

**Discussion Paper on 'Review of Delisting Regulations'**

**Background:**

1. SEBI vide notification dated June 10, 2009 notified the SEBI (Delisting of Equity Shares) Regulations, 2009 ("Delisting Regulations"), thereby superseding the earlier SEBI (Delisting of Securities) Guidelines, 2003. Delisting Regulations were framed after extensive consultations with various market participants and investor associations in order to safeguard the interest of investors.
2. Subsequently, SEBI received several representations from market participants including stock exchanges, industry representatives and investor associations, highlighting the challenges faced in delisting process and suggestions to address the concerns.
3. Market participants have pointed out issues in the delisting process both in the cases where the delisting offer has succeeded or failed. In case of successful delisting offers, a few market participants have apprehended that the success of the offer was due to tacit understanding between promoter(s) and a set of investors. Similarly, when the delisting offer fails, a few market participants have raised concerns that the discovered price through reverse book building process has been unduly influenced by a set of investors who are mainly speculators.
4. From the perspective of acquirers, the issues highlighted are summarised as under:
  - 4.1. **Reverse Book Building (RBB) Process:** It has been argued that the RBB process, which is supposed to engender an investor friendly mechanism for price discovery and to aid in determination of a fair exit value for minority / public shareholders, is not fully achieving the objective. The mechanism is not

necessarily leading to genuine discovery of price. A few concerns raised in relation to the RBB process as pointed out the by market participants are as under:

- i. The minority / public shareholders holding significant stake exercise disproportionate powers in determining the exit price and thereby, affect the interest of the larger set of minority / public shareholders.
- ii. Some of the bids are placed at a price which is much higher than the floor price determined as per the said Regulations. These bids are generally placed by some investors who have invested in the company close to the delisting process with a view to make unreasonably large gains in the process. Such bids destabilize the delisting process and adversely affect the interest of other minority / public shareholders who have undertaken the risk of investing with a longer time horizon and are denied a fair exit.
- iii. A tacit understanding between a few market participants in the price discovery process may work against the interest of other minority / interest shareholders intending to participate in delisting process.

**4.2. Lack of sufficient demand:** Retail investors find it difficult to comprehend the RBB process resulting in lack of participation by the retail investors. They are generally not aware of the bidding price sensitivities and end up bidding at high premiums, thus, making the price uneconomical for the acquirer. Further, tendering of shares in the delisting process is treated akin to off-market transactions and consequently, the tendering shareholders do not get the benefit of lower capital gains tax. These factors result in lack of participation in the delisting process.

**4.3. Time consuming process:** The sequential process including the requirement for obtaining shareholders' approval increases the timeline of the delisting

process. This enables some investors to build significant positions in the company's stock and influence the delisting process.

5. Certain concerns relating to the delisting process have also been raised from the perspective of investors. Market participants have raised the concern that the acquirers are finding ways to side-step the said Regulations. There are apprehensions that either through parking their own shares by way of offer for sale (OFS) / Institutional Placement Programme (IPP) or through informal arrangements with a set of investors, they acquire such shares at a predetermined price and successfully delist the company at a price favorable to them. This adversely impacts true price discovery.

**Need for review:**

6. Taking note of the above issues and concerns which underpin the need to revisit the present delisting process, SEBI decided to examine and review the present conditions for the delisting of securities of companies.
7. Accordingly, suggestions / comments were examined and placed before the Primary Market Advisory Committee (PMAC). Subsequently, a discussion paper has been prepared incorporating the various concerns raised and suggestions to address the same and is **Annexed herewith**.

**Public comments:**

8. Considering the importance of delisting of companies, public comments on the discussion paper are solicited. Specific comments/suggestions as per the format given below would be highly appreciated.

<b>Name of entity / person / intermediary:</b>			
<b>Name of organization (if applicable) / investor:</b>			
<b>Sr.No.</b>	<b>Pertains to serial number -- of discussion paper</b>	<b>Proposed / suggested changes</b>	<b>Rationale</b>

9. Such comments may please be e-mailed on or before May 30, 2014, to [delisting@sebi.gov.in](mailto:delisting@sebi.gov.in) or sent, by post, to:-

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ANNEXURE TO -  
DISCUSSION PAPER -  
REVIEW OF DELISTING  
REGULATIONS

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May 09, 2014

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## A. BRIEF HISTORY: THE EVOLUTION OF DELISTING REGULATIONS

1. In 1979, vide circular No. F6/9/SE/78 dated June 28, 1979 issued by the Ministry of Finance, delisting of companies was permitted subject to certain criteria being satisfied by the concerned company. Evolution and modification of these guidelines since then has been the outcome of a constant endeavor to enhance transparency of the process and provide fair opportunity to public shareholders.
  2. SEBI vide circular dated April 29, 1998 laid down a framework for voluntary or compulsory delisting of securities from the Stock Exchanges. The circular laid down conditions like requirement of shareholder approval through a special resolution and providing exit opportunity to all the minority shareholders at a price higher than or equal to a floor price determined as the weighted average of the traded price of the security in the preceding six months at the stock exchange on which the securities are listed and where the highest volume of the securities was traded. The price to be offered was fixed by the acquirer and depending on shareholders accepting the offered price and acquirer crossing a particular threshold of shareholding, the company could be delisted.
  3. Subsequently, SEBI came out with a more elaborate framework vide SEBI (Delisting of Securities) Guidelines, 2003 where the concept of price fixation was changed from fixed price announced by the acquirer to a reverse book built price determined by the existing public shareholders.
  4. Thereafter, SEBI (Delisting of Equity Shares) Regulations, 2009 ("the said Regulations") was notified on June 10, 2009, thereby superseding the SEBI (Delisting of Securities) Guidelines, 2003.
- B. Key changes brought about in the said Regulations were the new thresholds for delisting offer, approval of delisting proposal by the minority shareholders and determining success or failure of the delisting proposal based on the exit price determined under the revised reverse book building process.

## REASONS FOR GOING PRIVATE

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5. The reasons for delisting are varied:
  - i. For smaller, undervalued companies, maintaining a listing status entails various costs which may no longer be justifiable. .
  - ii. For other companies, maintaining a listing status involves various ongoing costs relating to financial reporting requirements, ad-hoc disclosures, investor relations and the increased demands on management to develop a good relationship with analysts and investors.
  - iii. Transparency and disclosure obligations of an unlisted company are comparatively less compared to a listed company.
  - iv. **Lenient FDI norms and removal of sectoral caps:** In the past, foreign companies eager to set up their shops in India had restrictions to operate alone. They had to adhere to the Foreign Direct Investment (FDI) policy that had an upper cap on the maximum ownership by a foreign entity. They could not have owned 100% of the business entity in India. This requirement led many foreign companies to list their subsidiary in India. As a result of economic liberalisation in the country, FDI policy has undergone a sea change and MNCs are now permitted to wholly own their subsidiaries except in few critical sectors. Therefore, the compulsion of FDI policy that had made the MNCs to list is no longer applicable.
  
6. A delisting, on the other hand, provides strategic and financial freedom:
  - i. long-term strategic planning is facilitated as short-term considerations of yields become less important;
  - ii. restructurings may be carried out with less public attention; and
  - iii. In the event of takeover by a strategic investor, a planned consolidation or re-organisation can be effected more easily.

## C. ANALYSIS OF PAST DELISTING OFFERS:

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7. The overall delisting activity has gone down considerably after the introduction of the said Regulations . A total of 38 offers have been made during the period between the introduction of the said Regulations and March' 2014. Key statistics pertaining to all these 38 offers are as under:



Sr No.	Company	Promoter holding	Offer Size in INR Cr.	Floor Price	Discovered/ Exit Price	Premium	Successful
1	Rhodia Specialty Chemicals India	91.33	35.13	442.64	1200	171%	Y
2	Reliance Broadcast Network Ltd	74.95	139.31	46.47	70	51%	Y
3	ARI Consolidated Investments Ltd	74.68	4.31	2750	2750	0%	Y
4	Cable Corporation Of India Ltd	74.99	36.73	19	19	0%	Y
5	Fresenius Kabi Oncology Ltd	81	405.85	116.1	135	16%	Y
6	DENSO (INDIA) LTD	73.46	107.27	59.7	145	143%	Y
7	Mangalam Ventures Limited	92.38	1.42	60	60	0%	Y
8	Jolly Board Limited	89.89	45.98	350	1000	186%	Y
9	Fairfield Atlas Company Limited	93.74	41.92	135.82	245	80%	Y
10	Chettinad Cement Corporation	88.44	317.98	540	720	33%	Y
11	Elcid Investments Limited	74.88	57.56	11,455	11,455	0%	N
12	Indo Tech Transformers Limited	74.35	68.11	106.4	250	135%	N
13	Amrit Banaspati Company Ltd	74.23	28.46	142.5	150	5%	Y
14	APW President Systems Ltd	75	37.8	164.3	250	52%	N
15	Ratnabali Capital Markets Ltd	74.98	15.62	110.84	120	8%	Y
16	Ricoh India Limited	73.6	136.47	53.79	130	142%	N
17	Saint-Gobain Sekurit India Ltd	85.77	116.7	29.49	90	205%	N
18	Chemplast Sanmar Limited	74.85	299.89	4.51	15	233%	Y
19	Patni Computer Systems Ltd	79.99	1,169.85	356.74	520	46%	Y
20	India Securities Limited	74.98	1,325.86	56	60.5	8%	Y
21	Alfa Laval (India) Limited	88.77	816.08	2,045	4,000	96%	Y
22	Exedy India Limited	93.94	12.74	141.36	350	148%	Y
23	Carol Info Services Limited	63.73	209.74	106	165	56%	Y
24	UTV Software Communications	70.04	1,343.74	835.03	1,100	32%	Y
25	Jhaveri Flexo India Ltd	74.99	16.05	25.5	25.5	0%	Y
26	SCIL Ventures Limited	74.82	9.91	123	123	0%	Y
27	Atlas Copco (India) Limited	83.77	1,007.11	1426	2,750	93%	Y
28	Sparsh BPO Services Limited	74.94	44.51	68.6	110	60%	Y
29	BOC India Limited	89.48	538.56	225.29	600	166%	N
30	Nirma Limited	77.17	944.49	218	260	19%	Y
31	Shakti Met-Dor Ltd	56.07	23.59	195	195	0%	Y
32	Sulzer India Ltd	80.03	81.29	855	1180	38%	Y
33	Goodyear India Ltd	74	203.91	194	340	75%	N
34	Suashish Diamonds Ltd	89.43	70.22	220	320	45%	N
35	HSBC InvestDirect India Limited	92.89	200.73	124	400	223%	Y
36	Micro Inks Limited	75	397.95	477.94	640	34%	Y
37	Elantas Beck India Ltd	88.55	54.44	219.1	600	174%	N
38	Vinay Cements Ltd	75	21.29	40.41	45	11%	Y

Source: [www.bseindia.com](http://www.bseindia.com)

Out of the above 38 offers, 29 offers were successful. Amongst 9 unsuccessful offers, in case of 7 offers, the number of shares tendered were less than the number required under the said Regulations. In the remaining 2 offers, acquirer rejected the discovered price.

## OFFER SIZE

8. Given below is the year-wise segregation of number of delisting offers based on offer size. In most of the cases the offer size is less than INR 50 crores.

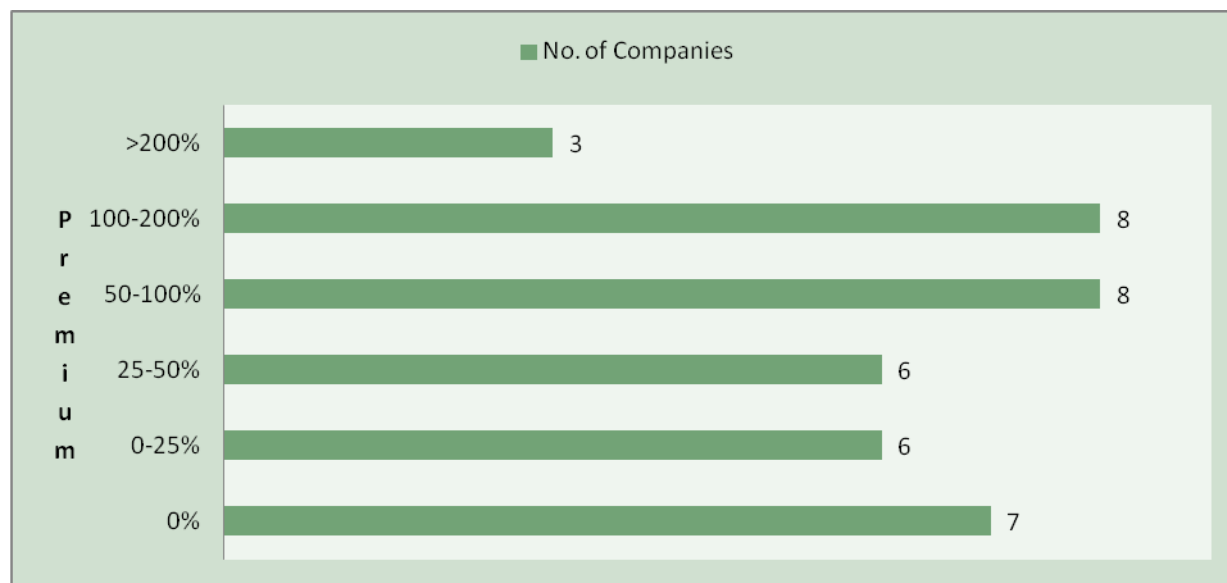
Year	0-50 Cr	50-200 Cr.	200-500 Cr.	>500 Cr.	Total
2009	1				1
2010	1	3	3		7
2011	3			3	6
2012	2	2	2	4	10
2013	6	3	2		11
2014	2	1			3
<b>Total</b>	<b>15</b>	<b>9</b>	<b>7</b>	<b>7</b>	<b>38</b>

9. Further, given below is the size-wise segregation of successful delisting offers. As it can be seen from the same, a greater proportion of delisting offers with offer size either being less than INR 50 crores on one extreme or more than INR 200 crores on the other extreme have been successful.



## PREMIUM PAID:

10. Out of 38 companies, discovered / exit price in case of 7 companies was equal to the floor price. However, in case of 11 companies, premium in the discovered price was more than 100%. Premium is the price differential of discovered/exit price over and above the floor price.



11. Below is the comparison of premium to the floor price in successful and unsuccessful delisting offers. The average premium taking into account all the 38 delisting offers was more than 70%. In the delisting offer of HSBC Investdirect (India), the discovered price was INR 400 compared to floor price of INR 124, which is a premium of 223%. In case of successful offers, average premium paid is 62% which is less than the average premium for all the offers. For unsuccessful offers, average premium demanded was more than 100%.

Premium paid	All 38 offers	28 successful offers	10 unsuccessful offers
Average	73%	62%	111%
Highest	223%	223%	205%
Lowest	0%	0%	0%

## PROMOTER HOLDING AND SUCCESS RATIO

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12. The graph given below classifies the number of delisting offers based on promoter holding before the offer. Out of 38 offers, in 31 cases, promoter holding was in the range of 70% - 90%. In all 9 unsuccessful offers, promoter holding was also in the same range. Further, in 20 offers out of the 38 offers, promoter holding was more than 75% and thus were not meeting the minimum public shareholding criteria.



## D. CHALLENGES/ISSUES ARISING THROUGH DELISTING PROCESS

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13. SEBI has received various representations from the market participants including stock exchanges, industry representatives and investor associations highlighting the challenges faced in the delisting process.

14. Market participants have pointed out issues in the delisting process both in the cases where the delisting offer has succeeded or failed. In case of successful delisting offers, a few market participants have apprehended that the success of the offer was due to tacit understanding between promoter(s) and a set of investors. Similarly, when the delisting offer fails, a few market participants have raised concerns that the discovered price through reverse book building process has been unduly influenced by a set of investors who are mainly speculators. In view of the above, the delisting process need to be reviewed in totality to address the aforesaid concerns. The details of the issues raised by the different market participants are detailed in the subsequent paragraphs.

15. From the perspective of acquirers, the issues highlighted are summarised as under:

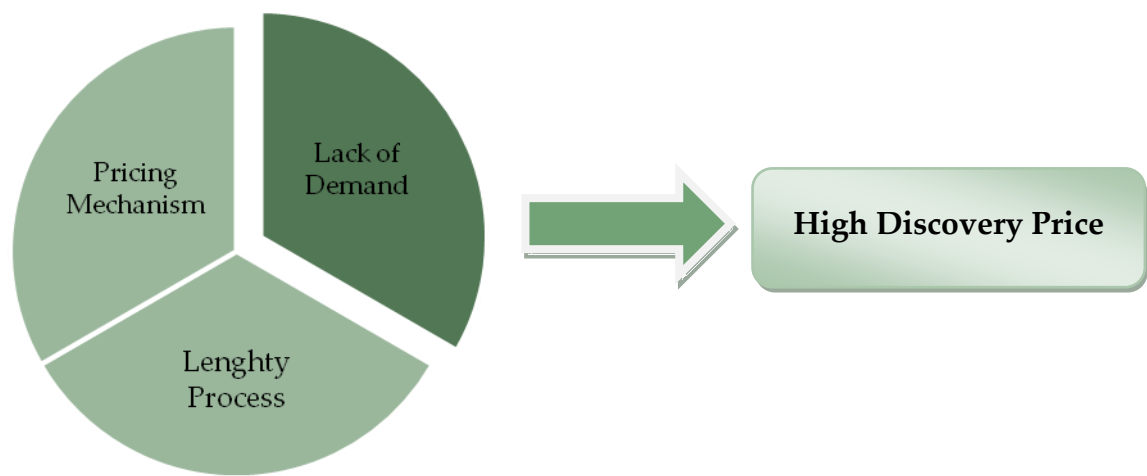
15.1. **Reverse Book Building (RBB) Process:** It has been argued that the RBB process, which is supposed to engender an investor friendly mechanism for price discovery and to aid in determination of a fair exit value for minority / public shareholders, is not fully achieving the objective. The mechanism is not necessarily leading to genuine discovery of price. A few concerns raised in relation to the RBB process as pointed out the by market participants are as under:

- a. The minority / public shareholders holding significant stake exercise disproportionate powers in determining the exit price and thereby, affect the interest of the larger set of minority / public shareholders. The bidding details of delisting offers of some companies point out that some investors have influenced the outcome of the offer by bidding at a higher premium (around 106% more than floor price). Promoters in such offers have rejected the price even after achieving 90% threshold limit. Thus, affects interest of larger set of minority / public shareholders.
- b. Some of the bids are placed at a price which is much higher than the floor price determined as per the said Regulations. These bids are generally placed by some investors who have invested in the company close to the delisting process with a view to make unreasonably large gains in the process. Such bids destabilize the delisting process and adversely affect the interest of other minority / public shareholders who have undertaken the risk of investing with a longer time horizon and are denied a fair exit.
- c. A tacit understanding between a few market participants in the price discovery process may work against the interest of other minority / interest shareholders intending to participate in delisting process.

15.2. **Lack of sufficient demand:** Retail investors find it difficult to comprehend the RBB process resulting in lack of participation by the retail investors. They are generally not aware of the bidding price sensitivities and end up bidding at high premiums, thus, making the price uneconomical for the acquirer. Further, tendering of shares in the delisting process is treated akin to off-market transactions and consequently, the tendering shareholders do not get the benefit

of lower capital gains tax. These factors result in lack of participation in the delisting process.

- 15.3. **Time consuming process:** The sequential process including the requirement for obtaining shareholders' approval increases the timeline of the delisting process. This enables some investors to build significant positions in the company's stock and influence the delisting process.



*Main Issue With Current Delisting Regulations*

16. Certain concerns relating to the delisting process have also been raised from the perspective of investors. Summary of such concerns are as under:

- 16.1. Acquirers are finding ways to side-step the said Regulations. There are apprehensions that either through parking their own shares by way of offer for sale (OFS) / Institutional Placement Programme (IPP) or through informal arrangements with a set of investors, they acquire such shares at a predetermined price and successfully delist the company at a price favorable to them. This adversely impacts true price discovery.

- 16.1.1. Concerns have been raised by some investors that the acquirers first park their shares with (friendly) investors. These shares are later purchased by promoters/acquirers in the delisting offer. This defeats the purpose of RBB. A study of some of the successful delisting offers strengthens this apprehension. It appears that some companies may have used the OFS route to facilitate their future delisting plans. As an example, in one of the cases,

9% of the total share capital was sold by the promoters through OFS. Upon completion of successful OFS, a delisting offer was launched. Less than 13% shares were tendered in the delisting offer which made the delisting successful. However, above example raises the concern of informal arrangement between promoters and a set of investors.

16.1.2. The bidding details of some of the successfully delisted companies also point out that in certain cases exceptionally high percentage of shares were tendered at a price, very close to the floor price. Further, the data also point out that even though the number of public shareholders was very high, the bids in the delisting offer were tendered at few price points (2 or 3), with very little price difference. For example, in one of the cases, public shareholding of the company constituting over 40% of the paid up capital was distributed around 800 shareholders. However, in the delisting offer, the bids were received at only four price points. Two of the four price points were not only very close to the floor price but also at a difference of INR 5. The delisting offer was success, as over 25% of the shares were received at floor price and around 10% were received at INR 5 more than the floor price.

## **E. ISSUES FOR DISCUSSION**

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### **I. PRICE DISCOVERY MECHANISM**

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17. Price discovery mechanism under the delisting regulations should ensure that the minority shareholders are adequately compensated. Minority shareholders' interest in the delisting process may be better served if there are sufficient safeguards built in the process so that the exit price is fair, transparent and not detrimental to the investors' interest.
  
18. Under the existing RBB process, the highest price at which maximum number of shareholders place their bids would be the offer price. The acquirer is not forced to accept the said offer price unless the price matches his business consideration. Similarly, investors also have no reason to complain as they themselves determined the price through a participative process. RBB process gives minority / public shareholders a say in determining the exit price at which a company could delist its shares and thus, ensures a transparent process of 'price discovery'.

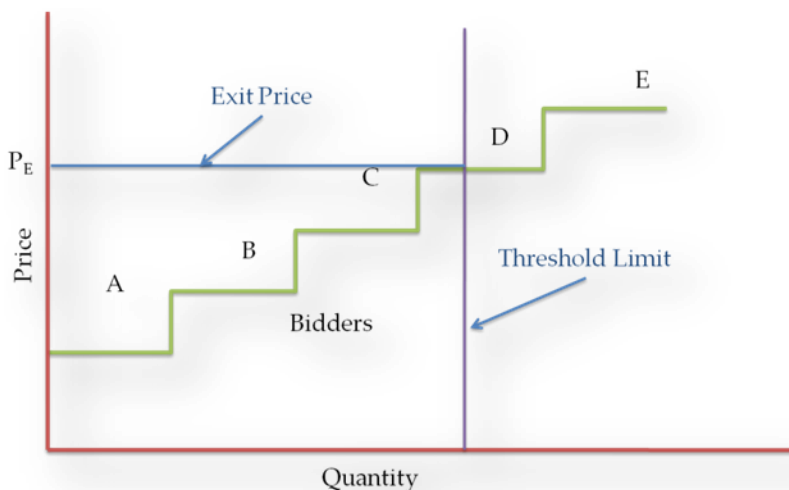
19. Despite many advantages perceived in the RBB process, certain concerns have been pointed out as detailed above.
20. However, considering that the RBB process provides the public shareholders an opportunity to determine the price, it may be continued but with some checks and balances to address the aforesaid concerns.

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**ALTERNATIVE I – RBB WITH MODIFICATIONS:**

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21. The RBB process may be modified to remove the influence of a single/small set of shareholder(s) and due weightage be given to the collective expectations of minority shareholders who individually may be holding a smaller number of shares. Therefore, the exit price determination may not be based on the price at which the maximum number of shares are tendered, but on the price at which shareholders representing a requisite number of shares tendered are willing to exit i.e. highest price at which the promoter touches the threshold limit. In this approach, the bid of each shareholder counts unlike in the present system where only the bid of the largest shareholder counts. This may encourage more shareholders to participate in the RBB process, once they know that their bid counts thus leading to better exit price discovery. This may also address the concern related to influence of single/small set of shareholder(s) in price discovery.



*Considering the above methodology, in this graph,  $P_E$  would be the exit price as this is the highest price at which the threshold limit (i.e. 90% of the total issued shares) is touched.*

22. At the same time, to address the apprehension that delisting others are successful only because of some understanding between the promoters and a set of non-promoter shareholders, the following are suggested in addition to the proposal above :



### **Option 1: Mandatory tender by minimum number of shareholders**

The delisting offer may be considered as successful only if the acquirer acquires shares from at least a specified number of shareholders which could be, say 50% of the total number of public shareholders. This may ensure that a few investors may not be in a position to influence the success of the delisting process and the process involves wider participation of the investors.

**and / or**

### **Option 2: Mandatory tender of minimum number of shares**

The delisting offer may be considered to be successful only if the acquirer acquires at least a specified number of shares, say 50% of shares 'held and not traded' for more than a year as on the date of the announcement of delisting offer. In other words, record date for the purpose of determining such shares would be the date one year prior to announcement of delisting offer. This may ensure that no single investor/ set of investors are in a position to influence the outcome of the delisting process.

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### **ALTERNATIVE II – FIXED PRICE MECHANISM:**

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23. RBB mechanism is not observed in most of the developed markets and a consistent practice is to enable the majority shareholders to indicate a price for delisting and the same being approved by minority shareholders.
24. Companies may be allowed to have an option to make a delisting offer at a fixed price which would be either at a fixed premium to the floor price or a fair price as determined by merchant bankers to the delisting offers.
25. The Companies Act, 2013 and current corporate governance framework provides for a robust mechanism, particularly in the selection of independent directors to protect interest of all shareholders. A committee of independent directors, in consultation with merchant bankers, may provide recommendations on any delisting offers proposed by a majority shareholder. The independent directors and the merchant bankers shall consider market scenario, company performance, future prospects, willingness of controlling / promoter shareholders to delist, quantum of funds required etc. while providing such recommendations.

26. However, in a scenario where market sustains a declining trend over a long period, such a method is bound to give a low exit price. This would be unfair to the investors. Under depressed market conditions, the exit price arrived on the basis of this principle does not adequately compensate the shareholder for the permanent loss of investment opportunity, especially in a company whose shares are regarded as value investment.

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### **ALTERNATIVE III - TWO STEP PROCESS – COUNTER OFFER:**

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27. It is observed that a few delisting offers failed as acquirer rejected the discovered price. In order to increase the possibility of some of the offers going through a two step process may be introduced.

28. In a two step process, the first step remains the same as in the case of current RBB process i.e. shares can be tendered in the RBB process and the price is discovered. In case this discovered price is at significant premium to the floor price/price is not acceptable to the promoter, the acquirer may be given an option to make a counter offer to public shareholders instead of rejecting the discovered price and the offer failing. In this respect, the significant premium could be defined in relation to the floor price, say a premium of 100%.

29. Subsequently, the shareholders can be given a choice either to accept or reject the counter offer made by the acquirer. The offer will be considered successful if investors accept the counter offer and enable the acquirer to reach the required threshold limit under the delisting regulations (i.e. 90% of the total issued shares) .

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## **II. LACK OF SUFFICIENT DEMAND/ENHANCING PARTICIPATION IN RBB**

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30. Widespread shareholding, lack of availability of current shareholders data and low institutional shareholding results in lack of sufficient bids being tendered in the delisting process.

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### **SUGGESTION I - RESTRICTION ON TRADING:**

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31. There is no restriction on trading activities of shares during the delisting offer. There is a possibility that due to high delivery volume in the last two days before closure of the RBB process, a portion of the traded shares may not be available for tendering as a part of RBB process. This may result in lack of sufficient bids in the delisting process and may lead to failure of the delisting offer.

32. Considering the above, trading activities in the shares may be restricted during the last few days before closure of the RBB process. This would ensure that all the shares are available for tendering in the RBB process.

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### **SUGGESTION II - PARTICIPATION OF THE DEPOSITORY RECEIPT HOLDERS:**

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33. As per the said Regulations, 'public shareholders' means the holders of equity shares, other than the (a) promoters and (b) holders of depository receipts issued overseas against equity shares held with a custodian and such custodian. DR holders / custodian cannot participate, unless DRs are converted into underlying shares. The DR holders are required to convert the DRs into shares to participate in the delisting offering without any indication of whether the offer will succeed and may need to convert back if the offer fails. As a result, participation in the delisting process is not representative of these DR holders.

34. If DR holders are allowed to participate in the bidding process (with the condition that if the delisting offer succeeds, the shares must be submitted to the acquirer prior to making payment), a larger pool of public investor would be available for participation in the delisting process.

35. However, there is a concern relating to the ultimate beneficiary of DR holders issued by companies to overseas investors, as through such instruments promoters may conceal indirect holdings in their own firms. The local custodian bank holds DRs on behalf of the overseas depository who issues DRs and the record of DR holders is maintained by the overseas depository.

36. In view of the aforesaid, it may be considered to allow DR holders to tender their shares if the beneficiaries of all the DR holders are known.

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### **SUGGESTION III - TAX STRUCTURE:**

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37. Investors want to maximize their returns and are often faced with the question of tendering their shares in the delisting offer or selling them in the market.

38. In RBB, the transfer of shares happens through an off market deal and securities transaction tax (STT) is not applicable on the transaction as it is not routed through the stock exchange. Hence, the transaction through the tender route has tax implications and would attract long term capital gains tax. Tendering of shares

through RBB attracts higher capital gains tax as compared to transaction through the stock exchange which attracts STT and therefore, lower capital gain taxes are applicable. In view of the same, shareholders refrain from tendering shares in the RBB process to avoid paying higher taxes.

39. In order to provide the level playing field for RBB and the sale in stock exchange, tendering of shares through exchange platform may be considered for delisting. This may ensure higher investor participation in the RBB.

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#### **SUGGESTION IV – CUT-OFF PRICE:**

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40. Retail investors may be allowed to bid at the cut-off price similar to an IPO process. Thus, ensuring a significant portion of the retail holding gets tendered and retail investors have an exit. The cut-off price may be determined via RBB or any other suitable formula. This may provide an option to those retail shareholders who find it difficult to comprehend the RBB process.

### **III. SHORTENING OF PROCESS**

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41. As per the extant provisions, in terms of Regulation 8(1) of the said Regulations, any company desirous of delisting its shares shall obtain prior approval of the shareholders by special resolution passed through postal ballot. Further, the special resolution shall be acted upon if and only if the votes cast by public shareholders in favour of the proposal is at least twice the number of votes cast against it.
42. Further, after getting in-principle approval from the stock exchange(s) (Regulations prescribe 30 days from the application date for stock exchanges to grant their in-principle approval), a delisting offer shall be deemed to be successful if post offer, the shareholding of the promoter is the higher of either ninety percent (90%) of the total issued shares or aggregate percentage of pre-offer promoter shareholding and fifty percent (50%) of the offer size.
43. Current delisting process takes anywhere between 4-6 months to complete. This provides ample opportunities to investors to take up significant positions and, thus, influence the price discovery process.

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**SUGGESTION I - ONE LEVEL APPROVAL - WITHOUT SHAREHOLDER APPROVAL:**

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44. Currently, the delisting is a two-step process. The first being the first step being the shareholders' approval by postal ballot followed by the RBB process. The two level approval process confuses the shareholders and is also time consuming. Discontinuing the requirement of shareholders' approval for delisting would significantly shorten the time for delisting. The approval of the shareholders would in any case be evident through their participation or otherwise in the RBB process. A successful RBB process can be perceived as shareholder approval in conjunction with the price discovery process and, subsequently, the shares may be permitted to be delisted in case the RBB is successful. It is also argued that not offering the shares in the RBB cannot be taken as a substitute for deciding whether at all company should go for delisting.
45. From the delisting data available for FY 2009-2013, it is seen that even where the delisting proposal was approved through special resolution, still requisite number of shareholders did not tender their shares which led to failure of the delisting offers. Thus, the special resolution may not be indicative of successful completion of delisting offer.
46. Shareholders' approval typically takes approximately 30 days. Doing away with this requirement of shareholder approval for delisting would significantly shorten the delisting time line. This will also make sure that investors would get less time to build significant positions in the company's share. Thus, chances of them influencing the price discovery will decrease drastically.
47. However, it is pertinent to note that for the delisting offer to be successful, all the shareholders must be aware of the proposal. Although the company is required to provide updates to the stock exchanges for dissemination on their websites, it is recommended that for wider public participation, such information may be widely disseminated through additional means by the company.

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**SUGGESTION II - ONE LEVEL APPROVAL - OFFER PRICE PRE-POSTAL BALLOT STAGE:**

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48. The acquirer may be permitted to announce an offer price before the postal ballot process as per a predetermined formula prescribed by SEBI or determined by

independent valuers. If the postal ballot succeeds, then the stock may be delisted directly at the offered price. This would significantly shorten the delisting time.

49. However, in this process, public shareholders have little say on the final delisting price as compared to RBB process where minority shareholders have a voice in determining the exit price at which a company could delist its shares and thus, ensures a transparent process of 'price discovery'.

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### **SUGGESTION III – NO IN-PRINCIPLE APPROVAL**

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50. In terms of the said Regulations, companies are required to make an application to the concerned recognized stock exchange for in-principle approval of the proposed delisting. The application shall be accompanied by an audit report as required under regulation 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 in respect of the equity shares sought to be delisted, covering a period of six months prior to the date of the application. The recognized Stock Exchange shall dispose of the application of the in-principal approval within a period not exceeding thirty working days from the date of receipt of such application.

51. While considering an application seeking in-principle approval for delisting, the recognised stock exchange shall satisfy itself on the following grounds:

- i. The resolution of investor grievances by the company;
- ii. Payment of listing fees to that recognised stock exchange;
- iii. The compliance with any condition of the listing agreement with that recognised stock exchange having a material bearing on the interests of its equity shareholders;
- iv. Any litigation or action pending against the company pertaining to its activities in the securities market or any other matter having a material bearing on the interests of its equity shareholders;
- v. Any other relevant matter as the recognised stock exchange may deem fit to verify.

52. If the stock exchanges are mandated to maintain a list of companies compliant with the provisions of the listing agreement / regulations on periodic basis then the requirement of in-principle approval from stock exchanges may be dispensed with. No requirement of in-principle approval for delisting would significantly shorten the delisting time. This will ensure that investors would get less time to build significant positions in the company's stock and chances of them influencing the

price discovery will decrease significantly. Further, this will also ensure that only compliant companies may proceed with the delisting process.

53. In case of non-compliant companies, a mechanism may be prescribed in the delisting regulations so that SEBI, may grant relaxation from strict compliance with any requirement under the regulations subject to such conditions as it deems fit to impose, in the interest of investors in securities market.
54. Any promoter or acquirer desirous of delisting securities of the company is required to make a public announcement upon receipt of the in-principle approval from stock exchange. In case, there is no requirement of in-principle approval from stock exchange, the public announcement may be prescribed to be made on the date on which the promoter / acquirer takes the decision to voluntarily delist the company. This will be in line with SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 where the acquirer is required to make public announcement on the same day as the date on which the acquirer takes the decision to voluntarily make open offer for acquiring shares of the target company.

#### **IV. THRESHOLD LIMIT:**

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55. In terms of regulation 17 of the said Regulations, for a delisting offer to be successful, the shareholding of the promoter / acquirer post offer should either reach the higher of ninety per cent of the total issued share capital or promoter / acquirer should acquire at least 50% of the offer size.
56. Considering that the deadline for complying with minimum public shareholding requirement is over and a large number of companies have already complied with the norms and only companies compliant with minimum public shareholding norms are allowed to make delisting offers, it is felt that there may not be a need for two different thresholds for a delisting offer to be successful. In view of the same, for a delisting offer to be considered successful, the shareholding of the promoter / acquirer post-offer should reach ninety per cent of the total issued share capital, in line with internationally accepted practice.
57. Further, for all the remaining shareholders an exit option is mandated under the said Regulations at the discovered price during at least the twelve months following the delisting.

58. For Government Companies / Public Sector Undertakings where promoter can hold up to 90%, it is proposed that the threshold level of buying out at least 50% of the remaining public shareholders shall also remain.

## V. OTHER ISSUES - SMALL COMPANIES AND DELISTING

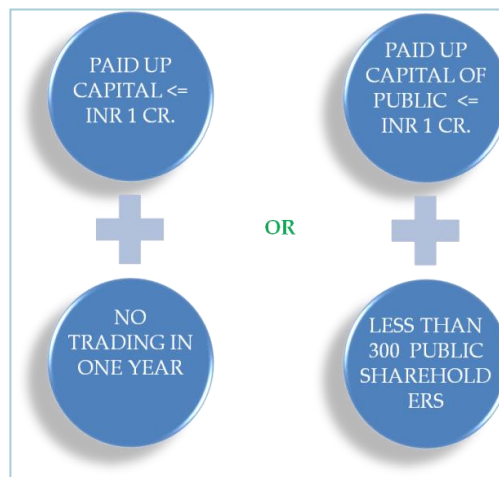
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### THRESHOLD LIMIT FOR SMALL COMPANIES

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59. In terms of regulation 27 of the said Regulations, following two types of companies fall within the category of Small Companies:

- i. A company with a paid up capital up to one crore rupees and its equity shares have not traded in any recognised stock exchange in the one year immediately preceding the date of decision; or
- ii. A company with three hundred or fewer public shareholders and paid up value of the shares held by such public shareholders in such company is not more than one crore rupees



60. As per the said Regulations, these small companies can apply for voluntary delisting of their equity shares without following the RBB process. There may not be lot of companies listed in stock exchanges that satisfy the definition of 'small companies' as per the Regulations.

61. Delisting Regulations defines threshold limit for 'small companies' based on paid up capital, trading history and number of public shareholders. Therefore, a question arises whether there is a need to raise the threshold limit so that a larger number of companies may get covered under this special provision, and if so, to what extent.



## F. INDICATIVE TIMELINES TO COMPLETE THE DELISTING PROCESS

62. At present the delisting process requires approximately 137 days to be completed. Indicative timelines for different activities constituting the process are given in the table below. As can be seen from the same, shareholders' approval and in-principle approval from the stock exchange(s) take up a significant proportion of time.
63. Obtaining shareholders' approval requires following a definite process and timelines as prescribed statutorily which cannot be compromised. As already mentioned above, approval of the shareholders would in any case be evident through their participation or otherwise in the RBB process. Thus, this step may be discontinued.
64. As regards the existing requirement of obtaining in-principle approval from stock exchange(s), the same may no longer be necessary as only compliant companies are proposed to be eligible for delisting.
65. Accordingly, if there is no requirement of prior approval of the shareholders by special resolution and in-principle approval from stock exchange, it would considerably reduce the timeline to complete delisting process. Comparison of current indicative timelines and timelines based on above suggestions are as under:

Activity	Current Indicative end date (calendar days)	Proposed timelines (working days)
Company informs Exchanges, convenes a Board Meeting	X	X
Board of Directors of Company approve proposed delisting resolution, proposed acquisition by Promoter and seek shareholder approval. Company intimates Exchanges/Promoter	X+2	X+2
Posting of notices to shareholders	X+3	NA
Receipt of votes from shareholders - passing of special resolution	X+33	NA
Application to concerned Recognized Stock Exchange(s) for in-principle approval	X+34	NA
Receipt of in-principle approval from Recognized Stock	X+54	NA

Exchange(s) (regulations prescribe 30 days from application date for stock exchanges to grant their in-principle approval)		
Public Announcement in accordance with Delisting Regulations, intimation to Stock Exchanges	X+58	X-1 (Step 1)
Dispatch of Letter of Offer	X+75	X+7
Offer starting date (same as current)	X+88	X+17
Offer closing date	X+92	X+22
Public announcement regarding outcome of Process	X+103	X+30
Payment of consideration / return of shares to shareholders who have validly tendered shares (depending on success/failure) (regulations prescribe maximum 10 business days for payment to shareholders)	X+105	X+32
Final application to Exchanges	X+107	X+34
Actual Delisting, after documentation with Exchanges (exchanges give final approval only after their internal committee approves which meets once a month)	X+137	X+64