholds are that the proposed mechanism has enough checks and balances in place and reduced threshold shall help in attracting more participation under this mechanism.
- b) To increase the threshold to 80 to 90%, no clear rationale / reasons for suggestion has been offered.

- c) Fair value should be determined by two separate reports of independent valuers and taken an average of those two reports as opposed to a joint report of two independent valuers.

- **Analysis**

Our corresponding analysis on the contention raised by the entities on this issue is as under -

- a) With respect to the suggestion that the threshold of at least 75% as proposed may be reduced or increased, it is stated that to start with the threshold of 75% is proposed, which, on the basis of learnings and experience gained over the period of time, may be reviewed appropriately.
- b) Further, with respect to the suggestion that fair value should be determined by two separate reports of independent valuers and take an average of those two reports as opposed to a joint report of two independent valuers, it is stated that valuation in itself is a complex process and having two separate reports of independent valuers would lead to confusion, difference of opinion, unnecessary complaints and possible litigations. The requirement of having joint report will ensure that both the independent valuers have mutually agreed with the methodologies adopted while arriving at the valuation.

2. Review of the Counter-Offer Mechanism

2.1. Existing Provisions- Regulation 22 (4) of Delisting Regulations, provides that in case the discovered price is not acceptable to the acquirer, a counter-offer may be made by the acquirer to the public shareholders. Further, Regulation 22(5) of Delisting Regulations states that the counter offer price shall not be less than the book value of the company as certified by the Manager to the offer.

2.2. Public Comments and SEBI's analysis on the questions asked in the consultation paper are as under-

I. Reducing the threshold of 90% for making a counter-offer

- **Public Comments**

The seven (7) entities who have disagreed with the proposal of reducing the threshold of 90% for making counter-offer, have either not offered any

clear rationale / reasons for their disagreement or their comments have not been relevant to the proposal.

II. Thresholds for making a counter-offer

- **Public Comments**

The entities who have either dis-agreed or partially agreed with the proposal on the eligibility for making the counter-offer threshold have contended following-

- a) The process involves complex procedural requirements and is complicated.
- b) Since the delisting regulations already safeguards the interests of the public shareholders, the proposed threshold imposes an incremental obligation on the acquirer without necessarily achieving the benefits. Moreover, conditioning the ability to make counter-offer on the number of bids received does not enhance the ability of public shareholders to receive a fair price for their shares in a delisting offer.
- c) Delete the threshold requirement of 75% and provide that counter-offer be made where 50% of public shareholding has accepted the offer.

- **Analysis**

Our analysis on the contention raised by the entities on this issue are provided below-

- a) With respect to contention of entities made on the proposed counter-offer threshold, it is stated that requirement for making a counter-offer based on the number of bids received is actually an important parameter as it will help in forming an opinion as to whether shareholders are actually interested in the delisting process. If enough bids are not received in the RBB process itself, expectations of the bids being received in the counter-offer process would be minimal and will make the counter-offer process purposeless. Thus, we believe that the required 75% threshold is an important benchmark to be reached to make a counter-offer.
- b) Further, it is stated that making a counter offer is optional and does not cast any incremental obligation on the acquirer.

III. Proposed method of calculating the floor price for counter-offer

- **Public Comments**

The entities who have either dis-agreed or partially agreed with the proposal on the proposed calculation of floor price have contended following-

- a) Acquirer can see prices at which shares are tendered and he/she is naturally inclined to offer a better price as the counter-offer price, thus having the floor price linked to VWAP price would defeat the counter-offer process.
- b) It has also been asserted that VWAP of shares tendered could lead to very unpredictable outcomes and that a group of shareholders can collaborate in the bidding process and may demand unreasonable delisting price.
- c) Tendering in the RBB process will by default be above the initial floor price and thus this condition may not be required. Further, it has also been suggested to add reference to indicative price, if any opted for by the promoter/acquirer.

- **Analysis**

Our corresponding analysis on the contention raised by the entities on this issue are provided below-

- a) With respect to entities' contentions made against the proposed counter-offer price that acquirer can see prices at which shares are tendered and the acquirer is naturally inclined to offer a better price as the counter-offer price, it is stated that the proposed VWAP method of calculation of floor price would reflect the general expectations of the public shareholders and will aid the acquirer in deciding the counter-offer price.
- b) Further, with respect to the argument of VWAP of shares tendered leading to a unpredictable outcomes and the possibility that a group of shareholders can collaborate in the bidding process and demand unreasonable delisting price, it is stated that VWAP shall average out any such distorted bids placed at abnormal high price.
- c) Further, with respect to the suggestion of dispensing with the requirement of initial floor price as one of the parameter for determining floor price for counter-offer, it is noted that the bidding

under Reverse Book Building process shall happen above the floor price only and as a result, the VWAP arrived would be above the floor price in any case. Thus, suggestion with respect to dispensing with the requirement of making initial floor price as one of the parameter for determining floor price for counter-offer may be acceded to. Further, it is also noted that there is a possibility of VWAP being arrived at, may be between the initial floor price and the indicative price (if offered by the acquirer) and thus, the suggestion of adding indicative price, if offered by the acquirer, as one of the parameter for determining floor price for counter-offer is also acceded to.

3. Review of “Floor Price” under the Delisting Regulations

3.1. Existing Provisions- Regulation 20 (2) of the Delisting Regulations provides that the floor price shall be determined in terms of Regulation 8 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“Takeover Regulations”) as may be applicable.

3.2. Public Comments and SEBI’s analysis on the questions asked in the consultation paper are as under-

I. Proposal for introducing additional parameter of “adjusted book value” for determining floor price

•Public Comments

The entities who have either dis-agreed or partially agreed with the proposal have contended the following-

- a) Commenters have reasoned against the need for introducing the additional parameter of adjusted book value for frequently traded shares. In their opinion, the market price is an adequate indicator for determining the fair market value of a frequently traded shares and is reflective of the intrinsic value of such shares.
- b) Concern have been raised regarding the confidentiality of the delisting proposal as such exercise will require involving many internal and external agencies and that any leakage of the delisting information will fuel high speculation in the scrip. Further, it is contended that SEBI (LODR) Regulations shall come into play requiring promoters/company

to issue clarifications to stock exchange of any impending news on delisting.

- c) Clarification has also been sought with respect to treatment of financial instruments, intangible assets etc. It has also been suggested that adjusted book value should be considered on both standalone and consolidated basis, and the higher of the two values should be taken as the adjusted book value.

- **Analysis**

Our analysis on the concerns raised by the entities on this issue are provided below-

- a) With respect to entities argument that the additional parameter of adjusted book value should not be used for determining floor price for frequently traded shares as the market price is an adequate indicator for determining the fair market value and is reflective of the intrinsic value of such shares, it is stated that sometimes due to internal and external factors, the market price may be depressed for a short period of time and in such cases, if delisting is attempted then the floor price may not appropriately account its fair value considering its assets and liabilities. Moreover, in case of a delisting offer, since the company ceases to remain listed, public shareholders should be entitled for such fair value irrespective whether the shares are frequently or infrequently traded.
- b) Further, with respect to the concern voiced about the possibility of leakage of information about the delisting while carrying out the exercise of determining the adjusted value, it is stated that the same holds true for all corporate actions be it takeovers, buyback, preferential allotment, etc. where the process initiates well before the formal announcement. Mechanisms are in place to address the same.
- c) Further, with respect to entities' suggestion of seeking clarity with respect to treatment of financial instruments, intangible assets in relation of computation of adjusted book value, it is stated that the assets and the liabilities which are appearing in the books of the company need to be adjusted as per the broad principle as spelt out under para 4.3.4.3 (c) above. Further, for any specific asset, it is responsibility of the registered valuer to apply the relevant accounting

principle to arrive at the adjusted book value. With respect to the suggestion of the entities to consider higher of the standalone and consolidated adjusted book value, it is stated that the fair value of the company is generally considered on the basis of consolidated financials. Therefore, we may not agree with the suggestion.

4. Review of the Reference Date for determination of the Floor Price

4.1. Existing Provisions- Regulation 20 (3) of the Delisting Regulations state that the reference date for computing the floor price would be the date on which the recognized stock exchange(s) was required to be notified of the board meeting in which the delisting proposal was considered and approved. Further, explanation to Regulation 37 of the Delisting Regulations, which deals with delisting of equity shares of a subsidiary company pursuant to a scheme of arrangement, provide that the reference date for computing the volume weighted average price would be the date on which the recognized stock exchange(s) was required to be notified of the board meeting in which the delisting proposal of the subsidiary was considered and approved.

4.2. Public Comments and SEBI's analysis on the questions asked in the consultation paper are as under-

I. Whether the date of the initial public announcement be made the reference date for determining the floor price?

- **Public Comments-** The 3 entities who have partially agreed with the proposal have broadly agreed with the concept as well without providing any other material suggestions.
- **Analysis-** All the three entities who have partially agreed with the proposal of reviewing the Reference Date for determination of the Floor Price have not provided any specific suggestion for consideration and have predominantly agreed with the proposal.

1. Detailed Mechanism for delisting of Investment Holding Companies is as follows:

1.1. Framework

- a) The ‘overall fair value’ of the listed IHC shall be determined pursuant to a joint report by two independent registered valuers, which, inter-alia, shall include-
- value of investments in frequently traded shares of listed companies at 60 trading day volume weighted average market price;
 - fair value of investments in infrequently traded shares of listed companies and unlisted companies; and
 - fair value of other assets of the listed IHC.
- b) transfer of underlying shares held by a listed IHC in other listed companies to the public shareholders of such IHC in proportion to the shareholding of the public shareholders in the IHC;
- c) proportionate cash payments by listed IHC to the public shareholders of such IHC against the other assets including underlying shares or investments made by such IHC in unlisted companies; and
- d) extinguishment of public shareholding of the listed IHC upon transfer of the underlying shares mentioned at (a) and cash payments mentioned at (b) above pursuant to a scheme of selective reduction of capital under Section 66 of the Companies Act, 2013.
- e) Pursuant to implementation of the above scheme, the entire shareholding of the listed IHC will be held by the promoters or the promoter group and such IHC will be required to apply to the stock exchanges for delisting.

1.2. Checks and Balances

The framework shall be subject to certain checks and balances in relation to the proposed delisting framework as provided under –

- a) the above mechanism will only be available to listed IHCs having at least 75% (this percentage is subject to the SEBI’s review from time to time) of their overall fair value comprising direct investments in equity shares of other listed companies (**This is a new requirement proposed for this mechanism**);

- b) continuous prior listing of the shares of the IHC for a period of at least three years and not suspended from trading. (This is in line with the delisting of subsidiary company in terms of Reg. 37 of Delisting Regulations);
- c) the listed IHC will be required to obtain the approval of its board of directors and recommendation of its audit committee prior to filing of the scheme with the stock exchanges (This is in line with the present requirement in case of Scheme of Arrangement);
- d) the special resolution can be acted upon only if the votes cast by the public shareholders of the listed IHC in favour of the delisting resolution are at least two times the votes cast against it (This is in line with Regulation 11 of Delisting Regulations);
- e) material disclosures in relation to calculation of the entitlement ratio and per share consideration will be required to be included in the explanatory statement of the notice for the shareholders meeting (This is in line with the present requirement in case of Scheme of Arrangement);
- f) the valuation report obtained in connection with the scheme will be required to be made public (This is in line with the present requirement in case of Scheme of Arrangement);
- g) report to be obtained from a chartered accountant or merchant banker confirming the entitlement ratio (This is a new requirement proposed for this mechanism);
- h) absence of adverse orders of the SEBI against such IHC and their promoters or promoter group in the last three years (This is in line with delisting of subsidiary company in terms of Reg. 37 of Delisting Regulations);
- i) restriction on relisting of shares of the IHC for a period of three years from the date of delisting (This is in line with Regulation 40 of Delisting Regulations).
- j) It is clarified that the manner of transfer of fractional shares to the public shareholders of the listed IHC pursuant to the scheme shall be dealt in accordance with the Master Circular on Scheme of Arrangement dated June 20, 2023, as amended, from time to time.

2. PMAC's recommendation on the revised formula for computation the floor price

i. The revised formula for computation of floor price shall be as follows-

a. In case of Frequently Traded Shares, the floor price will be the highest of:

- I. volume weighted average price paid or payable for acquisitions, by the acquirer, along with persons acting in concert, during the 52 weeks immediately preceding the reference date;
- II. the highest price paid or payable for any acquisition, by the acquirer, along with persons acting in concert, during the 26 weeks immediately preceding the reference date;
- III. the volume weighted average market price for a period of 60 trading days immediately preceding the reference date, on the stock exchange where the maximum trading volume of the equity shares is recorded; and
- IV. adjusted book value (considering consolidated financials) as determined by an independent registered valuer.

b. In case of Infrequently Traded Shares, the floor price will be the highest of:

- I. volume weighted average price paid or payable for acquisitions, by the acquirer, along with persons acting in concert, during the 52 weeks immediately preceding the reference date;
- II. the highest price paid or payable for any acquisition, by the acquirer, along with persons acting in concert, during the 26 weeks immediately preceding the reference date;
- III. price determined by an independent registered valuer, taking into account valuation parameters such as the book value, comparable trading multiples, and any other customary valuation metrics for valuation of shares of companies in the same industry; and
- IV. adjusted book value (considering consolidated financials) as determined by an independent registered valuer.

c. The adjusted book-value of the company shall mean: $A+B+C+D - L$, where,

A = Book value of all the assets (other than jewellery, artistic work, shares & securities and immovable property) in the balance sheet as reduced by any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

B = Price which jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;

C = Fair market value of unquoted/infrequently trade shares and securities as determined considering the internationally accepted valuation methods by the registered valuer. If the shares and securities are quoted and frequently traded on any recognized stock exchange, the fair market value of such shares and securities shall be the transaction value as recorded in such stock exchange as on the valuation date;

D = The value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property. In case immovable property is located outside India, market value of the property shall be determined by the independent registered valuer;

L= Book value of liabilities shown in the balance sheet, but not including the following amounts, namely :—

- the paid-up capital in respect of equity shares;
- the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;
- reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;
- any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
- any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

Annexure-IV

(This shall be notified at a later date)