CAPITAL MARKETS

N. A. SHAH BULLETIN

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EXECUTIVE SUMMARY

- SEBI has introduced an optional pricing mechanism under the preferential issue by a company whose shares are frequently traded
- SEBI has amended the Takeover Regulations, in case of indirect acquisition, the acquirer shall deposit 100% of the consideration payable in the open offer in the escrow account
- SEBI has permitted write off of shares by FPIs where the FPIs are unable to sell such shares
- SEBI has stipulated timelines for issue and listing of securities issued on private placement basis

1. Introduction of optional pricing mechanism for Preferential Issue

a. SEBI has introduced optional pricing mechanism in case of preferential issue by company whose shares are frequently traded. The company can opt for either of the option for computing the price of equity shares to be allotted pursuant to the preferential issue.

Existing Mechanism	Optional Mechanism
The price of the equity shares shall not be less than the higher of: i. The price at which equity shares were issued during IPO or value per share arrived under scheme of merger pursuant to which shares were listed; or ii. The average weekly high low of the volume weighted average price during the period the equity shares have been listed preceding the relevant date; or iii. The average weekly high low of the volume weighted average price during the 2 weeks preceding the relevant date	The price of the equity shares shall not be less than the higher of: i. The average weekly high low of the volume weighted average price during the 12 weeks preceding the relevant date; or ii. The average weekly high low of the volume weighted average price during the 2 weeks preceding the relevant date

The securities issued under this optional pricing shall be locked-in for a period of 3 years. Further the said pricing methodology shall be availed in case of allotment made between 1st July 2020 and 31st December, 2020.

2. Amendment in SAST Regulations

a. <u>Escrow Regulations for Indirect Acquisition</u>

i. Under the extant regulations, the acquirer has to create an escrow account within 2 working days prior to the date of making public announcement of open offer and deposit the prescribed escrow amount which is calculated based on the quantum of the consideration payable for both direct as well as indirect acquisitions. A new proviso has been inserted whereby, in case of indirect acquisition where conditions of proportion of net assets / sales turnover / market capitalization of target company to that of the entity being acquired as per Regulation 5(2) are not satisfied, the acquirer shall deposit 100% of the consideration payable in the open offer in the escrow account.

ii. Under the extant mechanism, the escrow account can be created through cash deposits, bank guarantees or deposit of freely traded securities into the account. For the purpose of indirect acquisitions where conditions of Regulation 5(2) as mentioned in point (i) above are not satisfied, the deposit of securities shall not be permitted for creation of escrow under the amended regulations.

b. <u>Delay in Payment</u>
In case of failure to make the payment to the shareholders who has accepted the open offer within the prescribed period, the acquirer shall pay interest @10% p.a. The board may grant waiver provided the delay is not attributable to any act of omission/commission of the acquirer.

c. <u>Acquisition of Shares by Acquirer</u>
As per erstwhile provision, the acquirer was allowed to acquire shares of target company through preferential issue or stock exchange settlement process otherwise than bulk / block deal before completion of the open offer subject to certain conditions. Now SEBI has permitted the acquirer to utilize the bulk or block deal mechanism subject to other conditions.

3. Extension of exemption to transactions under trading window restrictions

Under the Prohibition of Insider Trading Regulations, SEBI has specified certain transactions which are exempted from the trading window restrictions. Now the exemption has been extended to the transactions relating to offer for sale and rights entitlement carried out in accordance with the SEBI framework.

4. Extension of relaxations under Takeover, Buyback and ICDR Regulations

Relaxations granted by SEBI relating to procedural matters under Takeover, Buyback and ICDR Regulations are extended up to December 31, 2020.

5. Offer of Physical shares in buyback, open offers and delisting

The extant regulations provide that except in case of transmission or transposition of securities, requests for effecting transfer of securities shall not be processed unless the securities are held in the dematerialized form with a depository.

In this regard, SEBI has issued a clarification that shareholders holding securities in physical form are allowed to tender shares in open offers, buy-backs through tender offer route and exit offers in case of voluntary or compulsory delisting. However, such tendering shall be as per the provisions of respective regulations.

6. Write off of shares held by FPIs

Under operational guidelines, SEBI permits FPIs who want to surrender their registration, to write-off their investment in securities and shares of companies which are unlisted/illiquid/suspended/delisted. Now, SEBI has further permitted such FPIs to write off their investment in securities and shares of companies which they are unable to sell.

7. Timeline for issue of securities issued on a private placement basis

SEBI has stipulated the following timelines in case of listing of securities issued on a private placement basis:

<table>
<tr><th>Details of Activities</th><th>Due Date for completion</th></tr>
<tr><td>Closure of issue</td><td>T</td></tr>
<tr><td>Receipt of funds</td><td rowspan="2">T+2 trading day</td></tr>
<tr><td>Allotment of securities</td></tr>
<tr><td>Issue to make listing application to Stock Exchange</td><td rowspan="2">T+4 trading day</td></tr>
<tr><td>Listing permission from Stock Exchange</td></tr>
</table>

In case of delay in listing beyond the stipulated timelines, the issuer shall:

- pay penal interest of 1% p.a. over the coupon rate for the period of delay (date of allotment to date of listing) to the investor

- be permitted to utilize the issue proceeds of its subsequent two privately placed issuances of securities only after receiving final listing approval from Stock Exchanges

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