

# Proposed Amendments to the Voluntary Delisting Process

On August 14, 2023, the Securities and Exchange Board of India (“SEBI”) issued a consultation paper on proposed amendments to the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021 (“**Delisting Regulations**” and such consultation paper, the “**Consultation Paper**”). The amendments proposed include: (i) certain changes to the counter-offer mechanism under the reverse book-building process; (ii) manner of calculation of floor price; (iii) determination of the reference date; (iv) introduction of a fixed-price route for delisting; and (v) provisions for delisting of investment holding companies. This note sets out a summary of the key changes proposed to be introduced to the voluntary delisting process (i.e., (i) to (iv) above).

## OVERVIEW OF THE PROPOSED AMENDMENTS

### Counter-Offer Mechanism

The Delisting Regulations require a company considering a delisting offer to obtain the approval of its shareholders. The shareholder resolution can be acted upon by the company only if the votes cast by the public shareholders in favor of the proposal are at least two times the number of votes cast by the public shareholders against the proposal.

Currently, under the Delisting Regulations, an acquirer may make a counter-offer only if the post-offer shareholder of the acquirer (along with shares tendered in the delisting offer) reaches 90% of the total issued shares. This could potentially result in the failure of a delisting offer where majority of the shareholders of the company are in favor of the delisting offer and have tendered their shares. For instance, please see below:

	Company A	Company B
Shareholding Pattern	Promoter – 20% Public – 80%	Promoter – 40% Public – 60%
Voting Pattern of the Public Shareholders on the Resolution for Delisting (in%)	For – 55% Against – 25%	For – 40% Against – 20%

Shares Tendered in the Reverse Book-Building Process (in%) *	55%	40%
Post-Offer Shareholding of Acquirer (the Promoter) (in%)	75%	80%
Implication	Delisting offer fails and the acquirer does not have an opportunity to make a counter-offer.	Delisting offer fails and the acquirer does not have an opportunity to make a counter-offer.

*\*Assuming all shareholders that voted in favor of the delisting resolution tender their shares in the reverse book-building process.*

In both the above illustrations, though majority of the public shareholders of Company A and Company B i.e., approximately 69% (55% of 80%) and 67% (40% of 60%) of the public shareholders, are in favor of the delisting proposal, the delisting offer fails in both instances and the acquirer is also not permitted to make a counter-offer.

The Consultation Paper has proposed revision of the threshold required for an acquirer to make a counter-offer. Pursuant to the proposed amendments, an acquirer would have the opportunity to make a counter-offer if the bids received are the higher of the difference between the acquirer's shareholding and 75% of the total issued shares of the company; and 50% of the public shareholding.

The proposed amendments to the Delisting Regulations will help provide acquirers an opportunity to make a counter-offer. As an example, please see below application of the revised counter-offer threshold to the illustration provided above:

	Company A	Company B
Shareholding Pattern	Promoter – 20% Public – 80%	Promoter – 40% Public – 60%
Voting Pattern of the Public Shareholders on the Resolution for Delisting (in%)	For – 55% Against – 25%	For – 40% Against – 20%
Shares Tendered in the Reverse Book-Building Process (in%)*	55%	40%
Counter-Offer Threshold (i.e., the higher of the difference between the acquirer's shareholding and 75% of the total issued shares; and 50% of the public shareholding)	55%	35%
Implication	Acquirer will have an opportunity to make a counter-offer.	Acquirer will have an opportunity to make a counter-offer.

*\*Assuming all shareholders that voted in favor of the delisting resolution tender their shares in the reverse book-building process.*

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In both the above illustrations, the acquirer will have an opportunity to make a counter-offer.

In addition to lowering the threshold for a counter-offer, the Consultation Paper has also prescribed a framework for the determination of the counter-offer price. Such price will be the volume weighted average price of the shares tendered in the reverse book-building process. The above change will provide meaningful information to acquirers as the volume weighted average price of the shares tendered in the reverse book-building process could reflect the expectations of the public shareholders. The Consultation Paper has also clarified that the acquirer may also choose to offer a higher price.

The proposed framework for determination of the counter-offer price along with the proposal to lower the threshold for a counter-offer could potentially result in more successful delisting offers. However, it should be noted that the revised threshold is applicable only in relation to a counter-offer. Accordingly, once a counter-offer is made, the post-offer shareholding of the acquirer along with the shares tendered in the reverse book-building process will be required to reach 90% of the total issued shares of the company.

### Calculation of the Floor Price

The Delisting Regulations currently require calculation of the floor price based on the parameters set out under Regulation 8 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**Takeover Regulations**”). The Consultation Paper notes that there is a need to separately define “floor price” in the context of delisting offers as the definition under the Takeover Regulations was drafted in the context of open offers where companies continue to remain listed.

The proposed definition of floor price is aligned with the definition of such term under the Takeover Regulations. In addition, the Consultation Paper has also proposed “adjusted book value” as determined by an independent registered valuer as an additional parameter for determination of the floor price for delisting of companies whose shares are frequently traded shares and companies whose shares are not frequently traded. The proposed definition of adjusted book value has also been included in the Consultation Paper.

Adjusted book value as an additional parameter could help in accurate valuation of a company where the existing parameters under the Takeover Regulations do not reflect the true value of the shares of the company.

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## Determination of Reference Date

The reference date for calculation of the floor price, under the Delisting Regulations, is currently 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.

The Delisting Regulations provide for a period of 21 days from the date of the initial public announcement within which a board meeting is required to be held to consider the delisting offer. Further, for the delisting of a listed subsidiary of a listed holding company where both companies are in the same line of business, under Regulation 37 of the Delisting Regulation, a prior intimation for the board meeting where such proposal will be considered is required to be provided, in accordance with Regulation 29 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**SEBI Listing Regulations**”).

In both the above situations, the announcement of the delisting offer will impact the share price of the company that is proposed to be delisted. The Consultation Paper notes that *“there could be a risk of substantial and abnormal trading activity in the shares of the company during the period between the date of the initial public announcement or the date of the prior intimation to the stock exchanges of the board meeting in which the delisting proposal will be considered, as applicable, and 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.”* Accordingly, the Consultation Paper has proposed the reference date to be the date of the initial public announcement, or the date of the prior intimation given to the stock exchanges in accordance with the SEBI Listing Regulations, as applicable.

The above change will ensure that both acquirers and the public shareholders are given the benefit of calculation of a floor price based on a price that is not influenced by the impending delisting offer.

## Fixed-Price Route for Delisting

The Consultation Paper has proposed the introduction of a fixed-price route for delisting shares of a company. This is consistent with the practice in certain other jurisdictions including Singapore.

The reverse book-building process allowed public shareholders to determine the price at which the acquirer would be required to provide an exit opportunity. This could potentially result in the discovery of a price that is higher than anticipated by the acquirer. A large difference between the price discovered through the reverse book-building process and the indicative price provided by the acquirer might make the delisting offer unfeasible for the acquirer. This resulted in uncertainty in the success of delisting offers.

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A fixed-price route solves the above issue by providing acquirers with a certain degree of certainty in relation to price. Public shareholders will also be able to make an informed decision as the price at which the exit opportunity will be provided is known prior to the commencement of the tendering process. A fixed-price route will also make the process of obtaining external funding, if required, easier for acquirers as the price at which the delisting offer will be made is known.

## CONCLUSION

The proposed amendments could result in more successful delisting offers for the following reasons:

- The lower threshold for a counter-offer along with the requirement for the minimum counter-offer price to be based on the volume-weighted average price of the shares tendered could help ensure that the counter-offer price offered by acquirers reflects the expectations of the public.
- The addition of “adjusted book value” could help accurately determine the value of shares of certain companies where the existing parameters set out under the Takeover Regulations do not reflect the true value of such companies.
- The proposed changes for determination of the reference date will help ensure that the floor price is calculated based on a price that is not influenced by the proposed delisting offer.
- Lastly, inclusion of the fixed-price route for delisting will help simplify the delisting process. The certainty that the fixed-price route provides will equally benefit both acquirers and public shareholders.

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*This insight has been authored by **Swapneil Akut** (Partner) and **Siddharth Urs** (Associate). They can be reached at [sakut@snrlaw.in](mailto:sakut@snrlaw.in) and [surs@snrlaw.in](mailto:surs@snrlaw.in), respectively, for any questions. This insight is intended only as a general discussion of issues and is not intended for any solicitation of work. It should not be regarded as legal advice and no legal or business decision should be based on its content.*

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**ASSOCIATES**  
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### NEW DELHI

64 Okhla Industrial Estate  
Phase III  
New Delhi 110 020  
Tel: +91 11 4069 8000

### MUMBAI

One World Center, 1403 Tower 2 B  
841 Senapati Bapat Marg, Lower Parel  
Mumbai 400 013  
Tel: +91 22 4302 8000