

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

1. Objective

1.1. This memorandum seeks approval of the Board for amendments in the SEBI (Delisting of Equity Shares) Regulations, 2009 (“Delisting Regulations”), taking into account the following:

- i. Recommendations of Shri P. K. Malhotra, former Law Secretary, Government of India
- ii. Proposal for counter offer by promoters after reverse book building (RBB) process
- iii. Proposal for timeline to be provided for the promoters to provide exit to the public shareholders after compulsory delisting of company.

2. Recommendations of Shri P. K. Malhotra

2.1. The services of Shri P. K. Malhotra former Member, Securities Appellate Tribunal and former Secretary, Ministry of Law and Justice as an expert in the field of law were engaged by SEBI on April 20, 2017 with the objectives of simplifying the language and removing inconsistencies in Delisting Regulations.

2.2. The scope of the said review exercise was to make recommendations on simplifying the language, removing redundant provisions and inconsistencies, updating the references to the new Companies Act, 2013/ other new SEBI Regulations, and incorporating the circulars, FAQs and informal guidance in the regulations, wherever possible, without making any policy changes. Shri P. K. Malhotra submitted his recommendations to SEBI on January 06, 2018.

2.3. The recommendations made by Shri P. K. Malhotra have been examined by SEBI and suitable amendments in the Delisting Regulations have been proposed. While there is no fresh policy measure proposed by Shri P. K. Malhotra, the main amendments proposed in Delisting Regulations after

recommendation by Shri P. K. Malhotra and subsequent examination by SEBI inter alia include the following:

- i. Currently, the acquirer in Delisting Regulations has been defined as having the same meaning as per Takeover Regulations. It is proposed to clarify that the definition of “acquirer” for the purpose of Delisting Regulations shall be only those acquirer (as defined in Takeover Regulations) that have chosen to make an offer for delisting the company in accordance with regulation 5A of the Takeover Regulations (Sr. No. 3(1) of **Annexure-I**)
- ii. Currently the definition of “public shareholders” excludes promoters, holders of depository receipts. It is proposed to clarify that the definition of “public shareholders” shall also exclude acquirer(s) and persons acting in concert with such acquirer(s) (Sr. No. 3(1)(d) of **Annexure -I**);
- iii. References to Companies Act 1956 and Listing Agreements may be changed to Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 respectively;
- iv. Some explanations that have been provided by way of FAQs are proposed to be incorporated in the Delisting Regulations (Sr. Nos. 3(4)(b), 3(5), 3(6), 3(8), 3(12)(c) of **Annexure - I**); and
- v. Circular dated September 07, 2016 on “Restrictions on Promoters and Whole-Time Directors of Compulsorily Delisted Companies Pending Fulfillment of Exit Offers to the Shareholders” may be incorporated in the Delisting Regulations (Sr. No. 3(18) of **Annexure-I**)

3. Counter offer by promoters after reverse book building process (RBB)

3.1. Currently, in voluntary delisting an issuer/promoter has to first take the approval of shareholders of that class, then an in-principle approval of the stock exchange followed by RBB to discover the price. The promoter may choose

to pay a price equal to or more than the discovered price to the shareholders who had tendered their shares in the RBB process. Delisting is regarded as successful if promoter shareholding reaches 90% pursuant to RBB at the discovered price which is acceptable to the promoter.

3.2. Several concerns have been raised by the stakeholders regarding implementation of the reverse book building process, as summarized below:

- a) Price is influenced by the arbitrage seekers.
- b) Some shareholders may form groups, bid at exorbitantly high prices in order to drive the high premium
- c) No country except India has adopted the reverse book building method to delist the shares of the company.
- d) Small shareholders are unable to comprehend the reverse book building process
- e) Promoters in order to influence the price discovery through RBB, may systematically divest their stake to friendly shareholders
- f) Floor price computed before initiating RBB process doesn't consider the book value.
- g) Promoters exercise his unilateral right to reject the price, if price is not acceptable to him.

Analysis of voluntary delisting data

3.3. In order to understand the trends in voluntary delisting in recent times, data of voluntary delisting through "RBB" during the financial year 2015-16 to 2017-18 was perused and it was observed that a total of 15 companies got voluntarily delisted, by following the reverse book building process. Out of these, 7 companies got delisted at the floor price (Premium being zero) and 8 companies got delisted at a premium ranging between 7.69% to 242.02%.

Consultation with Primary Market Advisory Committee

3.4. To deal with such concerns, a working paper suggesting two proposed alternatives (Alternative – I. "Price band (Floor price – Cap Price) along with premium" or Alternative – II. "Price discovered as per Reverse book building

method” along with counter offer of promoter” in place of RBB in the present form) was placed before the Primary Market Advisory Committee (PMAC) of SEBI.

3.5. PMAC deliberated on the paper suggesting two alternatives in place of current RBB mechanism and recommended the Alternate II i.e. “Price discovered as per “Reverse book building method” along with counter offer of promoter(s)”.

3.6. While recommending Alternate – II, the committee observed that there had been instances where book value of the company shares was more than the RBB price and while calculating the floor price in RBB in case of frequently traded companies book value is not considered. Accordingly, it was also recommended that in case promoter(s) give a counter offer, then the counter offer price should not be less than the book value and the counter offer should be accepted by such number of public shareholders where the promoter shareholding reaches 90%.

Issuance of discussion paper for public comments

3.7. As a part of SEBI’s consultative approach, the public consultation paper along with the draft of the proposed Regulations and the key recommendations of the PMAC were placed on the SEBI website for public comments to be submitted by August 16, 2018. The discussion paper is placed at **Annexure - II** for reference. The paper examined, inter-alia, the present RBB framework in voluntary delisting process and the need to review it in the light of various concerns. The discussion paper contained the following suggestions in place of RBB in its present form:

- i. Currently, if the price discovered through RBB is not attractive to the promoter(s), he/she may unilaterally reject the price and the whole exercise becomes futile. Instead, the promoter may be allowed to make counter offer to the shareholders of that class. If the counter offer is lucrative to the shareholders and if it is accepted, delisting should be treated successful.

- ii. Further, it was also suggested that in case promoter(s) give a counter offer, then the counter offer price should not be less than the book value and the counter offer should be accepted by such number of public shareholders where the promoter shareholding reaches 90%.

Examination of comments received

3.8. A total of 23 comments have been received from a variety of stakeholders including Investors, Industry participants, lawyers, Merchant Bankers, Exchange (NSE) etc. Out of the total 23 comments received, 11 agreed on the proposal of “RBB With counter offer”, 1 agreed with conditions, 8 did not agree and remaining 3 did not comment upon the proposal on RBB with counter offer.

3.9. Further, out of the total 23 comments received, 5 agreed on the proposal “Counter offer should not be less than the book value”, 8 agreed with certain modifications, 4 did not agree and the remaining 6 didn’t comment on this.

Analysis of comments (Table - I)		
Categorization of comments received	RBB with Counter offer	Counter offer should not be less than book value
Agree	11	5
Agree with conditions	1	8
No comment	3	6
Not Agree	8	4
Grand Total	23	23

3.10. The proposal, after taking into account the views of all stakeholders involved, is presented as under:

- a) In case of voluntary delisting, if price discovered through reverse book building mechanism is not acceptable to the promoter(s), he/she may be allowed to make counter offer to the shareholders of that class. If the

counter offer is lucrative to the shareholders and if it is accepted, delisting should be treated successful.

b) In case promoter(s) give a counter offer, the price of the same should not be less than the book value and for the delisting to be treated as successful, the counter offer should be accepted by such number of public shareholders where the promoter shareholding reaches 90%.

3.11. The necessary amendments in Delisting Regulations in this regard has been proposed (Sr. Nos. 3(9), 3(11), 3(12)(a) and 3(12)(e) of **Annexure-I**).

4. Compulsory Delisting

4.1. Subsequent to compulsory delisting of company by stock exchanges, Regulation 23(3) of Delisting Regulations provides for exit option to be given by the promoters to the shareholders of compulsorily delisted companies. However, no timeline has been provided in the Delisting Regulations to comply with the same.

4.2. SEBI vide circular dated September 07, 2016 has imposed certain restrictions (such as freeze on transfer, by way of sale, pledge etc. and corporate benefits, for all equity shares held by promoters; and restriction on promoters and whole-time directors in becoming director of any listed company) on the promoters and whole-time directors of compulsorily delisted companies, pending fulfillment of exit offers to the shareholders. However, despite the restrictions imposed by SEBI, it has been observed that exit to the shareholders are not being provided in terms of Delisting Regulations.

4.3. After providing a timeline for compliance with Regulation 23 (3) of Delisting Regulations, appropriate enforcement action may be considered for not providing exit to public shareholders.

4.4. It is therefore proposed to amend Regulation 23 (3) to the extent of providing a timeline of 3 months (since the date of delisting from exchange) to the promoters of compulsory delisted companies for giving exit to the public

shareholders. The necessary amendment in this regard has been proposed in the Delisting Regulations (Sr. No. 3(17) (b) of **Annexure-I**).

5. Amendments in Delisting Regulations

5.1. In view of the above, the proposed amendments to the Delisting Regulations have been placed at **Annexure- I**.

6. Proposal

6.1. The Board is requested to approve the proposed amendment in Delisting Regulations and authorize the Chairman to take consequential and incidental steps to give effect to the decisions of the Board.

**THE GAZETTE OF INDIA
EXTRAORDINARY
PART – III – SECTION 4
PUBLISHED BY AUTHORITY
NEW DELHI, [●], 2018
SECURITIES AND EXCHANGE BOARD OF INDIA
NOTIFICATION
Mumbai, the [●], 2018**

SECURITIES AND EXCHANGE BOARD OF INDIA (DELISTING OF EQUITY SHARES) (SECOND AMENDMENT) REGULATIONS, 2018

No. [●]. In exercise of the powers conferred by section 31 read with section 21A of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), section 30, sub-section (1) of section 11 and sub-section (2) of section 11A of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to further amend the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, namely:

1. These regulations may be called the Securities and Exchange Board of India (Delisting of Equity Shares) (Second Amendment) Regulations, 2018.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009,
 - (1) In regulation 2:
 - (a) In sub-regulation (1) after clause (i) the following clause shall be inserted, namely:-

- “(ia) ‘Acquirer’ has the same meaning as assigned to it in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and who has chosen to make an offer for delisting the company in accordance with regulation 5A of the said Regulations.*

Explanation: Any reference made to the promoter in relation to delisting offer in these regulations shall apply, mutatis mutandis, to the acquirer making a delisting offer.”

- (b) Clause (iii) in sub-regulation (1), shall be substituted with the following clause, namely:-

“(iii) ‘company’ means a company within the meaning of section 2 of the Companies Act, 2013 and includes a body corporate or corporation established under a Central Act, State Act or Provincial Act for the time being in force, whose equity shares are listed on a recognised stock exchange;”

- (c) Clause (iva) of sub-regulation (1) shall be omitted.

- (d) Clause (v) of sub-regulation (1) shall be substituted by the following clause, namely:-

“(v) ‘public shareholders’ mean the holders of equity shares, other than the following:

(a) promoters, promoter group and persons acting in concert with them;

(b) acquirer(s) and persons acting in concert with such acquirer(s)

- (c) *holders of depository receipts issued overseas against equity shares held with a custodian and such custodian holding the equity shares.*”
- (e) In sub-regulation (2), the words, acquirer and public shareholding shall be omitted and after the word “promoter” the words “*promoter group*” shall be inserted.
- (f) In sub-regulation (3), the words and figures “1956 (1 of 1956)” shall be substituted by the words and figures “2013 (18 of 2013)”.
- (2) In clause (b) of regulation 6, the word “would” shall be substituted with the word “do”.
- (3) In regulation 8:
- (a) In the proviso to clause (b) of sub-regulation (1), the words “if and” shall be omitted.
- (b) In clause (a) of sub-regulation (1E), the words “the entities belonging to acquirer or promoter or promoter group” shall be substituted with the following words “*any of the acquirer or promoter or promoter group entity*”.
- (c) Clause (b) of sub-regulation (1E) shall be substituted with the following:
“*any of the acquirer or promoter or promoter group entity or persons acting in concert or their related entities have carried out or not any transaction to facilitate the success of the delisting offer which is in contravention of the provisions of sub-regulation (5) of regulation 4.*”
- (d) In clause (d) of sub-regulation (4), the words “listing agreement” shall be substituted with the following words “*Securities and*”

Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015”.

- (4) In regulation 10:
- (a) In sub-regulation (3), the words ‘thirty working days’ shall be substituted by the words ‘one working day’.
- (b) After sub-regulation (4), the following explanation shall be inserted, namely:-

“Explanation: The Merchant Banker conducting due diligence on behalf of the Company may also act as manager to the Delisting Offer.”

- (5) After sub-regulation (3) of regulation 11, following explanation shall be inserted, namely:-

“Explanation: The cash component of the escrow account may be maintained in an interest bearing account, provided that the merchant banker ensures that the funds are available at the time of making payment to shareholders.”

- (6) After sub-regulation (4) of regulation 12, following explanation shall be inserted, namely:-

“Explanation: An eligible public shareholder may participate in the Delisting Offer and tender bids even if he does not receive the tender offer/offer form. Such shareholder may tender shares in the manner as provided by the Board in this regard.”

- (7) In regulation 14:
- (a) In sub-regulation (3), the following proviso shall be inserted:
“Provided that any holder of depository receipts shall be allowed to participate in the book building process under sub-regulation

(1) after exchanging such depository receipts with the shares of the class that are proposed to be delisted.”

(b) Sub-regulation (4) shall be omitted.

(8) After sub-regulation (2) of regulation 15, the following explanation shall be inserted, namely:-

“Explanation: The reference date for computing the floor price would be the date on which the recognized stock exchange/s were required to be notified of the board meeting in which the delisting proposal would be considered.”

(9) The heading “Right of the promoter not to accept the offer price” shall be substituted with “*Right of the promoter to either make a counter offer or reject the offer*”

(10) In clause (a) of sub-regulation (2) of regulation 16, the word “paragraphs” shall be substituted with the word “*clauses*”.

(11) The following new sub-regulation (1A) may be inserted after sub-regulation (1), in regulation 16:

“ (1A) If the price discovered as per regulation 15 is not acceptable to the acquirer or promoter, the acquirer or promoter can make a counter offer to the public shareholders within two working days of price discovered as per regulation 15, in the manner prescribed by the Board from time to time:

Provided that the counter offer price shall not be less than the book value of the company as certified by the merchant banker.

(12) In regulation 17:

- (a) The existing regulation may be numbered as sub-regulation (1) and the following words may be inserted at the beginning of regulation 17: *“(1) If a counter offer has not been made by the acquirer or promoter in accordance with regulation 16 (1A),*
- (b) In the proviso, the words “this requirement” shall be substituted with the words *“the requirement under clause (b) of sub-regulation (1) of regulation 17”*.
- (c) After the proviso, the following explanation shall be inserted, namely:-

“Explanation (I) –

- a. If the acquirer or the Merchant Banker sends the letter of offer to all the shareholders by registered post or speed post through India Post and is able to provide a detailed account regarding the status of delivery of the letters of offer (whether delivered or not) sent through India Post, the same would be considered as a deemed compliance with the proviso.*
 - b. If the Acquirer and Merchant Banker are unable to deliver the letter of offer to certain shareholders by modes other than speed post or registered post of India Post, efforts should be made to deliver the letter of offer to them by speed post or registered post of India Post. In that case, a detailed account regarding the status of delivery of letter of offer (whether delivered or not) provided from India Post would also be considered as deemed compliance with the proviso.*
- (d) The existing Explanation be numbered as: *“Explanation (II)”*
 - (e) The following new sub-regulation (2) shall be inserted:

“(2) If a counter offer has been made by the acquirer or promoter in accordance with regulation 16 (1A), an offer made under chapter III shall be deemed to be successful only if the post offer promoter shareholding (along with the persons acting in concert with the promoter) taken together with the shares accepted at the counter offer price reaches ninety per cent. of the total issued shares of that class excluding the shares which are held by a custodian and against which depository receipts have been issued overseas.”

- (13) In regulation 18:
- (a) The word “*the*” shall be inserted before the words “closure of the offer”.
 - (b) Clause (iii) shall be omitted.
- (14) In regulation 20, the words “on ascertaining” shall be substituted with the word “*upon*”.
- (15) In sub-regulation (1) of regulation 21, the word ‘atleast’ shall be substituted by the word ‘*minimum*’.
- (16) In regulation 22:
- (a) In sub-regulation (3), the word “making” shall be substituted with the word “*passing*”.
 - (b) In clause (b) of sub-regulation (6), the words ‘and the surrounding circumstances’ shall be omitted.
- (17) In regulation 23:
- (a) Sub-regulations (1) and (2) shall be rearranged as follows:-

“(1) The recognised stock exchange shall form a panel of expert valuers from whom the valuer or valuers shall be appointed for purposes of sub-regulation (2).”

“(2) Where equity shares of a company are delisted by a recognised stock exchange under this Chapter, the recognised stock exchange shall appoint an independent valuer or valuers who shall determine the fair value of the delisted equity shares.”

(b) In sub-regulation 23, the following words shall be inserted after “retaining their shares” and before the explanation:

“, within three months of date of delisting from the recognised stock exchange.”

(18) The existing regulation 24 shall be numbered as sub-regulation (1) and after sub-regulation (1) so numbered, the following sub-regulation shall be inserted, namely:-

“(2) In case of such companies whose fair value is positive:-

(a) such a company and the depositories shall not effect transfer, by way of sale, pledge, etc., of any of the equity shares and corporate benefits like dividend, rights, bonus shares, split, etc. shall be frozen, for all the equity shares, held by the promoters/promoter group till the promoters of such company provide an exit option to the public shareholders in compliance with sub-regulation (3) of regulation 23, as certified by the concerned recognized stock exchange;

(b) the promoters and whole-time directors of the compulsorily delisted company shall also not be eligible to become

directors of any listed company till the exit option as stated in clause (a) above is provided.

- (19) In regulation 25 the words ‘in the form of circulars’ shall be substituted by the words ‘*from time to time*’.
- (20) In sub-regulation (3) of regulation 25A, the words “sub-regulation (3)” shall be substituted by the words “*sub-regulation (2)*”.
- (21) In regulation 26, the proviso shall be omitted.
- (22) In clause (d) of sub-regulation (3) of regulation 27, the words “at least ninety per cent of such public shareholders give their positive consent” shall be substituted by the words “*the public shareholders, irrespective of their numbers, holding ninety percent or more of the public shareholding give their consent*”.
- (23) In Chapter VIII, the heading “Transitional provisions” shall be substituted with “*Repeal and Savings*”.
- (24) In sub-regulation (2) of regulation 31:
- (a) the words “Delisting of Equity” shall be substituted with the words “*Delisting of Equity Shares*”
 - (b) the words “by the Securities and Exchange Board of India (Delisting of Equity Shares) (Amendment) Regulations, 2015” shall be substituted with the words “*from time to time*”.

Sd/

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**AJAY TYAGI
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA**

Footnotes:

1. The SEBI (Delisting of Equity Shares) Regulations, 2009, were published in the Gazette of India on 10 June, 2009 vide No. LAD-NRO/GN/2009-2010/09/165992.

2. The Principal Regulations were subsequently amended on:
 - a) October 8, 2013 by the SEBI (Listing of Specified Securities on Institutional Trading Platform) Regulations, 2013 vide No. LAD-NRO/GN/2013-14/28/6720.
 - b) March 24, 2015 by SEBI (Delisting of Equity Shares) (Amendment) Regulations, 2015 vide No. LAD-NRO/GN/2014-15/27/541.
 - c) August 14, 2015 by SEBI (Delisting of Equity Shares) (Second Amendment) Regulations, 2015 vide No. SEBI/LAD-NRO/GN/2015-16/010.
 - d) January 12, 2016 SEBI (Delisting of Equity Shares) (Amendment) Regulations, 2016 vide No. SEBI/LAD-NRO/GN/2015-16/30.
 - e) March 6, 2017 SEBI (Payment of fees and mode of payment) (Amendment) Regulations, 2017 vide No. SEBI/LAD-NRO/GN/2016-17/037.
 - f) May 31, 2018 by SEBI (Delisting of Equity Shares) (Amendment) Regulations, 2018 vide No. SEBI/LAD-NRO/GN/2018/23.

Annexure- II

Discussion Paper on Delisting of Equity Shares Review of “Reverse Book Building Process” is available on SEBI website.