

# Capital Markets Hotline

September 30, 2024

## VOLUNTARY DELISTING: A LOOK AT THE NEW AMENDMENTS

- In the recent past, voluntary delisting offers have had limited success due to various reasons such as difficulty in procuring the required public shareholder interest, speculative bidding and artificial inflation of the exit prices.
- On September 25, 2024, SEBI notified the Securities and Exchange Board of India (Delisting of Equity Shares) (Amendment) Regulations, 2024 with an aim to provide acquirers with more flexibility and options in undertaking voluntary delisting offers.
- The major amendments include introduction of fixed price option, change in manner of determination of counter offer price and floor price, change in determination of reference date, modification to the counter offer thresholds and introduction of framework on delisting of an investment holding company.

### INTRODUCTION

An Indian listed company's equity shares can be delisted either compulsorily or voluntarily. Compulsory delisting occurs when a recognised stock exchange makes a reasoned order based on any of the grounds prescribed in the rules made under the Securities Contracts (Regulation) Act, 1956 after the non-compliant company is given an opportunity to be heard.

Voluntary delisting, on the other hand, is a matter of choice wherein an acquirer – usually the company's promoter – can choose to delist the company's equity shares from a recognised stock exchange on which they are listed. Unless, after the delisting, the company's equity shares will remain listed on a recognised stock exchange having nationwide trading terminals, the Securities and Exchange Board of India ("SEBI") mandates the acquirer to follow an elaborate and time-consuming process that entails providing an exit opportunity to the company's public shareholders in the manner stipulated under the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021 ("Delisting Regulations").

### THE DELISTING AMENDMENTS

In the recent past, voluntary delisting offers have had limited success due to various reasons such as difficulty in procuring the required public shareholder interest, speculative bidding and artificial inflation of the exit price making the delisting offer expensive and impracticable. In an attempt to resolve these issues, SEBI constituted a subgroup of its Primary Market Advisory Committee ("PMAC") on December 18, 2022 to review the existing voluntary delisting framework. Subsequently, on August 14, 2023, SEBI issued a consultation paper<sup>1</sup> inviting comments from the public. Based on the comments received and the PMAC's recommendations, SEBI, in its meeting held on June 27, 2024, approved certain amendments to the existing voluntary delisting framework.<sup>2</sup> Finally, on September 25, 2024, SEBI notified the Securities and Exchange Board of India (Delisting of Equity Shares) (Amendment) Regulations, 2024 ("Delisting Amendments").<sup>3</sup>

The Delisting Amendments aim to provide acquirers with more flexibility and options in undertaking voluntary delisting offers. The amendments are effective from September 25, 2024, and apply to any delisting offer whose initial public announcement is made on or after September 25, 2024. Acquirers also have the option to make a delisting offer under the pre-amended delisting regulations for a period of 60 days from September 25, 2024.

|   | Current Framework   | Reason for Amendment  | Delisting Amendments  | Comments  |
|---|---|---|---|---|
| <b>Alternative to Reverse Book Building ("RBB") Process</b> | Once the public announcement of a voluntary delisting offer was made, the actual exit price ( <i>commonly referred to as the 'discovered price'</i> ) at which the public shareholders could sell the equity shares held by | After a voluntary delisting offer is publicly announced, there is usually increased volatility and increased trading activity in the company's scrip since the exit price is determined through the RBB | For publicly listed companies whose equity shares are frequently traded <sup>4</sup> , a fixed price delisting offer mechanism has been introduced as an alternative to the RBB process. The fixed price offered must be at least 15% more than the floor price. A fixed price delisting offer is deemed to be successful and the acquirer must accept the equity shares tendered by the public shareholders if the | The fixed price alternative will provide greater deal and price certainty since it will eliminate the speculative bidding and artificially inflated exit price issues associated with |

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them was determined through an RBB process. The process permitted the shareholders to place their price bid above the floor price or a higher indicative price offered by the acquirer.

process which is vulnerable to speculative bidding. Hence, a group of bidders operating in concert with each other could jack up the exit price making the delisting offer expensive and impracticable.

acquirer's post offer shareholding along with the tendered shares reaches 90% of the issued share capital of that class<sup>5</sup>.

the RBB process. Moreover, a voluntary delisting offer based on a fixed price will also allow the acquirer to arrange funds for the offer in advance.

**Counter Offer Thresholds**

The acquirer could make a counter offer in an RBB process only if the aggregate post offer shareholding of the acquirer along with the shares tendered by the public shareholders reaches 90% of the issued share capital.

Even though a majority of the public shareholders may be in favour of the delisting offer, an acquirer is unable to make a counter offer only because the required 90% threshold is not reached.

The acquirer can make a counter offer if the post offer shareholding of the acquirer along with the shares tendered by the public shareholders reaches 75% of the issued share capital, provided that at least 50% of the public shareholding has been tendered.

The revision in the threshold to make a counter offer from 90% to 75% will potentially increase the likelihood of success of voluntary delisting offers that otherwise failed because of the acquirer's inability to make a counter offer.

**Counter Offer Price**

The counter offer price could not be lower than the book value of the company as certified by the manager to the delisting offer.

There is no volume weighted average linked price mechanism to determine the counter offer price.

The counter offer price cannot be less than the higher of: (a) the volume weighted average price of the shares tendered/offered in the RBB process<sup>6</sup>; and (b) indicative price, if any.

The parameters for determining the counter offer price will safeguard public shareholder interest and at the same time allow the acquirer to make a meaningful counter offer.

**Determination of Floor Price**

The floor price was to be computed in accordance with Regulation 8 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("Takeover Regulations").

The determination of the floor price under the Takeover Regulations is in the open offer context wherein the company will continue to remain listed. However, since the company ceases to remain listed post delisting, the fair market value of the assets of the company needs to be taken into account while determining the floor price.

The floor price cannot be less than the higher of (a) volume weighted average price during 52 weeks prior to the reference date or the highest price during 26 weeks prior to the reference date that, in either case, is paid or payable by the acquirer along with persons acting in concert; (b) adjusted book value based on consolidated financials determined by an independent registered valuer ("Valuer"); (c) volume weighted average market price of 60 trading days prior to the reference date on the stock exchange with maximum trading volume if the shares are frequently traded; and (d) the price determined by a Valuer based on various valuation parameters if the shares are infrequently traded.

The floor price is no longer computed under the Takeover Regulations. Further, the inclusion of the adjusted book value certified by a Valuer as an added parameter provides a more accurate and fair valuation of the company's equity value.

**Reference Date for Determination of Floor Price**

The reference date to determine the floor price was the date on which the concerned stock exchange was to be notified of the meeting in which the delisting proposal was to be

After the voluntary delisting offer is publicly announced, the company has 21 days to obtain board approval. During this period, there is a potential risk of unusual

The reference date is linked to the date of the initial public announcement by the acquirer. If the announcement is made during market hours, the date of such announcement is treated as the reference date and if it is made after market hours, then the next day will be the reference date.

Preponing the reference date to the initial public announcement date will reduce speculative activity and align the floor price more

## Delisting of an Investment Holding Company ("IHC")

|   |  |   |
|---|--|---|
| considered.   | trading activity in the company's scrip.   | close to the prevailing market conditions.  |
| An IHC is a company which holds investments in listed or unlisted companies or holds assets other than such investments. Currently, there is no separate framework for delisting of IHCs. | The equity shares of a listed IHC usually trade at a discount compared to the underlying value of its investments in listed and unlisted companies. Therefore, the floor price determined in accordance with the Delisting Regulations may not capture the real intrinsic value of the underlying investments. | An IHC can avail of an alternate delisting framework wherein the shares of the underlying listed companies held by the IHC will be transferred to the IHC's public shareholders proportionately after making cash payments for the underlying shares or investments in unlisted companies and other assets. Thereafter, the public shareholding in the IHC will be extinguished by a scheme of selective capital reduction under Section 66 of the Companies Act, 2013. This option, however, is available only to a listed IHC having at least 75% of its overall fair value comprising direct investments in equity shares of other listed companies. |

## CONCLUSION

The Delisting Amendments provide acquirers with more flexibility and options in undertaking voluntary delisting offers under the Delisting Regulations. The inclusion of a fixed price option coupled with a revision in the reference date for determining the floor price will help mitigate volatility and speculative activities associated with the RBB process. Furthermore, the reduced threshold for making a counter offer in the RBB process will alleviate some of the issues plagued by unsuccessful delisting offers in the past. Overall, the amendments will make the delisting process more predictable and allow acquirers to give a meaningful exit opportunity to the public shareholders.

- Sapna Kataria, Vasavi Kaparathi and Viral Mehta

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