CAPITAL MARKETS

N. A. SHAH BULLETIN

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EXECUTIVE SUMMARY

- SEBI has permitted off market transfer of securities by FPIs to ease fund relocation to IFSC.

- SEBI has relaxed the minimum vesting period requirement in respect of ESOPs and SARs of listed companies in case of death of employee.

- SEBI has allowed AIFs to invest simultaneously in units of other AIFs and directly in securities of investee companies. Also, it has provided certain clarifications with respect to investment committee to be set up by the Manager of the AIF and applicability of code of conduct on KMP of the AIF.

- SEBI has issued the SEBI (Delisting of Equity Shares) Regulations, 2021 in supersession the erstwhile SEBI (Delisting of Equity Shares) Regulations, 2009, to improve and streamline the delisting process.

1. **Off-market transfer of securities by FPI**

    a. The Finance Act 2021 provides tax incentives to relation of foreign funds to International Financial Services Centre (IFSC). In order to facilitate such relocation, a one-time off-market transfer of securities by FPI to the resultant fund in the IFSC has been permitted.

    b. Such relocation request shall imply that FPI has deemed to have applied for surrender of its registration.

    c. The off-market transfer shall be allowed without prejudice to any provisions of tax laws and FEMA.

2. **Relaxation in minimum vesting period in case of death of employees**

    a. With an aim to provide relief to families of deceased employees of listed companies amid the coronavirus pandemic, SEBI has decided that the minimum vesting period of one year for Employee Stock Options ("ESOPs") and Stock Appreciation Rights ("SARs") shall not apply in case of death of an employee (for any reason) of a listed company.

    b. All the ESOPs and SARs granted to such an employee shall vest with his/her legal heir or nominee on the date of death of the employee.

    c. This relaxation is applicable to all such employees who have deceased on or after April 01, 2020.

3. **Key Amendments to SEBI (AIF) Regulations, 2012**

    a. <u>Investment by AIFs in units of other AIFs</u>
        i. Existing Alternative Investment Funds (AIFs) may invest in units of other AIFs simultaneously with direct investment in securities of investee companies subject to appropriate disclosures in the Private Placement Memorandum ("PPM") and consent of at least two-thirds of unit holders by value.
        ii. The disclosure in PPMs shall contain proposed allocation of investment in other AIFs, portion of fees and expenses attributed to such investments.

b. Applicability of code of conduct on key managerial personnel
   i. The key manageral personnel (KMP) shall abide by the code of conduct.
   ii. KMP shall mean:
      – Members of key investment team as disclosed in the PPM
      – Employees involved in decision making of the AIF
      – Any other person declared as KMP by the AIF
   iii. AIFs will have to disclose the names of all KMP of the AIFs and manager in their PPMs. Any change in KMP shall be intimated to the investors and the Board.

c. Investment Commiittee
   In the investment committee constituted by the Manager, consent of 75% of investors of the AIF by value may not be required for change in ex-officio external members.

4. Introduction of new Delisting Regulations

The SEBI has issued SEBI (Delisting of Equity Shares) Regulations, 2021 thereby superseding the erstwhile SEBI (Delisting of Equity Shares) Regulations, 2009. SEBI introduced the new regulations to streamline and strengthen the process to be followed for delisting.

The key modifications brought about by the new delisting regulations are as under:

a. Disclosure by Promoter

   To make information available to the public without any time gap of such an important event, the promoter shall directly make an intial public announcement to the stock exchanges of its intention to delist the Company.

b. Timelines
   i. The timelines for various stages in the delisting process have been revised, with a view to complete the process in a more efficient way:

Event	Timline
Board resolution	Within 21 days from promoter intimation
Special resolution	Within 45 days from the date of approval of the board

Opening of escrow account	Within 7 working days from the date of shareholder approval
Filing of application for in-principle approval from stock exchange	Within 15 working days from the the date of shareholder approval
Outcome of Reverse Book Building ('RBB')	To be announced within 2 hours from the closure of the bidding period.
Release of shares in case of failure of offer	In case of failure of offer due to: • 90% of the shares are not tendered: on the date of disclosure of the outcome of the RBB process • Discovered price being rejected by acquirer: on the date of making public announcement for the failure of the delisting
Payment on successful delisting	• Discovered price same as floor price: payment through secondary market settlement mechanism • Discovered price higher than floor price: within 5 working days from the date of making the payment to the public shareholders
Final application to the stock exchanges after successful delisting	Within 5 working days from the date of making the payment to the public shareholders

ii. The five-year cooling period for relisting after voluntary delisting has been shortened to three years. Furthermore, if a delisting offer fails, the Acquirer will be barred from making another delisting offer for six months.

iii. Voluntary delisting will be permitted only if six months have elapsed from completion of last buyback or preferential allotment.

c. Due diligence

With an intention to avoid conflict of interest, the Board must appoint an independent peer reviewed company secretary to conduct the necessary due diligence.

d. Opening of escrow account

The Acquirer must now deposit 25% of the total consideration (as opposed to 100% previously) in the escrow account. Prior to making the detailed public announcement, the remaining 75% must be deposited.

e. Indicative price

While the regulations do not place a cap on the indicative price, it has now been defined to mean a price being higher than the floor price. The public announcement shall reveal an indicative price at which the company is willing to receive bids in the detailed public announcement.

f. Introduction of special provisions for delisting of certain category of companies:

i. Delisting of subsidiary company through a scheme of arrangement

Many provisions of the regulations shall not be applicale if:

- listed holding company and the subsidiary company are in the same line of business; and
- the subsidiary shall be a listed subsidiary of a listed holding company for a period of 3 years.

ii. Delisting of companies listed on the innovators growth platform

Instead of the requirement of 90% criteria, the provisions require that total shares tendered reach 75% of the total issued shares and that at least 50% shares of the public shareholders as on date of the board meeting in which such delisting is approved are tendered and accepted.

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