

SEBI's Amendments to Voluntary Delisting Regulations

The Securities and Exchange Board of India (“SEBI”) has in its meeting held on June 27, 2024 approved significant amendments to the voluntary delisting norms under the SEBI (Delisting of Equity Shares) Regulations, 2021 (“Delisting Regulations”).

We are pleased to provide to you a summary of the proposals that have been approved by SEBI:

1. Introduction of Fixed Price process: SEBI has introduced a ‘fixed price’ delisting approach for companies whose shares are frequently traded. This will be an alternative to the present Reverse Book Building (“RBB”) process. Under the ‘fixed price’ approach, the acquirer can specify the price at which it proposes to delist the company upfront. The delisting price must be at a premium of at least 15% to the ‘floor price’ determined in accordance with the Delisting Regulations. The delisting is considered successful if the shares tendered by the public shareholders results in the acquirer’s post-offer shareholding being at least 90% of the issued share capital. This mechanism offers far more price certainty to an acquirer compared to the current RBB process.

2. Modification of the Counter-Offer mechanism in case of delisting through RBB process:

(i) Under the current framework, an acquirer can only make a counter-offer to the price discovered through the RBB process if, the acquirer’s post-offer shareholding at the RBB price constitutes 90% of the company’s issued share capital. SEBI has now permitted the acquirer to make a counter-offer, if the acquirer’s post-offer shareholding at the RBB price is 75% of the company’s issued share capital, provided that at least 50% of the public shareholding has been tendered in the RBB process.

(ii) The Delisting Regulations currently specify that the counter-offer price should not be less than the company’s book value (as certified by the manager to the delisting offer). To ensure that the counter-offer price reflects the expectations of the public, SEBI has now indicated that the counter-offer price shall not be less than the higher of the volume weighted average price (“VWAP”) of the shares tendered/offered during the RBB process and the indicative price, if any, offered by the acquirer (indicative price is a price that may be offered by the acquirer upfront, at which it is willing to delist the company).

3. ‘Adjusted Book Value’ for determining floor price: The Delisting Regulations provide a minimum acquisition price for a delisting offer (i.e. the ‘floor price’). The floor price is currently calculated based on the parameters in the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, viz. VWAP of the shares acquired by the acquirer during 52 weeks preceding the reference date, volume weighted average market price of 60 days preceding the reference date etc. SEBI has now introduced an additional parameter of ‘adjusted book value’ for determining the floor price of frequently and infrequently traded shares, with a view to taking the fair market value of the assets of the company into consideration while determining the floor price. The floor price shall be the highest of the price determined basis the parameters specified above and the Adjusted Book Value of the company.

4. Modification of ‘reference date’ for computing floor price: The ‘floor price’ under the Delisting Regulations is calculated based on a ‘reference date’. The ‘reference date’ presently prescribed under the Delisting Regulations is the date on which the stock exchanges are required to be notified of the

board meeting in which the delisting proposal was considered and approved. This has now been changed to the date of the 'initial public announcement' for the delisting offer. This helps ensure that the floor price is calculated based on an undisturbed price, as of the date when the information relating to the proposed delisting offer is first disclosed to the public.

- 5. Delisting framework for listed Investment Holding Companies (IHC):** SEBI has introduced an alternate delisting mechanism for listed IHCs that have at least 75% of their fair value (net of liabilities) comprising of direct investments in equity shares of other listed companies: (i) transfer of underlying shares held by the IHC in other listed companies to public shareholders, in proportion to their shareholding in the IHC; (ii) cash payments to the public shareholders of the IHC

in exchange for the underlying shares or investments made by such IHC in unlisted companies and other assets; and (iii) subsequent extinguishment of public shareholding of the IHC pursuant to a scheme for selective reduction of capital. The IHC is delisted once the entire public shareholding is extinguished.

While these proposals have been approved by SEBI in its Board meeting, these changes will come into effect only once amendments to the relevant regulations are notified. These regulatory changes (especially around the fixed price delisting), once notified, will have a far-reaching impact and are likely to result in more successful delisting offers. It would be interesting to watch when and the form in which SEBI notifies the actual amendments to give effect to these regulatory changes.

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